

OXFORD

LEGAL DIRECTIVES
AND PRACTICAL
REASONS

NOAM GUR

OXFORD
UNIVERSITY PRESS

Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

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First Edition published in 2018

Impression: 1

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Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data
Data available

Library of Congress Control Number: 2018934173

ISBN 978-0-19-965987-6

Printed and bound by
CPI Group (UK) Ltd, Croydon, CR0 4YY

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Some front matter is omitted from this preview.

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1

Introduction

Reasons are fundamental to our self-understanding as human agents, and to the way we relate to our actions. When acting intentionally, we normally take ourselves to be acting for some reason;¹ and we regularly invoke reasons by way of explaining, recommending, requiring, justifying, evaluating, or criticizing actions, among other purposes.² At the same time, our operation in many spheres of life is subject to *legal* requirements—which are intended to direct and shape our behaviour. But, precisely because our self-understanding as agents is bound up with reasons in the fundamental way just indicated, it is plausible to suppose—as many legal philosophers have—that law’s conduct-guiding operation typically involves some sort of appeal to our reasons; and that law’s function as a guide to conduct cannot be fully or adequately understood without insight into law’s ability to interact with our reasons. To put it differently, the domain of reasons provides what seems to be an important, and perhaps essential, medium between law and our actions. This last statement brings into focus the principal topic of this book: the way in which law bears (or can bear) on our reasons.

This initial statement of my topic requires significant refinement and limitation. That is part of what I will do in this introductory chapter, along with clarifying relevant notions and premises, and introducing some candidate answers that will be examined in later chapters. I start with the following three clarifications. First, my ultimate objective is not the identification of a normative quality shared by all systems or institutions that might be called legal, however iniquitous, corrupt, unreasonable, or thoroughly defective in other normatively significant ways they might be (if any such shared normative

¹ I say ‘normally’ to allow for some instances that can plausibly be understood as involving intentional action done for no perceived reason. This will be fleshed out in ch 9, where a thesis akin to the statement in the body text will be discussed. That thesis, known as the ‘guise of the good’ thesis, has been advocated by an illustrious series of thinkers that includes, inter alia, Aristotle, St Thomas Aquinas, Immanuel Kant, Elizabeth Anscombe, Donald Davidson, and Joseph Raz.

² The list is partial, not only because there are other action-focused invocations of reasons, but also because reasons are frequently invoked with regard to other things, such as beliefs and other attitudes.

quality exists).³ Indeed, much of the discussion, including the thesis I will eventually put forward, will focus on legal systems and lawmakers that satisfy certain prerequisites, or pass some minimum threshold level, in terms of relevant qualities, such as lawmakers being reasonably fit to exercise moral and equitable judgement and reasonably informed about matters germane to their decisions. Thus, my focal question is somewhat more accurately defined as a question about law's *potential* bearing on our reasons, namely as the question of how it bears on our reasons when it meets those prerequisites, which will be further specified in due course. That said, it should be added by way of qualification that parts of the discussion will revolve around cases of objectionable directives which are *less likely* to emerge under reasonably just and judicious legislatures than under legislatures that fall below this standard. But it is one thing to say that such cases are *less likely* to emerge under reasonably just and judicious legislatures, and quite another to say that they *cannot* or *never do*. And precisely because it would be false to say the latter, those cases remain relevant to my inquiry.

Second, the term 'reasons', as used in my initial topic description, warrants some explanatory comments. While I largely leave these to Section 1.2, one comment is apposite at this point. This book is not concerned with *any* reasons, but with reasons that relate in some relevant and significant way to our *actions*.⁴ That I direct my attention to such reasons in a book focused on law should hardly come as a surprise—for law is after all a practical affair, a social practice primarily concerned with our actions.⁵ But a question might follow here: am I referring to essentially the same thing that philosophers call *practical* reasons? The answer is: in large part yes, but not exclusively. When philosophers speak of practical reasons, they normally mean reasons for action: a term of art usually intended to include reasons in favour of or against an action,⁶ such as, for example, the reason for you to set your alarm

³ I say in the body text above 'might be called legal', but I should add, of course, that, from the perspective of natural law theories, defects of the types mentioned above may undercut the legality of a system, or may render it a peripheral instance of law (John M Finnis, *Natural Law and Natural Rights* (2nd edn, Clarendon Press 2011) 9–11, 363–66), or may mean that it is a legally (not only morally) defective system (Mark C Murphy, *Natural Law in Jurisprudence and Politics* (CUP 2006) *passim*, esp 10–12). See further, Jonathan Crowe, 'Clarifying the Natural Law Thesis' (2012) 37 *Australian Journal of Legal Philosophy* 159.

⁴ These words are not meant to signify anything like a category with fixed and sharp boundaries determined in an a priori fashion. I wish to retain a relatively open-ended field of vision in this respect, so as to be able to pick up different types of reason that might emerge through substantive analysis as significant mediators between law and our actions.

⁵ The qualifier 'primarily' is used above, inter alia, because legal responsibility sometimes depends in part on mental elements, such as *mens rea* in criminal offences.

⁶ Though this or closely related terms have also been used in more inclusive ways. I am thinking particularly of Joseph Raz who, in his seminal book *Practical Reason and Norms*, introduced the

clock to 7.00 a.m. (e.g. that otherwise you would be late to work), or, say, your reasons not to order the whole boiled lobster at a business lunch (e.g. it would be messy to crack and eat and would consume your entire attention). The law does not tell us at what time to wake up or what to order for lunch, but reasons with the above type of structure and function—that is, reasons that militate for or against an action—have central relevance to this inquiry. However, to confine the inquiry to those reasons alone would, I believe, be unduly restrictive. It would prematurely preclude the possibility that at least part of law's potential normative significance is to be understood in terms of reasons that, although not reasons for action themselves, have indirect pertinence to our actions. One such type of reason, for example, could be reasons for belief (sometimes referred to as theoretical or epistemic reasons) that, in turn, *inform* our assessment of reasons for action. And there are other reasons that, although not reasons for action in the paradigmatic sense or arguably in any sense, have potential significance for our actions—one of which reasons, as will become clearer in Part III, is central to the position I will ultimately advocate. More will be said about this in due course. I should only add here, as a terminological point, that when referring to the book's topic or question I will nonetheless frequently opt for the term 'practical reasons',⁷ it being a compact term that approximates reasonably well the range of reasons with which I am concerned. But this is a choice of convenience made without intention to preclude from consideration potentially relevant reasons that do not, or do not squarely, fall within the term's standard meaning.

A third clarification may help provide a still more accurate idea of the question addressed in this book. There are different facets to the question of law's bearing on practical reasons, and different angles from which it can be approached. My primary focus here will be a *modal* or *structural* aspect of this puzzle, which can be encapsulated in the following question: what is law's mode of operation in the domain of practical reasons? Or, what is the *modus operandi* of its interaction with practical reasons? At the centre of attention in the first two parts of this book will be two competing answers to this question. The first contends that, when law meets certain prerequisites that endow it with legitimate authority,⁸ its normative mode of operation is

notion of second-order reasons, i.e. reasons to act for a reason or to refrain from acting for a reason (Joseph Raz, *Practical Reason and Norms* (2nd edn, Princeton University Press 1990) 39). The relevant aspects of Raz's theory will be expounded and discussed at length in this book.

⁷ As I have done in the book's title.

⁸ That is, 'legitimate' not in the sense of how it is perceived by people, but in the sense that it satisfies certain justificatory conditions. On the distinction between these two senses, see, e.g., Fabienne Peter, 'Political Legitimacy' in Edward N Zalta (ed), *Stanford Encyclopedia of Philosophy* (2017) s 1 <<https://plato.stanford.edu/entries/legitimacy/>> accessed 15 December 2017.

pre-emptive—namely, it constitutes reasons for action that *exclude and take the place of* some of the reasons that otherwise bear on what we ought to do.⁹ The second answer contends that, rather than excluding otherwise applicable reasons, law can only give rise to reasons for action that compete with opposing ones in terms of their comparative weight.¹⁰ In the third part of the book, I will put forward and advocate a third position, which explains the normative force of reasonably just and well-functioning legal systems in terms of reasons to adopt a certain attitude which reflects a middle course between pre-emption and weighing, an attitude that will be characterized more specifically in Chapter 7.¹¹

1.1. Law—Preliminaries

1.1.1. A Comment on Legal Validity

My inquiry revolves around the relationship between law and practical reasons, but each of the two constituents of this relationship is the subject of philosophical disputes in its own right. Focusing momentarily on the former,¹² there are, as readers of this book are likely to be well aware, wide-ranging disagreements over the question of what law is. This question, needless to explain, cannot be addressed within the confines of this book. But should I, nonetheless, adopt by way of stipulation any one specific conception of law among the jurisprudential contenders? I think it would be neither necessary nor advisable to do so, at least not on a general basis. This is because

⁹ This answer derives from Joseph Raz's pre-emption thesis (Joseph Raz, *The Morality of Freedom* (Clarendon Press 1986) 46). I will describe it more fully in Section 1.3.

¹⁰ This answer is espoused (explicitly or implicitly) by several of Raz's critics cited in n 61. It will be presented in further detail in Section 1.3.

¹¹ Two additional qualifications as to the scope of this inquiry should be added. First, my focus will be mandatory legal norms, rather than norms such as power-conferring and permission-granting norms. My primary interest here is law's operation in practical reason when and insofar as it *requires compliance*—and the paradigmatic sense in which it requires compliance occurs where it mandates behaviour. Furthermore, past discourse on our subject matter has tended to revolve around this type of norm, and, by way of engaging with past discourse, it would make sense for us to focus on the same object. For some exceptions, wherein other types of norm are discussed from a reason-focused perspective, see, e.g., Raz, *Practical Reason and Norms* (n 6) ch 3; Nigel E Simmonds, *Central Issues in Jurisprudence: Justice, Law and Rights* (Sweet and Maxwell 2002) 256–63, 298–304. Second, I will focus primarily on the interface between the law and non-legal actors, rather than on intra-legal methods of reasoning employed by officials, e.g. judges. Legal reasoning will feature in the discussion only instrumentally to my primary objectives. The specific characteristics of legal reasoning mean that including it as a primary topic here, first, would result in a substantially different book than that which I set out to write, and, second, could not fit in this book's scope along with my present objectives.

¹² As regards the latter, some comments will be offered in Section 1.2.1.

Pages 5 to 212 are not shown in this preview.

by a legal system. They cannot and need not be addressed in the context of this book.

9.5. Concluding Remarks

I close with some general remarks on the observations made in this book. Although a few of these remarks will involve partial restatement of earlier claims, they are generally not made in the way of a summary of my arguments or conclusions. My comments fall into three clusters that largely correlate the three parts of the book.

Part I has revealed a moral difficulty that afflicts the move between, on the one hand, the ultimate Razian rationale of recourse to (legitimate) legal authorities—namely, facilitating conformity with reasons—and, on the other hand, the idea of pre-emptive reasons. Although reliance on a legal authority that is better placed to decide than we are will help us to better conform to relevant reasons, *pre-emptive* (or exclusionary) reliance on it, I have argued, is a notion that does not withstand moral scrutiny. The reason can be encapsulated, in very brief form, in the combined effect of the following three considerations. (1) The fallibility of even competent and informed authorities⁷⁰ means that even such authorities may, on occasion, direct their subjects to morally wrong actions. Moreover, the generality of rules means that even good rules may, under certain contingencies, point their subjects to morally objectionable actions. (2) In some of these cases, the gravity and the manifest nature of the immorality involved will be such that, as moral agents, we should refuse to go along with it—such that it must compel disobedience. (3) Such cases do not lend themselves to exhaustive specification in advance through detailed descriptions of all the circumstances in which they arise. And while the Razian can try to provide for them through broadly defined limitations on legitimate authority or the scope of its exclusionary force, the actual demarcation of those limiting categories—and their applicability or inapplicability to particular cases—will depend on the weight of reasons for and against compliance, which is not a criterion that pre-emptive or exclusionary reasons can coherently depend on.

In Part II, the weighing model, an antithesis to Raz's position, has been critically examined. One of the central observations made in the course of this discussion concerns the normative relevance of a certain, partly cognitive

⁷⁰ Including those whose comparative competence and information render them generally apt to direct the relevant subjects to better conform to reasons in the domain in question.

and partly motivational problem.⁷¹ Drawing on empirical work in psychology,⁷² I have argued that an important part of the justification for using legal forms of social ordering lies in their structural suitability to address practical problems that involve the operation of some common situational biases.⁷³ The most immediate conclusion I have drawn from this argument is that the weighing model fails to provide a normative framework within which law could adequately fulfil its conduct-guiding function. But the argument from situational biases has wider significance for questions about the justification of law, the occasions for its appropriate use, and the normative force we can ascribe to certain legal systems (namely, systems that meet the moral and other prerequisites stated in Section 7.1). One noteworthy effect of the argument, which emerged in the course of the discussion, is that it readjusts the focus of epistemic grounds for legitimacy in the following way: since the argument revolves around structural features of law and common situational biases, it de-emphasizes the justificatory significance of a test that compares the authority and each individual subject in terms of attributes such as personal or professional knowledge, understanding, and skills in a specific domain. The level of prominence assigned to the latter type of test in the Razian strand of thought is one that, if I am correct, exceeds its due share in the explanation of why law binds us when it does⁷⁴—by which I mean that it exceeds its due share even in the epistemic part of the story.⁷⁵

⁷¹ The problem I am referring to here consists in certain biases, but I do not suggest that *all* biases, or even all biases discussed here, have partly motivational origins.

⁷² Psychology was drawn upon here in a manner confined and instrumental to my specific purposes. For a discussion of other potential ways in which psychology could inform jurisprudence, see Dan Priel, 'Jurisprudence and Psychology' in Maksymilian Del Mar (ed), *New Waves in Legal Philosophy* (Palgrave Macmillan 2011) 77–99.

⁷³ Which include self-enhancement bias, self-serving bias, hyperbolic or myopic discounting, availability bias, and a meta-bias known as the bias blind spot.

⁷⁴ For some comments of Raz in the vein of the above-described test, see, e.g., Raz, *The Morality of Freedom* (n 49) 70, 73–74, 77–78, 80, 99–100, 104; Joseph Raz, *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (rev paperback edn, Clarendon Press 1995) 347, 350; Joseph Raz, 'The Problem of Authority: Revisiting the Service Conception' (2006) 90 *Minnesota Law Review* 1003, 1033–34. Compare my reservations about the Razian test with other lines of criticism against it voiced, e.g., in Scott Hershovitz, 'Legitimacy, Democracy, and Razian Authority' (2003) 9 *Legal Theory* 201; Thomas Christiano, 'The Authority of Democracy' (2004) 12 *Journal of Political Philosophy* 266; Kenneth E. Himma, 'Just Cause You're Smarter Than Me Doesn't Give You a Right to Tell Me What to Do' (2007) 27 *Oxford Journal of Legal Studies* 121. See also James Sherman, 'Unresolved Problems in the Service Conception of Authority' (2010) 30 *Oxford Journal of Legal Studies* 419 (where Sherman offers a constructive critique of Raz's service conception). For relevant Razian defences, see, e.g., Raz, 'The Problem of Authority' (n 74); Daniel Viehoff, 'Debate: Procedure and Outcome in the Justification of Authority' (2011) 19 *Journal of Political Philosophy* 248.

⁷⁵ This qualification is called for particularly because Raz, apart from endorsing the individually-applied-and-domain-specific comparative test I am questioning here, has also made the following

I am not suggesting, of course, that domain-specific substantive knowledge and understanding do not matter for lawmaking. Nor am I denying that where lawmakers are not even *reasonably* informed about, or reasonably apt to understand, the domains of activity they regulate, their operation may undermine the law's normative force. But to acknowledge this much is not to say that, in the range of instances situated above that threshold, individual comparisons of substantive knowledge and understanding of specific domains are the epistemic paradigm that underpins the explanation of why law binds us when it does.⁷⁶ The normative implications of this point have been more fully discussed earlier in the book,⁷⁷ where it was seen that the foregoing difference in epistemic focus can, in turn, make a significant difference, of size and shape, to the scope of normative legitimacy of a legal system.

Another part of the significance of the argument from situational biases lies in its simultaneous connection with both cognitive and motivational problems. This connection serves to dispel the thought that our subject matter can be insulated from motivational questions. The point was noted earlier in the book,⁷⁸ but merits further attention here. To begin with, in the eyes of someone oblivious to the relevance of biases, it might appear that motivations influencing the agent are an issue extraneous to a discussion of practical reason.⁷⁹ Reasons for or against an action (in the sense we are concerned with) are a normative beast, so to speak—they bear on what we *should* or *should not* do.⁸⁰ What the agent is or is not *motivated* to do, it might be thought,⁸¹

statement: 'In fact, in my view, political authorities are justified primarily on the grounds of coordination, though these are mixed with considerations of expertise' (Joseph Raz, 'Facing Up: A Reply' (1989) 62 Southern California Law Review 1153, 1164. See also *ibid* 1180; Raz, *The Morality of Freedom* (n 49) 30–31, 56; Raz, *Ethics in the Public Domain* (n 74) 349).

⁷⁶ In at least one place, Raz cites some epistemic considerations that appear closer to those I have focused on (Raz, *The Morality of Freedom* (n 49) 75), but the overall picture emerging from his work, and his piecemeal view of the scope of governmental authority, denote a strong emphasis (as far as epistemic factors are concerned) on domain-specific substantive expertise.

⁷⁷ pp 127–29, 168–69. ⁷⁸ pp 125–27.

⁷⁹ More precisely, this may be their impression if they do not assume a desire-based/internalist theory of reasons (see p 10, n 37).

⁸⁰ There are some conceptual questions about reasons that I am glossing over here for the purpose of presenting the above point of view (see body text and notes on pp 9–10). What is material to the position I am describing is the assumption that reasons for action are a normative kind, such that they can apply to someone even if he or she is not motivated to do what they are a reason for.

⁸¹ See proviso in n 79. I set aside the fact that the thought stated above tends to be associated with specific, and not uncontested, meta-ethical assumptions. For relevant critical discussions in current jurisprudential discourse, see, e.g., Maksymilian Del Mar, 'The Natural and the Normative: The Distinction, not the Dichotomy between Facts and Values in a Broader Context' in Sanne Taekema, Bart van Klink, and Wouter de Been (eds), *The Development of Law: Creating Legal Facts and Norms Through Interdisciplinary Research?* (Elgar 2016) 224–41, esp at 230–36; Shivprasad Swaminathan, 'Projectivism and the Metaethical Foundations of the Normativity of Law' (2016) 7 Jurisprudence 231; Sylvie Delacroix, 'Law and Habits' (2017) 37 Oxford Journal of Legal Studies 660.

is beside the point when practical reason is at issue. This thought might operate as a tacit assumption that turns the attention away from motivational problems. And we also saw it (or, at least, what can be interpreted as a similar thought) invoked in the form of an explicit argument.⁸² Now, while it can be readily agreed that motivations and reasons for action are two distinct notions that ought not to be conflated, the thought that the agent's motivations *do not bear* on her practically relevant reasons is, I think, erroneous.⁸³ A preliminary point to recall in this regard is that, apart from reasons for or against an action, we have other practically relevant reasons: we have, for example, reasons to adopt some modes of reasoning rather than others, such as the fact that some are more conducive to correct decisions than others. Biases are, of course, highly pertinent to such reasons, because if one mode of reasoning is more amenable to bias than another mode of reasoning, that is a reason to prefer the former over the latter. But, and this step concludes my point, biases—or, at least, some biases—are not a purely *cognitive* phenomenon: some of them, including some of those relevant here, are linked with both motivational and cognitive factors.⁸⁴ They have cognitive effects, such as influencing our perception of reasons for action and their weight. But their sources and triggering conditions are partly motivational—as is the case, for example, when self-interest motivations manifest themselves in the form of a self-serving bias. Here, then, are motivational factors that make their impact felt (in a cognitive form) right at the heart of what has been our topic of inquiry.

⁸² pp 125–26, where I quote from Joseph Raz, 'Postema on Law's Autonomy and Public Practical Reasons: A Critical Comment' (1998) 4 *Legal Theory* 1, 12. Some other comments of Raz, however, suggest a different, or more qualified, approach to the relevance of motivational factors: see, e.g., Raz, *The Morality of Freedom* (n 49) 75.

⁸³ That is, it is erroneous even from the perspective of theories about reasons that are not desire-based/internalist theories.

⁸⁴ See, e.g., Tom Pyszczynski and Jeff Greenberg, 'Toward an Integration of Cognitive and Motivational Perspectives on Social Inference: A Biased Hypothesis-Testing Model' in Leonard Berkowitz (ed), *Advances in Experimental Social Psychology*, vol 20 (Academic Press 1987) 297–340; Ziva Kunda, 'The Case for Motivated Reasoning' (1990) 108 *Psychological Bulletin* 480; Peter H Ditto and David F Lopez, 'Motivated Skepticism: Use of Differential Decision Criteria for Preferred and Nonpreferred Conclusions' (1992) 63 *Journal of Personality and Social Psychology* 568; David Dunning, 'On the Motives Underlying Social Cognition' in Norbert Schwarz and Abraham Tesser (eds), *Blackwell Handbook of Social Psychology*, vol 1 (Blackwell 2001) 348–74; Erica Dawson, Thomas Gilovich, and Dennis T Regan, 'Motivated Reasoning and Performance in the Wason Selection Task' (2002) 28 *Personality and Social Psychology Bulletin* 1379; Emily Balcetis and David Dunning, 'See What You Want to See: The Impact of Motivational States on Visual Perception' (2006) 91 *Journal of Personality and Social Psychology* 612; David Dunning, 'Motivated Cognition in Self and Social Thought' in Mario Mikulincer and Phillip R Shaver (eds), *APA Handbook of Personality and Social Psychology*, vol 1 (American Psychological Association 2015) 777–803.

But does it really matter from the perspective of practical reason, it might be asked, whether a cognitive error originates from a motivational source or from another source? Implicit in the analysis I have pursued in this book is a positive answer: the partly motivational origins of the type of errors mentioned above matter a great deal. Most pertinently, they are part of the reason why the model put forward and defended in Part III of the book is one that incorporates what I have called the attitudinal or dispositional dimension—namely, why my proposed model involves a mechanism with motivational purchase and persistence such as a well-settled (but overridable) disposition. Since the *problem* is partly motivational, its *solution* must be one that incorporates a motivationally resistant mechanism.⁸⁵ Now, what has already been said in the book by way of explaining this model, distinguishing it from other alternatives, and advocating it, need not be reiterated. But two further comments are worth making. First, the dispositional model, it bears noting, serves to highlight a deficiency in a Razian thesis that has so far not been directly scrutinized here, namely the normal justification thesis.⁸⁶ Let me explain. The legitimacy condition stated in the normal justification thesis is a binary condition. It is binary in the sense that it refers to two alternative modes of reasoning: (1) the agent ‘accepts the directives of the alleged authority as authoritatively binding and tries to follow them’⁸⁷ (an alternative which, by Raz’s understanding, means acceptance of the directives as pre-emptive reasons); or (2) the agent tries ‘to follow the reasons which apply to him directly’⁸⁸ (a mode of reasoning consistent with what I have referred to as the weighing model). The normal and primary way to establish (legitimate) authority, according to the thesis, is by showing that the person over whom authority is supposed to be exercised is likely better to conform with reasons that apply to her by recourse to alternative 1 than by recourse to alternative 2. However, when the dispositional model is brought to mind, a critical problem about the normal justification thesis comes to the surface: its comparative test is incomplete,⁸⁹ since alternatives 1 and 2 are not the only relevant alternatives.⁹⁰ This binary character of

⁸⁵ I have also discussed the role of punishment and reward practices and the role of moral dispositions, and have argued that, notwithstanding their essential roles, they cannot provide an adequate substitute for the attitude and disposition advocated here. See Sections 8.2 and 8.3.

⁸⁶ What I mean is that the thesis *itself* has not been scrutinized here. I did, however, express reservations about the way Raz *applies* the thesis, namely about his piecemeal approach to its application.

⁸⁷ Raz, *The Morality of Freedom* (n 49) 53.

⁸⁸ *ibid.*

⁸⁹ On pp 102–03 I have rejected a somewhat different dichotomy, whereby the supposed alternative to pre-emption is one in which authoritative directives make no normative difference.

⁹⁰ A similar objection is raised by Shapiro (Scott J Shapiro, ‘Authority’ in Jules L Coleman and Scott J Shapiro (eds), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (OUP 2002) 382–439, at 409), though he understands Raz’s second alternative as involving a subject who ‘completely

the test would not be particularly problematic, of course, if other alternatives were evidently inferior to alternatives 1 and 2. But that is not the case, and, if I am correct to make the observations I have made in this book, there exists a better alternative in the form of the dispositional model.⁹¹

A second and final comment reverts to what I have called the attitudinal (or dispositional) dimension of the problem. Part of what I have sought to do in this book, and particularly in Part III, is to demonstrate that this dimension of the problem merits greater attention than it has been given so far. Past discussions of our topic have, for the most part, focused on law's normative significance in terms of (first-order) reasons to act as it requires and/or (second-order) reasons that exclude some opposing reasons.⁹² I have not denied that the operation of law sometimes, or even often, brings into play reasons of the former type, those called by Raz first-order reasons. What I have called attention to, however, is another—less direct, but, as I see it, highly significant—way in which law, reasons, and actions connect when certain prerequisites of legitimacy are met. The link I have highlighted is less direct in that the reasons it consists of are not reasons for or against any legally required act, but reasons to adopt a certain attitude towards the law—a law-abiding attitude, as I have referred to it—whose conative component is a relatively settled (but overridable) disposition to comply with legal requirements. The foregoing link can be schematically represented thus: a reasonably just and well-functioning legal system → reasons (that favour certain attitudes and dispositions) → a law-abiding attitude that disposes its possessor to comply with legal requirements → actions. The disposition at the heart of this model, as has been illustrated, is not a mere motivational reflection of

ignores' an authoritative directive and 'deliberates in its absence' (ibid). Raz may mean here a more inclusive weighing process that takes account of reasons for action that the directive brings into play.

⁹¹ I am conscious that the range of alternatives I have considered and commented on in the book (i.e. the weighing, pre-emption, and dispositional models, as well as other alternatives such as Schauer's presumptive conception of rules) is not exhaustive of all the conceivable alternatives. However, even after taking into account other alternatives that I could not discuss here, the dispositional model is the one I find most appealing.

⁹² It is worth recalling that exclusionary or pre-emptive reasons are not reasons about attitudes. Exclusionary reasons, as explicated by Raz in several places, are reasons against *acting for* some reasons (see, e.g., Joseph Raz, *Practical Reason and Norms* (2nd edn, Princeton University Press 1990) 39; Raz, 'Facing Up' (n 75) 1156–57). They are not reasons to adopt this or that settled and standing mental posture, which is the sense of 'attitudinal' I am referring to here. Thus, as was noted earlier, whether an agent has complied with a pre-emptive reason to ϕ is a question of what reasons she was acting for in ϕ -ing (assuming she has ϕ -ed), not a question of what settled attitudinal profile she has, or what measures she has taken to change it. Incidentally, recall another respect in which the dispositional model differs from the pre-emption thesis, namely the non-exclusionary, overridable character of the advocated disposition.

applicable reasons for action.⁹³ But nor is it a force detached from the domain of reasons, a force exogenous to the sequential link just charted. It is an integral element of the sequential link, connected, on the one hand, with reasons (i.e. the reasons to adopt it) and, on the other hand, with actions (i.e. the actions that would ensue from it, if adopted).

Although the legal philosophical literature includes prominent references to attitudes and dispositions,⁹⁴ within the discourse on law's interaction with practical reason not much has been said on reasons vis-à-vis them. Attitudes and dispositions, in other words, have not been usually discussed in this context as something *regarding which* we have reasons—not even in the qualified formulations favoured by deniers of state-given reasons, such as reasons to take measures conducive to the formation of certain attitudes, or reasons to try to bring it about that we have certain attitudes.⁹⁵ My observation of the relevance and significance of such reasons has emerged from an inquiry focused on the legal domain. But, when considering the wider context of our practical lives and the role played by attitudes in it, I find this outcome of the inquiry anything but surprising. Attitudes—and reasons that favour some of them, and disfavour others—seem to play a ubiquitous role in our practical lives. Employers take account of attitudes (of job applicants or employees) when deciding whom to hire, promote, or dismiss. Counselling psychologists, rehab centres, advertising agencies, and social campaigns are in large part about influencing or changing attitudes. Many, if not all, international and ethnic conflicts have part of their explanation in people's attitudes, which are also key to their resolution. And there are multiple other examples in this vein that come to mind. What such examples suggest is not only that attitudes pervade our lives and make a substantial practical difference in many spheres of activity, but also that we have reasons of great importance in relation to attitudes—such as reasons to adopt, maintain, nurture, or change certain attitudes and concomitant dispositions. If I am right to draw the conclusions I have drawn in this book, such reasons are key to an adequate understanding of the normative significance of reasonably just and well-functioning legal systems. I hope to have lent here some measure of support to their fuller integration in jurisprudential thought and discourse.

⁹³ On this point, and for other arguments to the effect that the dispositional model is not reducible to the weighing model, see pp 156–60.

⁹⁴ To mention two: Jeremy Bentham, *Of Laws in General* (HLA Hart ed, Athlone Press 1970) 16, 18, 109; HLA Hart, *The Concept of Law* (3rd edn with an introduction by Leslie Green, OUP 2012) 57, 85, 102, 137, 201–02.

⁹⁵ It is worth recalling here that my proposed model is not committed to the idea of state-given reasons (even if it lends some indirect support to it). The model is reconcilable with a conceptualization of reasons such as those mentioned in the body text as object-given reasons. See Section 9.2.