

LAW AS A NORMATIVE SYSTEM IN THE PHILOSOPHY OF JOSEPH RAZ

Paul T. Haaga, PhD

Department of Philosophy

Federal University of Lafia,

paul.haaga@arts.fulafia.edu.ng

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Abstract

This paper is aimed at exposing the idea of law as normative in Raz with a point of departure from H.L.A Hart his teacher and mentor. Given the fact that, Raz builds his idea of a normative system around resolving the issue of authority which is a recurrent issue in legal positivism. The paper examines Raz's 'detached statements' in relation with his idea of law as a normative system. The paper examines the nature and claims of law within Raz's philosophy and it further argues in line Raz that, law is a normative system for guiding behaviour and for settling disputes which claims supreme authority to interfere with any kind of activity. The paper found out that, Raz's conception of law as normative systems are social orders and values that motivate action; this means that, the basis for enforcing legal demands creates a viable alternative to the previous understanding that, apparently, coercion is an essential element of law as normative system. The conclusion that is reached in this paper is that the basis for the binding force of the law as a normative system is legal validity within normative legal system.

Keywords: Raz, Normative, Law, Detached statement, Validity

Introduction

In most of human history, law is largely known as a coercive institution, enforcing its practical demands on its subjects authoritatively. This conspicuous feature of law made it very tempting for some philosophers to assume that the normativity of law resides in its coercive aspect. Within the legal positivist tradition, however, the idea of coercive aspect of the law has given rise to fierce controversies. Early legal Positivists, such as Bentham and Austin, maintained that coercion is an essential feature of law, distinguishing it from other normative domains. Legal Positivists in the 20th century have tended to reject this, claiming that coercion is neither essential to law, nor, actually, pivotal to the fulfillment of its functions in society. Raz adds a voice to this discourse in his conceptualization of normative systems. This paper attempt to examine the detached statements and law as normative system in the philosophy of Joseph Raz. Going forward, he builds his idea of a normative system around resolving the issue of balancing

autonomy and authority, because if there is an authority which is legitimate, then its subjects are duty bound to obey it whether they agree or not. Such a duty is inconsistent with autonomy, with the right and the duty to act responsibly, in the light of law. The paper establishes Raz's point of departure from Hart, it explicates the nature and function of law as normative system considering the perspective of Raz and it finally juxtaposes the legitimate claims of the law as a normative system.

Raz's Point of Departure the Positivist Tradition

Raz is a positivist legal philosopher like Hart his teacher and mentor. Hart in the preface to his work the *Concept of Law* presents the case that the work is "an essay in analytic jurisprudence, for it is concerned with the clarification of the general framework of legal thought, rather than with the criticism of law and legal system. In Njoku's words "Raz substantially agrees with Hart's search for an independent account of a legal system. However, he alleges that, there are three functions of law which cannot be taken care of by Hart's explanation of law" (219). This is what defines Raz's first point of departure from Hart and makes his mark within the legal positivist tradition in general. Raz, acknowledges that Hart recognizes types of norms by discriminating between primary rules and secondary rules which he correlated with duty imposing rules and power conferring rules respectively. But as Njoku rightly observes, "Raz asserts that this correlation Hart makes obscures the distinction between normative types and social functions of law" (219). In Raz's opinion, this distinction Hart makes confuses the functions of law with the kinds of law. Raz thinks the social functions of the law are the intended or actual social consequences of the law and this is different from the question of classifying norms into distinct normative types. The classification of law into normative types has to do with the logical implications of statements stating the norm. To this end, Hart's distinction between primary and secondary rules clearly emphasizes the normative types of rules. The function of law, on the other hand, stresses the fulfillment secured when laws are applied and obeyed. The point here is further emphasized by Njoku that,

The point Raz makes is correct in claiming that Hart does not make a clear distinction between normative types and functions of law. Hart correlates primary rule solely with primary functions (duty-imposing rules) and secondary rule with secondary functions (power-conferring rules). Hart states that secondary rules remedy the defect of primary

rules. And in his presentation, primary rules can only be duty imposing and not power conferring, so also secondary rules are not duty imposing (221).

Thus, Hart restricts the function of the primary and secondary rule respectively. But Raz thinks that Hart's rule of recognition can be both power and duty conferring rules. Another point of departure from Hart for Raz is in his idea of detached statement as the middle course between the internal and external statement of Hart. In this context, Raz appreciates Hart's distinction between external and internal statement. However, the impression that is given is that, there may not be a middle course. But Raz indicates that there is another class of statements that may be made of a legal system that can be value-free; these are detached statements or statements from a point of view. They are statements which state a certain view that is not necessarily the view of the speaker; but essentially, from the point of view of those who hold such a view. The person who makes a detached statement, like Hart's external statement, is not committed to the view of the statement he makes. He is simply affirming what those who hold those view believe (Hart 102-103). The next section focuses on Raz's conceptualization of detached statements.

From Hart's Legal Statement to Raz's Detached Statement as a Normative System

Hart famously drew a distinction between internal and external legal statements. Internal legal statements are assertions of law. They are normative statements made from the point of view of an adherent of a legal system (e.g. a judge or a lawyer). External legal statements, on the other hand, are statements about individual laws or legal systems. They are descriptive statements made from the point of view of an observer (e.g. a sociologist or an anthropologist) (109-110). Given that the practice of law is a discursive practice, one large and important aspect of understanding legal goings-on is to obtain an understanding of what lawyers and others are up to in uttering internal legal statements. Instead of offering straight analysis of internal legal statements, Hart provided an analysis of theoretical statements that attribute internal legal statements to speakers. With some rational reconstruction, what could be called Hart's oblique analysis of internal legal statements can be characterized as follows: In uttering an internal legal statement, a speaker expresses his acceptance of norms that make up the legal system. What Hart offers then is an expressivist or noncognitivist analysis of internal legal statements.

Raz has been one of a few who have seen that Hart offers an expressivist analysis of internal legal statements. In a 1981 article comparing Hart and Hans Kelsen's positions, Raz, in "The Purity of the Pure Theory" outlines Hart's conception of internal legal statements as follows:

In fact, the meaning of legal statements can be given a truth conditional analysis. Legal statements are true if and only if certain relations obtain between them and the complex social practices. But it would be wrong to say that legal statements are just statements about the existence of those practices. The truth-conditional analysis does not exhaust the meaning of legal statements. To understand them one must also understand their standard uses and what they express. Their typical use is to provide guidance by criticizing, commanding, demanding, advising, approving, etc. and they express acceptance by the speaker of standards of behaviour towards conformity with which the statement is used to guide its addressee (448).

Thus, Raz attributes to Hart an analysis that has an expressivist or noncognitivism prong and a descriptivist or cognitivist prong. Raz's conception of Hart's analysis of internal legal statements can be summarized as follows:

(A1) A speaker makes an internal legal statement if he: (i) expresses his acceptance of some norm; and (ii) states that the same norm is generally accepted and complied with by the members of his community.

In Raz's writings, there are two lines of reasoning that cast doubt on the adequacy of (A1), and even the viability of the approach that Hart has taken in analyzing internal legal statements. The two lines of reasoning, both adopted from Kelsen, call into question two aspects of the proposed analysis that Hart took for granted. First, in attempting to provide an analysis of internal legal statements, Hart concentrated on the statements of those who generally accept and use laws as guides to their own conduct and as standards of criticism. In a number of places, Raz has pointed out that occupation of such a committed point of view -- what Hart calls the "internal point of view" -- is not necessary for a speaker to utter internal legal statements. For instance, even disaffected or alienated members of a community, ones whose normative commitments are deeply at odds with those embedded in the community's legal system, may utter internal legal statements. The worry then is that (A1) fails to capture a significant portion of the internal legal discourse.

The second assumption by Hart that Raz questions is describability. According to Raz in H.L.A. Hart, not only in *The Concept of Law*, but also in his subsequent writings, Hart has assumed that legal practices in particular, and human social practices in general, are describable in non-normative terms. (A1) displays Hart's commitment to describability. Although it is an analysis of normative statements, the terms in which it is formulated are "flatly descriptive and normatively neutral" ones (<http://jnlscup.org/home.do>). Raz has argued that one cannot stick to the observer's point of view in characterizing normative human practices, and still adequately account for their normative nature. He has argued that one must assume, in some sense, the internal or participant's point of view, and deploy normative statements if one wants to characterize satisfactorily the workings of a normative practice like that of law. Raz has thus challenged describability, to which (A1) is implicitly committed.

Raz takes notice of the existence of a type of internal legal statements that he calls "detached legal statements". And this has led him to deny that internal legal statements can be made only by those who generally accept and use the relevant laws as guides to their own conduct and as standards of criticism. Raz argues that Hart's division of legal statements simply into internal and external sorts obscures from view a very significant class of internal legal statements (Sources, Normativity, and Individualtion, 328-329). The internal legal statements Hart had in mind are those that display the speaker's acceptance of commitment to the norms of the legal system within which he speaks. In addition to such committed internal legal statements, as Raz calls them, detached internal legal statements, or statements from the "legal point of view", or statements from the point of view of the "legal man" (Barker 41-42).

The examples Raz gives of detached legal statements in his "Practical Reason and Norms", seem to fall into two main categories: (i) statements of law made within the speaker's own legal system; and (ii) statements of law made within a legal system that is not the speaker's own. In the first category belong statements of law made by lawyers and judges who do not accept or endorse the norms of their legal system. Statements of law teachers and legal writers can belong to either category. Teachers and expositors of domestic laws make statements that belong to the first category (176-177). On the other hand, the statements of teachers and expositors of laws of foreign legal systems, historical legal systems that are no longer extant, or hypothetical ones (e.g. a proposed model code) are prime examples of statements in the second category. To give an example, a

lawyer who is a libertarian at heart and hence does not believe that governments should tax its citizens may advise a client by uttering: "You are obligated to pay your taxes by April" (Raz, "Kelsen's General Theory of Norms" 499-500). This would be a detached legal statement of the first type.

Explicating the Nature of Law as Normative System: A Perspective from Raz

Raz considers law as that which provides "the general framework within which social life takes place; it is a system for guiding behavior and for settling disputes which claims supreme authority to interfere with any kind of activity. Law as a normative system regularly either supports or restricts the creation and practice of other norms in the society. This invariably mean that the law is known as a coercive institution, enforcing its practical demands on its subjects by means of threats and violence and its normativity resides in its coercive aspect. The law by this claim, provide the general framework for the conduct of all aspects of social life and sets itself as the supreme guardian of society" (Kelvin Toh, <http://jnlionse.org/home.ngf>). The laws or legal systems generally belong to institutionalized systems. Going further, Raz contends in his "The Authority of Law" that, all institutionalized systems share many qualities, but the legal system as a form of institutionalized system has its uniqueness; this invariably mean that, though all the sub-systems within institutionalized systems, including the legal system, share same qualities, the legal system stands out because the legal system has features which differentiate it from other systems within the institutionalized system; "these features also account for the fact that legal systems are the most important of all institutionalized systems and this is so as a matter of logic and it is a direct result of defining the feature of law" (114). Also, legal systems "differ from other institutionalized systems primarily by their relation to other institutionalized systems in force in the same society. These relations can be best illuminated by attending to the spheres of human activity which all legal systems regulate or claim authority to regulate. Furthermore,

subjects ought to show "an attitude of respect for law, which expresses itself in a belief that one has a duty to obey the law because it is our law, the law of our country, expresses identification with one's society and is, when such identification is valuable, self-vindicating, that is, that the people who have such an attitude have the duty they believe in...; subjects ought to show respect for the law by expressing trust in the government of the society which passed the law. Trust shows one's confidence that one's society and its institutions work together, and that

by and large they do so in the right way...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. Instead of such case by case scrutiny one accepts the law on trust as binding (164-165).

Sequel to this, Raz outlines what he considers are the unique features of a legal system and what the law claims. In his opinion, legal systems are unique because firstly, they contain norms establishing primary institutions; secondly, that a law belongs to them only if the primary institutions are under a duty to apply it and thirdly, that they have limits. These structural features of legal systems are not, however, sufficient to distinguish them from many normative systems which are clearly not municipal legal systems. Many of them have primary institutions and share all the mentioned structural features of law. Raz calls normative systems sharing these characteristics institutionalized systems. Legal systems differ from other institutionalized systems primarily by their relation to other institutionalized systems in force in the same society (170).

Legitimating the Claims of the Law as Normative System

Amongst the claim that Raz attributes to most legal systems is a claim to comprehensiveness. He holds that, it is entailed by this claim that most legal systems claim to possess legitimate authority to regulate all forms of behavior of all subjects in the communities in which they govern (*Facing Up: A Reply* 236-237). As it were, comprehensiveness does not entail that legal systems which make the claim necessarily *do* regulate all forms of behavior but rather comprehensiveness entails that, legal systems merely claim to possess legitimate authority *to be able to* regulate all behaviours. That is, legal systems either contain norms which regulate it (behaviours), or norms conferring power to enact norms that if enacted, would regulate it. Furthermore, legal systems can regulate behaviours in one way by permitting them. It follows that liberties granted by things such as constitutional provisions are regulated in one way by being permitted. Nowhere does he state that legal systems can claim comprehensiveness all by themselves. Rather, in order for any legal system to claim comprehensiveness, legal officials, authorities, and other legal representatives must claim comprehensiveness and then attribute that claim to their legal system. It is imperative to note that, when Raz talks about the claims of law, he is quick to point out that he uses the terms 'state', 'government', 'the

law', 'legal system', 'official', and 'authority' interchangeably (See "Authority and Justification", 27-29).

The fact is that, legal systems differ from most of other institutionalized systems, as these systems (legal) normally institute and govern the activities of organizations which are tied to some purpose or another. Legal systems do not acknowledge any limitation of the spheres of behaviour which they claim authority to regulate. If legal systems are established for a definite purpose, it is a purpose which does not entail a limitation over their claimed scope of competence. The key point for comprehensiveness as he showed in "The Authority of Law" is that "it does not entail that legal systems have and other systems do not have authority to regulate every kind of behavior. All it says is that legal systems claim such authority whereas other systems do not claim it" (168).

Also, every legal system must be supreme. This means that every legal system claims authority to regulate the setting up and application of other institutionalized systems by its subject-community. Simply put, it claims authority to prohibit, permit, to impose conditions on the institution and operation of all normative organizations to which members of its subject-community belong. This raises the question of the incompatibility of legal systems. This is not just an issue of co-existence as a matter of fact, but co-existence as a matter of law. Hence, can one legal system acknowledge that another legal system applies by right to the same community or must one legal system deny the right of others to apply to the same population? The point is that, there is no doubt that many legal systems are incompatible with each other, but there is no reason for assuming that this is necessarily true for all legal systems since "all legal systems claim to be supreme with respect to their subject-community, none can acknowledge any claim to supremacy over the same community which may be made by another legal system" (172).

Lastly, legal systems are open systems. This is the case because legal systems contain norms the purpose of which is to give binding force within the system to norms which do not belong to it. The more 'alien' norms are 'adopted' by the system, the more open it is. It is characteristic of legal systems that they maintain and support other forms of social groupings. Norms are adopted by a system because it is an open system if, and only if, they fulfill one of two tests. The first test requires that they belong to another normative system which is practiced by its norm subjects and be recognized as long as they remain in force in such a

system as applying to the same norm subjects. In this case, they must be recognized because the system intends to respect the way that the community regulates its activities, regardless of whether the same regulation would have been otherwise adopted.

The Functions and Sources of Law as Raz's Normative System

Understanding the functions of law is, quite obviously, of major importance to any theory of law which attempts a general explanation of the nature of law. In Raz's opinion, "the question of the social functions of law should be clearly distinguished from the question of classifying legal norms into distinct normative types. The normative character of a legal norm is a matter of its logical properties. It is a question of the logical implications of a statement stating that norm. The social functions on the other hand are the intended or actual social consequences of the law" (See Raz "The Problem of Authority: Revisiting the Service Conception", 1003-1004). A special danger awaiting any analysis of the social functions of law is that it may be so closely tied to particular moral and political principles as to be of no use to anyone who does not completely and exclusively endorse them. Bentham's plan for the natural arrangement of the law is a good illustration of this danger. Bentham had the brilliant idea of arranging and expounding the law in a way which would not only facilitate the memory and make for easy retrieval of any relevant legal material by lawyers and laymen alike, but which would also enable everyone to see what the social effects of the law were and would make the criticisms and reform of the law an easy matter.

He classified the law into *Expositorial Approach*- Command of Sovereign and *Censorial Approach*- Morality of Law (Bentham, 108- 109). Raz continues in this regard that, "in proposing his scheme for a natural arrangement Bentham does not confuse the roles of the expositor and critic of the law. He does not confuse the law as it is with the law as it ought to be. But his method of expounding the law as it is designed to serve the critic as well. This in itself is an admirable purpose, which should be served by every analysis. The trouble, however, is that the way Bentham conceived the function of the law was so closely tied to one particular way of evaluating it, namely his own, that his scheme for a natural arrangement is likely to be of little use for anybody but a utilitarian of the Benthamite brand. The aim of the analyst should be to propose a classification of the social functions of the law which is of use to the reformer, but is not too closely tied to any particular viewpoint."²¹ Immediately following this weakness which Raz identifies in Bentham, he (Raz) claims that it is his hope that

the classification he proposes would avoid all these pitfalls and successfully meets all the requirements mentioned.

As a rider, he begins with the social functions of the law which he profitably divided into *direct* and *indirect* functions. Direct functions are those fulfillments which the law secures by being obeyed and applied. Indirect functions are those the fulfillment of which consists in attitudes, feelings, opinions, and modes of behaviour which are not obedience to laws or the application of laws, but which result from the knowledge of the existence of the laws or from compliance with and application of laws. The indirect functions which laws actually fulfill are the results of their existence or of following and applying them. It must be remembered, however, that the acts of following or applying the laws are themselves part of the direct, rather than the indirect, functions of the law. The intended indirect functions of laws are those results which it is the laws' intention to achieve, whether or not they are actually secured. The indirect functions are most commonly fulfilled not only as results of the law's existence and application but also of their interaction with other factors such as people's attitudes to the law and the existence in the society concerned of other social norms and institutions.

The direct functions of the law often depend for their fulfillment on similar factors, but this is not always the case. A person may conform to laws imposing obligations without knowing that they exist. He may exercise legal powers without realizing that his actions have any legal effects. Though such cases are relatively rare, it is quite common for people to perform their duties and exercise powers for reasons which have nothing to do with the law. When doing so, they contribute to the fulfillment of the direct social functions of the law. For instance, curtailing the use of violence is a direct function of the law for it is secured if the relevant provisions of the criminal law are obeyed. Inculcating certain moral values in the population is an indirect function, for its success consists in something more than mere conformity with the law (1103-1004).

Raz further divided Direct functions into primary and secondary functions in "The Authority of Law". The primary functions are outward-looking; they affect the general population, and in them are to be found the reason and justification for the existence of the law. This primary function has the following elements: preventing undesirable behavior and securing desirable behavior; providing facilities for private arrangement between individuals; provision of services and redistribution of goods; and settling unregulated disputes (150-151). The

secondary functions are the functions of the maintenance of the legal system. They make its existence and operation possible. They are to be judged by their success in facilitating the fulfillment of the primary functions by the law. Thus, providing a national health service is a primary function. Regulating the operation of law-making organs is a secondary function.

The law's secondary social functions have to do with the operation of the legal system itself. They provide for its adaptability, its efficacy, and its smooth and uninterrupted operation. There are two secondary functions: first, the determination of procedures for changing the law, and secondly, the regulation of the operation of law-applying organs. To adapt Kelsen's formulation: the law regulates its own creation and its own application (153). The law regulates its own creation by instituting organs and procedures for changing the law. These include constitution making bodies, parliaments, local authorities, administrative legislation, custom, judicial law-making, regulations made by independent public bodies, etc. The law regulates its own application by creating and regulating the operation of courts and tribunals, the police and the prison system, various executive and administrative bodies, etc. In the performance of these functions are involved laws securing the financial resources necessary for the maintenance of these organs, and laws arranging for the recruitment of the appropriate personnel. This is mainly the domain of public law, though an important role is played by criminal law in the performance of these functions. Both duty-imposing and power-conferring laws are involved.

The social effects of the law which come under the indirect social function of the law almost always depend for their achievement on non-legal factors, especially the general attitude to the law and its interaction with social norms and institutions. Some of these functions are performed by particular legal institutions, others by the existence of the legal system itself. The indirect social effects of the law are numerous and vary enormously in nature, extent, and importance. They may include such things as strengthening or weakening the respect given to certain moral values, for example, the sanctity of life, strengthening or weakening respect for authority in general, affecting the sense of national unity, etc. The law helps in creating and maintaining social stratification; it sometimes helps in creating a sense of participation in running the country, sometimes it contributes to a feeling of alienation. Some laws are created with the intention of securing indirect effects. For example, conferment of certain privileges on certain classes of people may be done with the intention of

enhancing their status. Therefore, the distinction between intended and actual functions applies to the indirect functions as well. The previous example shows also that sometimes securing the indirect function is the main reason for enacting a law (159).

For the discourse on the sources of the law, Raz states that, three areas of dispute have been at the centre of the controversy within legal positivism: the identification of the law, its moral value, and the meaning of its key terms. These could be identified as the social thesis, the moral thesis, and the semantic thesis respectively. It should be understood, however, that in each area positivists (and their opponents) are identified by supporting (or rejecting) one or more of a whole group of related theses rather than any particular thesis. In the most general terms the positivist social thesis is that what is law and what is not is a matter of social fact (that is, the variety of social theses supported by positivists are various refinements and elaborations of this crude formulation). Their moral thesis is that the moral value of law (both of a particular law and of a whole legal system) or the moral merit it has is a contingent matter dependent on the-content of the law and the circumstances of the society to which it applies. The only semantic thesis which can be identified as common to most positivist theories is a negative one, namely, that terms like 'rights' and 'duties' cannot be used in the same meaning in legal and moral contexts. This vague formulation is meant to cover such diverse views as: (1) 'moral rights' and 'moral duties' are meaningless or self-contradictory expressions, or (2) 'rights' and 'duties' have an evaluative and a non-evaluative meaning and they are used in moral contexts in their evaluative meaning whereas in legal contexts they are used in their non-evaluative meaning, or (3) the meaning of 'legal rights and duties' is not a function of the meaning of its component terms--as well as a whole variety of related semantic theses (159).

However, the social thesis is more fundamental because it is also responsible for the name 'positivism' which indicates the view that the law is posited, is made law by the activities of human beings. The moral and semantic theses are often thought to be necessitated by the social thesis. In all, Raz adopts a version of the social thesis and he gives justification for this. In his opinion, the most general and non-theoretical justification of the social thesis is that it correctly reflects the meaning of 'law' and cognate terms in ordinary language.

Suppose further that it is argued that in virtue of this law moral considerations have become part of the law of the land (and hence the law is never unsettled

unless morality is). This contention runs directly counter to the strong thesis. If it is accepted, the determination of what is the law in certain cases turns on moral considerations, since one has to resort to moral arguments to identify the law. To conform to the strong thesis, we will have to say that while the rule referring to morality is indeed law (it is determined by its sources) the morality to which it refers is not thereby incorporated into law. The rule is analogous to a 'conflict of law' rule imposing a duty to apply a foreign system which remains independent of and outside the municipal law.

Raz favours the strong thesis and renames it the source thesis (70). A 'source' is here used in a somewhat technical sense (which is, however, clearly related to traditional writings on legal sources). A law has a source if its contents and existence can be determined without using moral arguments (but allowing for arguments about people's moral views and intentions, which are necessary for interpretation, for example). The sources of a law are those facts by virtue of which it is valid and which identify its content. 'Source' as used here includes also 'interpretative sources', namely all the relevant interpretative materials. The sources of a law thus understood are never a single act (of legislation, etc.) alone, but a whole range of facts of a variety of kinds.

Furthermore, two arguments combine to support accepting this source thesis. Firstly, the argument shows that the thesis reflects and explicates our conception of the law; secondly, it shows that there are sound reasons for adhering to that conception. The sources thesis, in this regard, explains and systemizes these distinctions. According to it, the law on a question is settled when legally binding sources provide its solution. In such cases judges are typically said to apply the law, and since it is source-based, its application involves technical, legal skills in reasoning from those sources and does not call for moral acumen. If a legal question is not answered by standards deriving from legal sources then it lacks a legal answer--the law on the question is unsettled. In deciding such cases courts inevitably break new (legal) ground and their decision develops the law (at least in precedent-based legal systems). Naturally, their decisions in such cases rely at least partly on moral and other extra-legal considerations. One need not assume complete convergence between the distinctions mentioned above and the sources thesis. Furthermore, the sources thesis is not merely a reflection of a superficial feature of our culture. Rather it captures and highlights a fundamental insight into the function of law. From all of the foregoing, the

sources of a law are those facts by virtue of which it is valid. What then are the specific demands of this validity?

Establishing Legal Validity within Normative Legal Systems

This section of the paper considers the question of how legal validity is guaranteed within the normative legal systems. In this regard Raz contends that, "rules, orders, contracts, wills, sales, marriages, and many other things can be legally valid or invalid" 72-73). A rule which is not legally valid is not a legal rule at all. A valid law is a law, an invalid law is not. Similarly, a valid rule is a rule and an invalid rule is not a rule at all. One mistake in this regard according to Raz is to think that what legal validity is, is neither more nor less than explaining what is law. This, however, is a mistake. The nature of law is explained primarily by explaining what legal systems are. Validity, on the other hand, pertains to the rules of the system. If we can say of the system itself that it is valid, this is only in the sense that its rules are valid. But now another proposition may suggest itself. Since it is clear that a legal system consists of legally valid rules is it not the case that legal validity means simply membership in a legal system? And "since validity according to law is broader than membership of the legal system, because though all laws are legally valid, not every legally valid rule is a law, it is clear that the notion of membership in a legal system cannot completely explain legal validity. The two notions though related are partly independent of each other" (Raz, "Authority and Its Justification", 18-19).

The best route to the understanding of 'legally valid' is by attending to the fact that it is used interchangeably with 'legally binding'. A valid rule is one which has normative effects. A legally valid rule is one which has legal effects. To avoid misunderstanding, these statements should perhaps be augmented to read: a legally valid rule is one which has the normative effects (in law) which it claims to have. If it is a legal rule purporting to impose an obligation on X then X is under this obligation because this rule is a legal rule. If it is a rule purporting to confer a right or power on Y then Y has the right or power in virtue of the fact that the rule is a legal rule. It is evident that this conception of the nature of the validity of rules can easily be extended to explain the validity of contracts, sales, wills, marriages, etc. They are all valid if and only if they have the normative consequences, they purport to have (21).

On the whole, Raz maintains a systemic understanding of the validity of legal rule. He admits that there is an ultimate rule in a legal system that validates

other subordinate rules within that system. Before him however, Hart had already justified such a rule by simply saying that it is accepted as a social practice constituting a reason for action and the question of its validity does not arise. Implicitly, the ground of its justification is its source: social practice (*Authority of Law* 152). Raz thinks that there is no need to appeal to practice in order to justify the ultimate rule. In his opinion, with the rest of the law both the reason and its source could with equal justice be regarded as the reason for doing as the rule prescribes. It is this fact which establishes the character of the rule as an ultimate legal rule. The fact that a rule is an ultimate legal rule means no more than that there is no legal ground, no legal justification for its validity. It does not imply that there is no ground or justification for the rule, only that if such grounds exist, it is not a legal one. These are legal reason for their character as grounds of validity is itself determined by another law. By definition ultimate legal rules are not similarly grounded on legal reasons. The absence of a further law determining the grounds of validity of the ultimate rules is precisely what makes them ultimate legal rules (Njoku 221). Thus, in Raz's estimation, a rule of recognition exists, but he denies a legal ground for justifying it. The fact that it is identified as ultimate rule is enough for it to be taken as valid. There is no need to raise the question of legal grounds for its validity or to appeal to extra-legal source of its validity.

Conclusion

In a nutshell, this discourse examines law as a normative system in the legal philosophy of Joseph Raz, moving away from Hart to Raz. The paper analyses Hart's normative statements made from the point of view of an adherent legal system (primary rules and secondary rules which he correlated with duty imposing rules and power conferring rules respectively) and his well-known distinction between internal and external legal statements. However, Raz asserts that this correlation Hart makes obscures the distinction between normative types and social functions of law. Raz concur that the social functions of the law are the intended or actual social consequences of the law and this is different from the question of classifying norms into distinct normative types, while this classification of law into normative types has to do with the logical implications of statements stating the norm. Applying his detached statement, he builds a normative system that creates a viable alternative to the previous understanding that coercion is an essential element of law and it is used for guiding behaviour and for settling disputes which claims supreme authority to interfere with any

kind of activity, hereby, considering the law as a normative system recurrently supports the creation and practice of other norms in the society. By this, it means that, the law is known as a coercive institution, enforcing its practical demands on its subjects by means of threats and violence and its normativity resides in its coercive aspect. The law by this claim, provide the basis for the conduct of all aspects of social life and sets itself as the supreme guide of society and in conclusion, a valid law is one which has normative effects and legally valid law is one which has legal effects.

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