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Abstract: This chapter considers whether legal requirements can constitute reasons for action independently of the merits of the requirement at hand. While jurisprudential opinion on this question is far from uniform, sceptical (or 'deflationary') views are becoming increasingly dominant. Such views typically contend that, while the law can be indicative of pre-existing reasons, or can trigger pre-existing reasons into operation, it cannot constitute new reasons. This chapter offers support to a somewhat less sceptical (but still qualified) position, according to which the fact that a legal requirement has been issued can be a reason for action, yet one that is underpinned by bedrock values which (under certain conditions and constraints) law is apt to serve. Notions discussed here include a value-based conception of reasons as facts (Sect. 1); a distinction between complete and incomplete reasons (Sect. 2); and David Enoch's idea of triggering reason-giving (Sect. 3). Following a discussion of criticism against the view adopted here (Sect. 4), the chapter concludes by considering some more 'robust' conceptions of law's reason giving capacity (Sect. 5).

Can the fact that the law requires an action constitute a reason for its performance? That is, can the fact that a requirement has been issued by a law-making institution (or, at least, a law-making institution of a reasonably just and decent legal system)—independently of the merits or demerits of that specific requirement, and of the risk of suffering a sanction—be a reason for action? While jurisprudential opinion on this matter is far from uniform, sceptical views—sometimes referred to as "deflationary" approaches to legal normativity—seem to have become increasingly dominant in contemporary discourse.[1] One response comes in roughly the following form. When

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[1] See, e.g., the deflationary positions put forward in Regan (1989), pp. 1003–1033, 1086–1095; Regan (1990); Enoch (2011a). Cf. moderately deflationary elements featuring in

the law requires an action, there will sometimes (perhaps even often) be reasons for its performance, and some such reasons may be *related to* the fact that the action is legally required, but the latter fact itself is not a reason for action. Thus, for example, in situations where my failure to comply with the law would likely result in a sanction, I have a prudential reason to comply—the reason to avoid a sanction. Moreover, insofar as the requirement's content coincides with what is anyway (regardless of the law) right or desirable—as is the case, for example, when the law requires us to avoid *mala in se* conduct such as murder, theft, or physical assault—clearly I have a content-dependent reason to act in conformity with the requirement. With regard to such reasons, the law can at best play an indicative role. And, finally, there will sometimes be reasons to comply that are not sanction-based and are (at least relatively) independent of the specific content adopted by the legal requirement. If, for instance, compliance will help me coordinate with my fellows, and if doing so is desirable, I have pro tanto a coordination-based reason to comply—as is the case, for example, with the rule that requires me to drive on the left (and as would equally be the case if the rule required me to drive on the right). But the reason in this example is not the rule itself, or the fact of its issuance, but the background desideratum of coordinating with my fellow drivers, which is antecedent and external to the law. All that the law does in this instance is to change the relevant factual landscape by affecting the likely behaviour of my fellow drivers, thus making it possible for me to satisfy a reason that lies in the background of the rule, namely a coordination need.[2] The very fact of there being a rule does not, on this view, constitute the reason.

Marmor (2018). Marmor's account differs from the deflationary position presented in the main body text and is, I think, closer to the views I will defend in Sects. 1–4. Similarly, some of Fred Schauer's remarks suggest a certain affinity with deflationism (see, e.g., Schauer 2016), but I am not sure if the extent of his deflationary affinity marks a discord with my claims in Sects. 1–4. I should also note that the label 'deflationary', in connection with legal normativity, can be used for a range of possible claims, including ones I do not discuss here. See, e.g., Bix (2018) and the symposium published in Revus (2019) 37 (https://journals.openedition.org/revus/5195) on Bix's essay.

[2] Regan (1989), pp. 1019–1033. See also Enoch (2011a) pp. 4–5, 26–33, who argues in a similar vein by reference to his notion of "triggering reason-giving". This notion will be discussed in Sect. 3.

In this chapter I wish to highlight some aspects of the relevant conceptual terrain that can lend support to, or at least facilitate acceptance of,[3] a somewhat less sceptical (but still qualified) position, according to which the fact that a legal requirement has been issued can be a reason for action,[4] yet one that is underpinned by bedrock values that (under certain conditions and constraints) law is apt to serve. I will also briefly point at an attitudinal aspect of legal normativity (i.e., one that pertains to reasons vis-à-vis attitudes, rather than reasons for action),[5] which I have explored elsewhere at greater length.[6] The set of concepts that will be discussed or highlighted here includes a value-based conception of reasons as facts (Sect. 1); a distinction between complete and incomplete reasons (Sect. 2); and David Enoch's notion of triggering reason-giving (Sect. 3). I will then consider and reject a possible objection—on behalf of a more deflationary approach than mine—according to which my position is guilty of a misattribution of reason-giving power (Sect. 4). Before concluding the chapter, I will consider whether, and in what sense, law can gain a more robust status as a source of practical reasons (Sect. 5).

1. A Value-Based Conception of Reasons as Facts

Reasons for action, in the sense pertinent to this discussion, are a *normative* beast, so to speak; they bear on what we *ought* to do or avoid doing.[7] And, since deriving a

[3] I am framing my objective in these rather modest terms ("facilitate acceptance") because a fair amount of what will be said here does not squarely establish the above view, but rather only draws attention to some notions against the background of which it becomes comparatively easy to accept that view.

[4] Occasionally, I will speak of a legal requirement as a reason for action. When doing so, I am merely using terminological shorthand that should be read as saying that *the fact of there being* a legal requirement is a reason for action.

[5] Sect. 5 herein.

[6] Gur (2018), Chaps. 7–9.

[7] I am not discussing herein reasons in the *motivational* sense, or what some writers have labelled "motivating reasons for action". On the distinction between the normative and motivational senses of reasons, see, e.g., Smith (1994), pp. 94–98; Dancy (2003), pp. 1–5, 20–25; Parfit (2001), p. 17. Other writers have used alternative terms in this connection, e.g., "justifying" or "grounding" instead of "normative" reasons, and "explanatory" instead of "motivating" reasons. See, e.g., Raz (2011), pp. 13–35, where Raz distinguishes between normative and explanatory reasons. Cf. Alvarez (2010), Chap. 2. For jurisprudential references to the normative/motivating-reasons distinction, see, e.g., Coleman (2001), pp. 71–72; Enoch (2011a), p. 15; Bix (2011), pp. 413–414; Ehrenberg (2016), pp. 150–152.

genuine normative inference[8] from purely and exclusively non-evaluative premises would seem to involve an unwarranted leap, it appears plausible to think that reasons for action are grounded (at least partly) in some values or goods. I should be quick to add, by way of qualification, that the foregoing is a contested view of practical reasons,[9] which finds its most notable rival in desire-based theories of practical reasons.[10] But my present focus will be confined to a value-based view of practical reasons. Confining the discussion to this ambit is commensurate with my modestly framed objective here, which is merely to highlight some (tenable, even if not uncontested) aspects of the relevant conceptual landscape in view of which it becomes easier to accept that legal requirements can form reasons for action.

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

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

[9] The body of philosophical writings on this matter (and more generally on the concept of reasons) is voluminous. For some relatively recent surveys, see Wiland (2012), Bongiovanni (2018), pp. 3–33.

[10] I should note incidentally that, in comparison to value-based views of reasons, desire-based views of reasons seem to me, prima facie, to fit less smoothly into a discussion of law's normative force. For it is a salient and important feature of law that it seeks to address reasons for action even to those who have no desire or want that corresponds to what it requires. And though the law does not always have the reason-giving power it purports to have, we do not attribute such failures to the absence of this or that desire on the part of a given subject. But a question might be raised here: could desire-based/internalist conceptions fully account for law-given reasons by focusing on more abstract and less immediate human desires whose fulfilment is helped or made possible by the law? Such an exercise, it seems to me, would require considerable strain, but I express no stronger view on whether it might succeed.

light bulb in Ali's table lamp being burnt out is a reason for him to replace it, or that Rosie's waiting for Claudine at the station is a reason for Claudine to go there, what we are referring to as reasons are *facts*.[11] And, indeed, the idea that reasons are facts, albeit a contested idea, enjoys a fair amount of support among writers on the nature of reasons,[12] including proponents of a value-based theory of reasons.

A terminological clarification should be added at this point. I intend the term "fact" in a sense similar to that which is employed in Joseph Raz's seminal book *Practical Reason and Norms*. Raz stipulates that he uses this term "in an extended sense to designate that in virtue of which true or justified statements are true or justified"[13] and that by "fact" he means "simply that which can be designated by the use of the operator 'the fact that …'."[14] "Facts" in this sense include, for example, "the occurrence of events, processes, performances and activities".[15] And using this sense of "fact" also accommodates what was identified above as the intuitive appeal in treating values as reasons—for X's being a value can also be designated by the operator "the fact that …" (as in: "The fact that human life/equal respect for persons is a paramount value …").[16]

Thus far I have briefly indicated some of the arguable merits of conceiving of reasons as facts and of thinking that they are grounded in values. These two views can be combined into something like the following understanding of reasons for action: (1) Reasons for action are facts that count in favour of a certain action; (2) Facts that constitute reasons for action are facts in virtue of which the action has some value (or its consequences do);[17] they are facts in virtue of which the action is, in

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

[12] On reasons as facts see, e.g., Raz (1990), pp. 17–20. See also Gardner and Macklem (2002), pp. 442–447. Factualist views of reasons are often contrasted with the position that reasons are some mental states (e.g., beliefs, pro-attitudes such as desires, or both)—a position sometimes referred to as a "psychologistic" approach to reasons.

[13] Raz (1990), p. 17.

[14] Ibid., 18.

[15] Ibid.

[16] In this connection, see also Gardner and Macklem (2002), pp. 449–450, where the authors point out "the error of thinking that while there may be mixtures of facts and values there are no true compounds of the two", and give examples of "value-laden facts", such as "the fact that the Lake District is beautiful, or the fact that the Thames is dangerous" (ibid., 450).

[17] In defence of a value-based theory of reasons, see, e.g., Bond (1983); Parfit (2001); Gardner and Macklem (2002) pp. 450–457. Raz, too, seems generally to support a value-

some way, good or desirable.[18] By way of illustration, the fact that it is raining today is a reason for me to carry an umbrella. For that fact is part of what makes carrying an umbrella an act that will effectively contribute to a desirable condition, that is, my not being drenched (and there are further explanations of why it is a desirable condition: otherwise I would be likelier to develop a cold, feel uncomfortable, have to waste time on changing clothes, etc.). A person may, directly or indirectly, refer to such a reason without fully stating why it is a reason, as when one says simply: "It's going to rain today. I'd better take an umbrella." But part of what one implies when making such a statement is that being soaked by the rain would be a bad thing.[19]

As indicated earlier, it falls outside the scope and aim of this paper to make a case for the above conception of reasons for action. The point I wish to make instead is that under one notable conception of reasons—which holds a fair degree of intuitive appeal and congruence with the way reasons feature in ordinary discourse—it becomes relatively easy to see how the fact of there being a legal rule in place can be a reason for action. Under this conception, the fact that the law requires an action (φ) need not inhere any moral metaphysical qualities for it to be a reason for action. If it is the case that, due to the introduction of a legal requirement, my φ-ing would serve certain values (whose status and importance as values do not derive from the law itself) which it would not otherwise serve—say, values associated with the desirability of social coordination, social order and stability, or 'fair play' considerations that apply in mutually beneficial cooperative schemes[20]—then, on the

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based theory of practical reasons (see, e.g., Raz 1999, pp. 22, 29–31, 63–64; Raz 2011, pp. 70, 75–79), albeit with certain qualifications (see, e.g., Raz 1999, p. 62; Raz 2016, pp. 141–156). See other relevant references cited in Maguire (2016), p. 234, n. 2. Cf. Chang (2004), pp. 56–90, who advocates a "hybrid" view, according to which "[s]ome practical reasons are provided by the fact that the agent wants something, while others are provided by the fact that what she wants is of value" (ibid., 57).

[18] A notable alternative is Scanlon's "buck-passing view" of value, according to which reasons have an explanatory priority over value (Scanlon 1998, pp. 95–100). But on this view, too, reasons are grounded in properties, or features of the world, external to the agent, and not in the agent's subjective states, such as her desires. In this light, it has been suggested by Parfit that the buck-passing view is reconcilable with a value-based theory of reasons, so long as the latter makes no reference to "value", "good", or "bad" save as abbreviations of reason-giving properties, such as safe, effective, painful, etc. (Parfit 2001, p. 20).

[19] See related comments in Raz (1990), pp. 22–25; Raz (2011), pp. 14–15.

[20] I have considered the 'fair play' argument (though not specifically in the context of reasons discourse) in Gur (2013), pp. 333–337.

conception described above, that fact that the requirements has been issued is (at least pro tanto) a reason for action.[21] I should be quick to clarify that the claim just made is not that the fact of there being a legal requirement in place is always a reason for action, but rather that it is a fact that *can* be a reason when and insofar as certain conditions hold—namely, when and insofar as the law serves values such as those mentioned above through the compliance rendered by its addressees.

2. Legal Directives as Incomplete Reasons

A further conceptual feature that can supplement, and moderately alter, the above picture is a distinction between complete reasons and different components thereof (which I will refer to as incomplete reasons). The distinction, as I characterize it below, draws on Raz's analysis in *Practical Reason and Norms*,[22] though the way I apply it to the question at hand is not strictly committed to, or intended to mirror, his views. An illustration may help explain the intuitive idea encapsulated by this distinction. Suppose Jenny buys a bunch of flowers for her grandmother on the way to visit her. Another person asks Jenny why she has bought the flowers. There is more than one way in which Jenny could conceivably respond (and her choice between alternative responses will depend on factors such as who asks the question, what their prior knowledge of the circumstances is, the specific way in which the question is

[21] I am not addressing here the question of whether—when certain prerequisites of legitimate authority are met—law can generate not merely reasons for action, but what Raz calls pre-emptive or protected reasons (which include second-order exclusionary reasons). I confine myself at this point to a more modest claim focused on what Raz calls first-order reasons for action. I have examined the pre-emption thesis elsewhere (Gur 2018, Chaps. 2–4) and will briefly refer to it in Sect. 5 below.

[22] Raz (1990), pp. 22–25. See also the discussion in Gardner and Macklem (2002), pp. 447–450. According to Raz, a complete reason comprises either an "operative reason" (such as the fact that X is a value: e.g., if respect for persons is a value, that fact is an operative reason, because my belief in that fact *entails* a belief that there is a reason to respect people) or a combination of an "operative reason" and an "auxiliary reason" (the latter of which is defined residually as a reason that is not an operative one)—Raz (1990), pp. 33–35. Examples of auxiliary reasons include "identifying reasons", whose function is to "help identify the act which there is reason to perform" (ibid., 34), and "strength-affecting reasons", whose function is to "help determine the relative strengths of competing reasons" (ibid., 35). As I understand Raz, he sees directives issued by a legitimate authority as operative reasons. But I leave this claim to one side, partly because the class of legal directives I discuss is not necessarily coextensive with directives issued by a Razian legitimate authority.

intended, etc.). Thus, for example, she might say that (a) the flowers are for her grandmother, who she is about to visit; or that (b) her grandmother would be happy to get the flowers; or that (c) making one's grandparent happy is a good thing. Although each of these possible responses would logically and structurally feature in the conversation as a statement of a reason for action, we regard them as interconnected considerations that operate together—as different parts of one explanation of the action.[23] In other words, only their combination captures what we may call a complete reason for action (or, at least, comes closer to capturing it than does (a), (b), or (c) in isolation). A more formal expression of the idea of a complete reason is found in Raz's following statement:

> The fact that p is a complete reason to ϕ for a person x if, and only if, either (a) necessarily, for any person y who understands both the statement that p and the statement that x ϕ's, if y believes that p he believes that there is a reason for x to ϕ, regardless of what other beliefs y has; or (b) R(ϕ)p,x entails R(ϕ),q,y which is a complete reason.[24]

Thus, for example, Laura may believe that 'ϕ-ing in condition c would increase human happiness', and she may simultaneously believe that there is no reason to ϕ in condition c, without thereby making a *logical* mistake (though she may be making a moral mistake). But if Laura believes both (1) that 'ϕ-ing in condition c would increase human happiness', and (2) that 'human happiness is a value', she can no longer hold the belief that there is no reason to ϕ in condition c without making a logical mistake (or, at least, a mistake about the concept of reasons, assuming, as we are doing here, a value-based view of reasons).[25] Now, if we adopt the distinction

[23] The above statement refers to "explanation", but the reasons referred to in the explanation are reasons that the agent (Jenny) believes to be normative, not merely explanatory in the motivational sense.

[24] Raz (1990), p. 24. He adds the following qualification: "However, the fact that p is not a complete reason if the statement that p trivially satisfies the definition only because it entails that some person knows some fact s, and s satisfies the definition" (ibid.).

[25] I set aside here the possibility that Laura believes that the reason to ϕ has been excluded by another, second-order exclusionary reason. Note, however, that even reasons subject to Razian exclusion do not cease to exist. As Raz remarks: "Exclusionary reasons are reasons for not acting for certain valid reasons. They do not nullify or cancel those reasons …" (ibid., 184); "the reasons which are to disregard are not canceled" (Raz 1989, p. 1158).

between complete and incomplete reasons, and revisit Section 2's analysis in this light, it becomes apparent that our earlier observation requires some reformulation. Considered from this perspective, what has been observed is better expressed by saying that legal requirements can at most be *incomplete* reasons. Since legal requirements can only qualify as reasons for action by deriving this status from some deeper-level values or desiderata, they do not meet the criteria for being a complete reason as stated in the above quotation. We cannot say that y's belief that the law requires an action warrants a further belief in a reason for action *regardless of what other beliefs y has*, or that the mere fact that the law requires the action, in isolation from any other facts, entails a reason for action.

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

3. Enoch on Triggering Reason-Giving

In a notable essay entitled "Reason-Giving and the Law", David Enoch has argued that when the law gives reasons for action it does so in a sense which he labels triggering reason-giving. [26] In this mode of reason-giving, law's normative significance is that it serves as a trigger for reasons; that is, it brings into operation reasons that were there in the first place, though in a dormant state. Enoch employs the following non-legal example to introduce this idea:

> [S]uppose your neighborhood grocer raised the price of milk. It is natural to say that she has thereby given you a reason to reduce your milk consumption. … But what the grocer did, it seems natural to say, is merely

[26] Enoch (2011a), esp. 4–5, 26–33. See also Enoch (2011b). A somewhat similar notion appears in Marmor's taxonomy of norms in relation to what he terms "reason-instantiating norms" (Marmor 2018), Sect. III. But, unlike some of Enoch's remarks, Marmor's description of the mode of operation of "reason-instantiating norms" does not seem to be inharmonious with my comments in this section.

> to manipulate the non-normative circumstances in such a way as to trigger a dormant reason that was there all along, independently of the grocer's actions. Arguably, you have a general reason (roughly) to save money. This reason doesn't depend on the grocer's raising of the price of milk. By raising the price of milk, the grocer triggered this general reason, thereby making it the case that you have a reason to reduce your milk consumption. Indeed, perhaps you even had all along the conditional reason to-buy-less-milk-if-the-price-goes-up. … But the grocer can make the conditional reason into an unconditional one, simply by manipulating the relevant non-normative circumstances. And this is what she did by raising the price of milk.[27]

As noted above, Enoch maintains that the same mode of reason-giving is at work when law succeeds in giving reasons for action, even if the dormant reasons triggered by law are substantively different to that featuring in the above example. Thus, for instance, when the law requires an action (Φ) it sometimes manages to trigger reasons "because it solves a coordination problem" or "by creating expectations that you Φ, thereby triggering the general reason you have not to frustrate people's expectations", and so on.[28]

Although there is much that I agree with in Enoch's essay, I have some doubts, or at least reservations, about the idea of triggering reason-giving as characterized by him. My doubts will be expressed by reference to the milk scenario described in the above quotation, but they apply to the legal context too. Before stating my doubts, it is worth highlighting the following aspect of the milk scenario: it involves two reasons, which correspond with two action descriptions at different levels of generality; at the more general level, there is a reason whose associated action description is 'save money' (that is, a reason to save money) and, at the more specific level, there is a reason whose associated action description is 'buy less milk' (that is, a reason to buy less milk). With this in mind, let's consider Enoch's analysis. A first point, of lesser pertinence to my purpose, relates to the general reason, namely

[27] Enoch (2011a), p. 4.
[28] Ibid., 28.

the reason to save money. Enoch points out that this reason was a "dormant reason". However, this does not seem to me to describe successfully the status of that reason. It is a general reason—in that the action 'save money' is general—but it was not, I think, dormant,[29] at least not under ordinary life circumstances; indeed, it was not dormant partly *because* its associated action description is general: 'save money'—which presumably you had both the need and opportunities to do, in all sorts of ways, before the grocer's action.[30] One might respond by saying that Enoch's reference to the reason to save money as dormant should only be understood to mean the following proposition: the reason to save money was not, at the time, instantiated as (part of) a reason to buy less milk. But even if this proposition is correct, I do not think it warrants describing the former reason as dormant because, once more, the action it is a reason for is the general 'save money' (rather than 'buy less milk'). Perhaps, however, Enoch would be willing to settle for another qualified proposition: namely, that the reason to save money *would be* dormant in a state of affairs where (although at some point in the future having extra money would be useful for you) you temporarily have no opportunities to save or spend money. While I am uncertain whether it is best to say, in such a state of affair, that the reason to save money is dormant or that it temporarily does not apply to you, I would in all other respects agree with the above proposition.

But more pertinent is the following point: I do not think that the second reason in the above scenario, namely the reason to buy less milk, was merely triggered. If this is what Enoch is saying—and I am not entirely sure he is—I respectfully differ. Precisely because its action description is 'buy less milk' (as distinct from 'save money'), it is a specific reason that did not exist before the grocer raised the price—it is a new reason created by the price rise, albeit a reason grounded in the desideratum to save money. Enoch mentions a similar view at the start of the above quoted

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

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

passage, but he then appears to reject it. He invokes (albeit tentatively) the idea of a conditional reason to-buy-less-milk-if-the-price-goes-up that was there all along. This idea apparently harmonizes with the triggering account, but there is, I think, an air of artificiality to it.[31] It seems to me less contrived to say that the reduction of milk consumption was simply not part of the relevant normative picture before the price rise than to say there was a conditional reason to-buy-less-milk-if-the-price-goes-up.

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

In the following section, I consider an objection that could be made on behalf of more deflationary approaches than the approach I have adopted. This objection insists that, even assuming the factualist value-based conception of reasons described earlier, it is wrong to think that the fact of legality itself can be a reason for action. Later, in Sect. 5, I will attend to the opposite possibility, namely that there is a more robust, and less deflationary, sense in which law can provide practical reasons which my arguments thus far do not capture.

4. The Misattribution Objection

As clarified above, it is not suggested that the fact that law requires an action is invariably a reason for its performance, but rather that it *can* be under certain conditions, namely if and insofar as some values would be satisfied through compliance with the law (and the fact that the action is legally required is part of the

[31] And that doesn't seem to me to be changed by the distinction between 'wide-scope' and 'narrow-scope' conditionals about reasons (see Enoch 2011a, pp. 7-8).

explanation of why that is so). Against this background, the following objection might be raised: the reason-giving capacity that I ascribe to law is really attributable not to the fact of legality, but to certain qualities (e.g., the capacity to facilitate coordination) and circumstances (e.g., circumstances where coordination is desirable), which are sometimes present in conjunction with the law, but at other times not. Moreover, even insofar as law possesses some beneficial capabilities, they (or parallel ones with a similar function) can also be present in other, non-legal entities; for example, a charismatic citizen with a loud voice who emerges as an effective coordinator in an emergency situation, say, on board a sinking ship.[32] Such capabilities are not, therefore, uniquely legal, and this—the objector might say—casts further doubt on my argument.

My reply to this criticism is as follows. At least some of the beneficial aspects of law's operation are attributable not simply to qualities that coincidentally may or may not be present in conjunction with the law, but to characteristics of law and legality (even if their beneficial potential is not operative in all circumstances). And, if that is so, it appears warranted, after all, to regard the fact of legality, at least under some conditions and circumstances, as a reason for action. By way of illustration, let us revert to law's coordinating function. There are contexts or situations wherein law is comparatively well suited to facilitate coordination between people due to attributes such as its social salience, the powerful coercive apparatus at its disposal, and people's (or some people's) disposition to comply with it as a matter of their normative attitudes towards the law.[33] These are characteristic attributes of law, or, at any rate, the combination of all of them in comparatively high measures is a characteristic attribute of law. Or consider, as another example, law's function in instituting and upholding mutually beneficial schemes of social cooperation through fair sharing of burdens and adherence to restrictions (for example, as regards the use

[32] This might evoke another sinking-ship example famously used by Robert Wolff to make a different (albeit related) point (Wolff 1970, pp. 15–16). See also Hershovitz (2011), p. 17, where a similar example is mentioned.

[33] Attitudes whose formation and endurance may well be attributable, at least in part, to further characteristics (or perceived characteristics) of the legal system, such as its overall adherence to 'rule of law' standards and a reasonable level of fairness and justice displayed by its laws and adjudicative processes. See in this connection Sarat (1977a, b); Tyler (2006), pp. 71–178; Sunshine and Tyler (2003) .

of public goods). Law is perhaps not always capable of adequately performing this function, but, to the extent that it has a comparative advantage at performing it, this is explicable in part by attributes such as its typical generality and impersonal mode of application, its relative persistence through time, and, again, the deference generally rendered to it (whether as a result of its coercive mechanism, normative attitudes towards it,[34] or both). These, once more, are characteristic attributes of law, or, at least, their conjoined presence in relatively high measures is a characteristic attribute of law. If that is true, there does not seem to be anything erroneous or strained in regarding the fact of there being a legal requirement (in circumstances of the type indicated above) as a reason for action.

The objection presented above refers also to the fact that certain bodies or individuals that do not operate on behalf of law or hold legal office may nevertheless possess attributes that allow them to perform (at least in some circumstance and to some extent) functions similar to those of law. I do not wish to deny that in certain contexts, and to some extent, functions such as conduct guidance and dispute resolution can be performed without involvement of the law. However, I should emphasize that a material part of my point refers to the *combination* of attributes associated with the law (i.e., generality, endurance through time, coercive capacity, perceived bindingness, etc.) and the *degree* to which they are present in association with law. The conjunction of these attributes, and the relatively concentrated form in which they are found in legal modes of ordering, are normatively significant,[35] for

[34] There are disagreements over the empirical questions of how common normative attitudes towards legality itself are, and what part such attitudes have in the causal explanation of people's compliance with the law. The most notable study in this regard is Tyler (2006). This study has been the subject of relatively recent criticism by legal theorists such as Claus (2012), pp. 65–70 and Schauer (2015), pp. 57–67, 73–74. I have discussed this debate in Gur (2018), pp. 184–192.

[35] Marmor has recently argued against the thought that there is some general feature of law that renders it normatively unique (Marmor 2018, esp. p. 95 and Sect. VI). As I understand his argument, it focuses on law's normative modality—namely, he argues that there isn't anything unique about *the way* law gives reasons for action, for similar modes of reason-giving can be found in other normative phenomena or practices. Now, I should clarify that this argument does not stand in opposition to the claim I am making here. I am not denying that law's normative modality—the way it gives reasons—is present also in some non-legal normative phenomena or practices. I am only suggesting that there are some situations in which law (due to some of its attributes) is comparatively well placed to perform a socially

they render law well suited to address certain problems of collective action that—given their large societal scale, and the type, intensity, and persistence of their cognitive and motivational precursors—other, non-legal practices or actors seem less (or not at all) capable of addressing.[36] In other words, the question of whether law can constitute reasons for action does not turn on whether there exist beneficial attributes that generally, or in the abstract, or in a necessarily qualitative sense are unique to law; rather, it turns on whether there are situations in which—due to attributes present in law, or their combination, or their concentrated level of presence—law is comparatively well placed to fulfil a valuable function.

5. Can Law-Given Reasons Acquire (System-Wide or Localized) Value-Independent Force?

So far I have argued for a qualified sense in which legal directives can be content-independent reasons. In this variant of content-independence, the reason for action constituted by a legal directive, though (relatively) independent of the merits or demerits of the directive's content, derives from—and remains invariably dependent on—other values or desiderata served through compliance with the directive, be they coordination benefits, social order, fairness, or other. The question I now wish to consider is the following. Suppose that a given legal system (S) is, overall, reasonably just and fair; and that S, overall, serves reasonably well the kind of values or desiderata that law is suited to serve. Can we say that, as a result of S's meeting the above (neither-trivial-nor-perfection-demanding) standard, its individual directives gain a more robust normative status than what has been advocated in the previous sections? Namely, can we say that S's directives thereby become reasons for action, such that their status as reasons for action crystallizes and persists independently of

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beneficial function, and that, to this extent, it is capable of giving reasons for action. As far as I can see, this is not a claim Marmor denies.

[36] I should add that, even to the extent that a function performed by the law is such that it could also be performed by means other than the law, this does not seem to me necessarily to undermine the thought that the law's requirements are reasons for action—at least if those other, non-legal means are less readily available than legal means (e.g., because the latter are the method already in common use in one's society) or if there are other considerations that render the latter preferable.

whether the values served by S are applicable to the directive or case at hand?[37] I will offer a negative answer, following which I will touch upon two theses that involve more qualified elements of robust normativity.

I will cast my answer in terms of a value-based conception of reasons (keeping to the confines earlier set for this discussion), although a similar answer, I believe, can be arrived at on premises of a desire-based conception of reasons.[38] According to the former conception, reasons for action are ultimately grounded in some values that are served or satisfied by the performance of the action. They are not created out of thin air *simply and only* by requiring that others act in some way—they are not the mere product of someone's say-so *without more*. The utterance of a directive-issuer is no more than an artefact of the human will which cannot *alone* turn a false moral proposition into a true one or determine by way of stipulation what is wrong and what is right.[39] It can only have normative bearing, within the framework of a value-based conception, when and insofar as it appears in conjunction with some evaluative factors which make it the case that, and explain why, it is valuable or desirable to follow the directive. With this in mind, I find it difficult to grasp how the set of underlying values that is generally served by the operation of a legal system could somehow imbue the system's requirements with a type of reason-giving quality that transcends, and essentially cuts loose from, its normative origins, such that those requirements become a self-contained source of genuine reasons for action. It would take, I think, some rather mysterious form of normative alchemy for such a transition to be generated. Now, to this the following clarification is worth adding: I do not mean to deny the possibility that the law *claims* to be—or that lawmakers *intend* their directives *to be taken as*[40]—a self-contained source of genuine reasons for action in

[37] The above question refers to a legal *system* (S), but a similar question can be framed by reference to a *body of laws* that forms only a part of S (say, S's body of commercial laws) and meets the above standard (i.e., the standard of being reasonably just and fair, etc.). My comments in the following paragraph of the text refer to the system-wide question, but these comments seem to me applicable, *mutatis mutandis*, to the domain-wide question too.

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

[39] A similar argument is mentioned by Hart (1982), p. 265, though he mentions it as part of a more moderate objection to his conception of authoritative reasons.

[40] Cf. Hart's following statement (1982), p. 254: "[T]he commander intends his expressions of intention to be taken as a reason for doing them. It is therefore intended to function as a

the above sense.[41] But my focus here is not on how the law presents or perceives its capacity to give reasons, but on its actual capacity to give reasons.

Having expressed doubts about robust legal normativity of the kind described above, I will now highlight two different approaches that involve more qualified variants of robust normativity. As I have discussed them elsewhere at some length, here I will only briefly comment on them. The first approach consists in Joseph Raz's service conception of authority.[42] Raz's service conception, it should first be emphasized, is a set of claims focused not on law in general, but on legitimate authority. As such, it applies to instances of law only where and insofar as Raz's prerequisites of legitimate authority are met. Now, Razian legitimate authorities possess a robust normative quality that finds its rational basis in Raz's distinctive view of the justification of authority. His justificatory conditions of authority make sense of the idea that the very fact that a legitimate authority requires an action is a reason for its performance (indeed, not just *a* reason, but, as will be noted below, a privileged type of reason which he labels "pre-emptive" or "protected"). The key condition, encapsulated in a thesis known as *the normal justification thesis*, is that for an ostensible authority (A) to gain legitimate authority over a subject (S), A must have the capacity to guide S to better conformity with reasons that apply to S (that is, reasons other than the directives of A)—in other words, it must be the case that S would be more likely to conform to reasons that apply to her by following A's directives than by trying to follow those reasons directly.[43] Now, if this is (at least part of) what it means for someone to qualify as a legitimate authority, it becomes easy to appreciate why Raz comes to his view about the normative force of legitimate authority: from a Razian perspective, precisely because the justification of authority

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reason independently of the nature or character of the actions to be done". I am not sure whether Hart imputes to the commander an intention similar to that mentioned in the body text.

[41] Though it is worth noting that the very notion that law claims to give reasons is not free from controversy—see, e.g., relevant doubts expressed in Essert (2013).

[42] Raz (1986), Chap. 3; Raz (1995), pp. 211–215; Raz (2006).

[43] Raz (1986), p. 53. In Raz's words: "[The normal justification thesis] claims that the normal and primary way to establish that a person should be acknowledged to have 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" (ibid.).

lies in its ability to reach decisions that better reflect background reasons, the fact that a directive has been issued by a legitimate authority is a reason for acting as the directive prescribes, as well as a reason to refrain from trying to act directly on background reasons which the authority had power to pronounce upon.[44] This idea finds expression in another thesis of Raz, known as the pre-emption thesis, which reads thus:

> [T]he fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them.[45]

On this sophisticated view, the normative force of authority is thought to have the following hybrid quality: on the one hand, it is thought to retain and never break the connection with what Raz sees as the basic rationale of authority—namely, the facilitation of conformity with background reasons—and, thereby, with the deeper level of values underpinning the background reasons (the connection being that the authority is better capable of correctly tracking those background reasons than the subject is);[46] on the other hand, there is a sense in which Razian authority-given reasons operate independently of, and indeed supplant, relevant background reasons and their associated bedrock values, in that the subject of a legitimate authority is not supposed to act on particularistic assessments (i.e., directive-by-directive or case-by-case) of whether the authority-prescribed action comports with those background reasons and values.[47]

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[44] Ibid., 59.

[45] Ibid., 46.

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

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

While the ingenuity of Raz's conception is undeniable, its claims remain contested.[48] In a critique of this conception, which I have advanced elsewhere,[49] I have highlighted what I believe to be two of its principal deficiencies. First, I have argued that the modality of pre-emptive reasons, with its exclusionary character, involves too strong a type of bindingness by authority, such that it fails to adequately accommodate situations where (notwithstanding the authority's compliance with Raz's conditions of authority) it is justified to disobey in order to avoid a directive-specific or situation-specific serious immorality.[50] The second deficiency concerns the scope of legitimate governmental authority. Raz opts for a distinctly piecemeal test for the legitimacy of authority (a choice perhaps partly driven by a wish to mitigate the relative modal stringency of pre-emptive bindingness), which, in turn, yields a rather patchy scope of legitimate governmental authority. This outcome, I have argued, is unsatisfactory since, in reality, the need to organize, and place constraints on, the operation of individuals in a political community through governmental regulation is wider and more general than the scope of authoritative power Raz's test tends to produce.[51] The analysis that led me to these conclusions cannot and need not be repeated here.

The second approach that will be touched upon is what I have put forward and defended elsewhere under the label "the dispositional model".[52] The core claim of this model can be stated, in thumbnail form, as follows: the fact of there being a reasonably just and well-functioning legal system in place is a reason to adopt a relatively settled and stable mental posture whose conative component is an (overridable) disposition to comply with the systems' requirements. Instead of reiterating my explanation and arguments in support of this model, here I will only briefly highlight a couple of the model's aspects that have particular relevance to the present discussion.

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[48] See, e.g., Moore (1989); Perry (1989); Regan (1989), pp. 1001–1033, 1086–1095; Hurd (1991); Mian (2002); Himma (2007); Martin (2014), pp. 81–89. For a relevant survey, see Ehrenberg (2011). Some of Raz's replies can be found in Raz (1989). See also Raz (2006).

[49] Gur (2018).

[50] Ibid., Chaps. 2–4.

[51] Ibid., 127–29, 168–69.

[52] Ibid., Chaps. 7–9.

It should first be noted that this model involves qualified aspects of value-independence (pertaining to the modus operandi of the foregoing disposition) alongside aspects of value-dependence (pertaining to conditions for adopting the disposition and its formation process). Starting with one of its value-dependent aspects, the dispositional model calls for adopting a law-abiding disposition on the condition that the legal system in question is a reasonably just and well-functioning system that is apt to serve valuable purposes and moral principles. And, accordingly, the model readily accepts that if a legal system descends to a pattern of repeated failures to live up to relevant moral standards (e.g., justice, fairness, and respect for persons) the result should be an erosion of its subjects' disposition to comply. On the other hand—and here I come to the qualified aspect of value-independence—once the disposition becomes a settled and relatively stable part of the agent's attitudinal profile, it operates with some degree of motivational and conative persistence.[53] It is not a mere momentary response to a particular situation or a fleeting state of mind, but rather an inclination that acquires relative embeddedness in the relevant agent and tends to endure through time. To this extent and in this sense, therefore, the motivational force it exerts gains independence of specific reasons for action as applicable to particular situations; it makes its force felt in a manner not conditional on those reasons.

At the outset of this section I rejected a type of value-independence whereby the directives of a reasonably just legal system (S) become a self-contained source of

[53] The above-noted senses of value-dependence and value-independence are mutually reconcilable because there is a difference between, on the one hand, the factors that contribute to the formation of an attitude and a concomitant disposition, and, on the other hand, the conditions that trigger behavioural manifestations of that disposition in a particular case. The following non-legal example may help to further illustrate this point. Suppose, for example, I have acquired, through a relatively prolonged assimilation of the view that 'gambling generally tends to have destructive effects on one's life', a general and firmly embedded disposition against gambling. Having materialized, my disposition (if strong enough) may lead me to refrain from gambling even on an occasion when I am presented with arguments, which I find persuasive, as to why gambling on that particular occasion would be desirable and harmless, and why my assessment of these arguments is not prone to error in the present conditions. I have acquired the disposition through recourse to a relevant rationale, but, once the disposition is in place, it may exert its influence even when the rationale for its acquisition is absent. A similar distinction is applicable to the law-abiding disposition mentioned in the body text, thus making it possible for the disposition to be value-independent in one sense (concerning the conditions for its activation) and value-dependent in another sense (concerning the process of its formation).

genuine reasons for action that apply independently of whether the values served by S are applicable to the directive or case at hand. Note that the dispositional model does not represent a departure from this position. For there is a difference between claiming (1) that S's directives constitute reasons for action (i.e., the action that they require), and claiming (2) that S's existence (and overall operation) is a reason for you to adopt a certain attitude or mental posture towards S, such that you become generally disposed to comply with S's directives. In claim (1), the reasons are ascribed to S's directives, and what they are reasons *for* are the *actions* required by those directives. In claim (2), the reason is ascribed to S's existence and general operation, and what it is a reason *for* is the acquisition of a general *attitude* towards S—an attitude that, once settled, tends to endure and exert its influence in a manner that is not contingent on reasons for action as applicable to the specific case at hand.[54] And what makes this difference all the more pronounced are situations that appear to disprove the general truth of claim (1), but which cohere with claim (2) and instantiate its practical effects—one such example being the proverbial lonely traffic light scenario, featuring a driver who comes upon a red traffic light where the road is clearly empty of other vehicles and pedestrians (the visibility is very good, the surrounding landscape is free of visual obstructions, and she can tell that there are no other vehicles or pedestrians within miles in any direction, etc.). In the latter scenario (or at least some appropriately refined version of it) the thought that there is a genuine reason for the action of stopping the car and waiting for the green light sounds counterintuitive, yet a driver who is generally disposed to comply with the law may be led by her disposition to act precisely this way.

Now compliance in the lonely traffic light scenario is also compatible with the modality of Razian pre-emptive reasons (provided that Raz's prerequisites of legitimate authority have been met), but it is worth emphasizing that, alongside this commonality, there are several significant differences between the pre-emption thesis and what I call the dispositional model. I will mention two of them. First, the dispositional model focuses on a reason to adopt a certain attitude, whereas pre-emptive reasons—and their distinctive exclusionary component: exclusionary

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

reasons—do not have this attitudinal focus. Exclusionary reasons, as Raz has made clear, are reasons against acting for some reasons.[55] They are not reasons to adopt this or that settled and standing mental posture. Thus, whether John Doe has complied with a pre-emptive reason to φ is a question of what reasons he was acting for in performing φ (assuming he has performed it), not a question of what settled attitudinal profile he has, or what measures he has taken to change it. Second, there is a modal difference between these two conceptions. A pre-emptive reason to perform an action (φ) is a reason to φ that excludes some of the reasons that would otherwise militate against φ-ing. This means that however weighty those (excluded) contra-φ reasons might be, they should not be acted upon. Insofar as I comply with the pre-emptive reason, then, those contra-φ reasons cease to play a role in determining whether I perform φ or refrain from it. Matters are different under the dispositional model, in that the exclusionary element just noted is absent from this model. The attitude envisaged by the dispositional model implies a behavioural disposition, which is no more than a *tendency* or *inclination* to comply with legal requirements. As such, it remains overridable (or defeasible) by the weight of opposing reasons that might apply in particular cases, rather than exclusionary of opposing reasons. It does not exclude any reason against compliance, at least not in a sense that is not conditional on that reason's weight, which is the sense of exclusion Raz endorses.[56]

6. Conclusion

Several observations have been made here regarding law's capacity to constitute reasons. Three of these observations (if correct) seem particularly worth highlighting by way of concluding this chapter.

First, I have noted that there is a factualist value-based conception of reasons for action that seems, prima facie, intuitively plausible, and which lends credence to, or makes it relatively easy to accept, the idea that legal requirements can constitute reasons for action (or, at least, incomplete reasons for action).[57] This is because, on

[55] See, e.g., Raz (1990), p. 39; Raz (1989), pp. 1156–1157.
[56] Raz (1990), p. 36, 40, 189, 190.
[57] Sects. 1 and 2.

the above conception of reasons, saying that a given fact (F) is a reason for action (φ) is compatible with saying that F's status as a reason for action is grounded in some deeper values (V) that do not reside in F itself. F's being a reason to φ only means that F (or F in conjunction with some other facts) makes it the case that φ-ing would serve or satisfy V—and this, at least sometimes, holds true in the relation between the fact that law requires an action and the values that would be served or satisfied by performance of the action.

Second, I have discussed some relevant arguments put forward by David Enoch in his essay "Reason-Giving and the Law".[58] While there is much that I agree with in Enoch's analysis, I have expressed certain reservations about his characterization of law's normative operation in terms of triggering reason-giving. Enoch is right to note that the issuance of a legal requirement often results in specific reasons for action (e.g., a reason to drive on the left) that emerge on the back of pre-existing general reasons for action (e.g., a reason to coordinate with other drivers). But I have offered a qualification to the thought that the latter, general reasons were dormant prior to the law's pronouncement,[59] and I have noted that, since the former, specific reasons pertain to a distinct action description (e.g., 'drive on the left', as distinct from 'coordinate with other drivers'), there is a genuine sense in which they can be seen as newly created, rather than merely triggered, reasons.

Third, I have expressed scepticism about law's capacity to give reasons for action whose normative operation gains independence of the underlying values or desiderata served or satisfied by recourse to legal modes of regulation (e.g., coordination, social order, and fairness)—namely, reasons for action whose operation supposedly ceases to be contingent on whether those underlying values apply to the directive or situation at hand.[60] On the other hand, I have noted a different (qualified) form of robust normativity that pertains not to reasons for action given by specific legal directives, but to reasons for attitudes given by the overall operation of a legal system (provided it is a reasonably just and well-functioning system). This idea consists, more specifically, in reasons to adopt a (relatively settled, yet overridable)

[58] Sect. 3.
[59] Namely, I have suggested that, since these reasons are general, they were not dormant if there were other ways (even if deficient ones) to satisfy or partly satisfy them.
[60] Sect. 4.

disposition to comply with the system's requirements—a disposition whose motivational and conative influence may persist and extend beyond the directive-specific or situational applicability of reasons for action, but which also remains overridable by compelling enough reasons for non-compliance when these crop up. This idea, which I have elaborated and advocated elsewhere,[61] complements my observations in this chapter to form a fuller picture of law's interaction with practical reasons.

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[61] Gur (2018), Chaps. 7–9.

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