# Prescriptive Rules in Legal Theory

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**Abstract:** Understanding prescriptive rules is important for understanding the law given that much of law is prescriptive. This work in legal philosophy aims to promote such understanding by offering an analysis of prescriptive rules. It does so by showing what these rules are and how they operate, distinguishing them from other rule types, and advancing a critical analysis of Joseph Raz's conception of prescriptive rules. The analysis offered helps to clarify not only the nature of prescriptive rules and their treatment within legal philosophy, but also legal norms that operate by prescribing conduct.

**Keywords:** prescriptive rules, Joseph Raz, content-independence, legal philosophy, pre-emptive reasons, rules

## 1. Introduction

Understanding prescriptive rules is important for understanding the law given that much of law is prescriptive. This work in legal philosophy aims to promote such understanding by offering an analysis of prescriptive rules. It does so by showing what these rules are and how they operate, distinguishing them from other rule types, and advancing a critical analysis of Joseph Raz's conception of prescriptive rules. To make things clearer at the outset, the working definition of prescriptive rules is the following: prescriptive rules are directives issued by a presumptive authority.

In order to clarify the nature of prescriptive rules, the first part of this essay distinguishes them from both regulative rules and instructions, with which they share many similarities. The second part addresses the matter of content-independent reasons. As claimed in this part, well-formulated prescriptive rules provide normative content-independent reasons for action for their subjects. The third part advances a critical analysis of prescriptive rules and their pre-emptive qualities. Here, Joseph Raz's conception will be in focus, and his account of prescriptive rules as pre-emptive or exclusionary reasons for action will be explicated and analysed. A short conclusion ends this work.

## 1.1.   Contrasting rules

Prescriptive rules typically take the form of "Do X" or "If C do X". Rules of this type prescribe that a certain action should be, must be, or ought to be performed (Raz, 1975, p. 49).[1] This puts prescriptive rules in the larger class of regulative rules; however, they stand apart from regulative rules, which do not have a clear issuing source, and from other prescriptive rules such as instructions (Schauer, 1991, pp. 3–6).

There are questions about the appropriateness of distinguishing between regulative and prescriptive rule types. To clarify, this work takes prescriptive rules to be similar to regulative rules. Regulative rules are typically used to control, direct, change or guide the actions of agents with decision-making capacities (Schauer, 1991). The core difference between regulative and prescriptive rules is that the latter do not merely prescribe but are also prescribed. On the other hand, regulative rules need not be backed by an issuing authority. One might consider examples of regulative rules such as rules of etiquette or polite table behaviour. These rules do not have a clear source, and it would be a stretch to point to an issuing authority. Examples of prescriptive rules distinguish themselves by having an authoritative source (in addition to regulating roles): traffic rules, penal and civil codes, pharmaceutical directions for use, and so on.

Instructions provide an interesting contrast to prescriptive rules inasmuch as the two share similar traits: they claim that certain actions ought to be performed and they are typically issued by authorities. The core difference between the two rules is that instructions prove optional in a way that prescriptive rules are not (Schauer, 1991). Unlike instructions, prescriptive rules provide subjects with content-independent reasons for action (Hart, 1982). A reason for action is defined, at its most straightforward, as a consideration that counts in favour of or against performing an action (Dancy, 2000; Parfit, 1984; Raz, 1975; Velleman, 2000). Content-independent reasons will be the focus of analysis in the second part of this work.

Instructions are rules that constitute directions for the accomplishment of a result. A primary way that instructions differ from prescriptive rules is that they are optional (Dancy, 2000; Parfit, 1984; Raz, 1975; Velleman, 2000). This feature of optionality manifests itself in at least two ways. Not only do instructions apply or get put to use by agents with prior reasons for following them, but it also matters to agents if they lead to their desired result. As a consequence, instructions give rise to subjective content-dependent reasons for action. The subjectivity of instructions (or subjectivity of reasons provided by instructions) comes from the fact that they depend on an agent's prior subjective reasons for accomplishing the result that they are meant to help achieve. The content-dependence of reasons provided by instructions comes from the fact that their normative force is inextricably linked to their capacity to help achieve a desired result.

To help illustrate the above, consider the following instruction: "To turn the computer on, press the power button." This instruction prescribes that the power button

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[1]   For a dissenting position see Matthew Kramer (1999). He argues that the imperative 'must' is different from the 'ought' of legal rules in the sense that the 'must' kind of rules do not necessarily provide subjects with reasons for action nor do they presuppose reasons for action for them (Kramer, 1999).

ought to be pressed in order to turn on the computer, but it does not command that an agent press the power button. It expresses a conditional that depends on an agent's desire or reasons for wanting a result to be effectuated in action. It provides a (proper) course of action for accomplishing an outcome. It is in this sense that instructions give rise to subjective normative reasons. If an agent has prior reasons to turn on the computer, for example, then she will follow an instruction about how to turn it on. However, without such prior reasons she has no use for engaging the rule. In this way, instructions are optional in that their normativity arises only in conjunction with an agent's reasons that would motivate her to abide by them.

In order for instructions to be able to provide agents with reasons for action – what will be called their normative force – they need to lead, in fact, to the desired result. Thus, the normativity of instructions is constrained by whether performing the action that the rule prescribes actually leads to the outcome they would help to achieve (Dancy, 2000; Parfit, 1984; Raz, 1975; Velleman, 2000). For example, if the way to turn on the computer was not by pushing the power button, but rather by banging it on the table a couple of times, then any addressee of the instruction would abandon the rule in order to proceed banging (Dancy, 2000; Parfit, 1984; Raz, 1975; Velleman, 2000). Notice that this adds another aspect of meaning to the optionality of instructions: abiding or ignoring them depends on whether they assist in the accomplishment of the result. What differentiates this sense of optionality from the one above is that the content of the rule as it is effectuated is the source of reasons for embracing or rejecting it. In essence, the agent has established that the instruction's aim is a reason for her, but the normative force of the rule only holds sway if its aim can be accomplished by following it.

Now, prescriptive rules can also appear to be optional. This is an appearance that should be dispelled. Take a sign stating "No parking on Mondays" posted in plain view above a certain section of a street. Barring a physical impediment to parking, an agent might disregard the rule and park her vehicle on Mondays. The rule is not strictly speaking inviolable, which makes it seem optional. The subject can choose to disobey the rule on the basis of her reasons. If the subject chooses to disobey the rule then she will most likely have to face some form of penalty. A noteworthy feature of prescriptive rules is that they attach sanctions to their contravention. This represents a key distinction between prescriptive rules and instructions.

Sanctions alone do not efface the trait of optionality that also seems to be a part of prescriptive rules. Sanctions may actually highlight the fact that an agent has a choice because the rule expressly accounts for the circumstance when the subject disobeys the rule. This makes the case for prescriptive rules as either/or propositions – "either obey the rule or suffer the penalty" – that apparently preserves the feature of optionality. Unlike instructions, however, prescriptive rules provide new reasons that attempt to override subjective normative ones. While the capacity of instructions to provide reasons for action was dependent on an agent's prior subjective reasons for engaging with the instruction, prescriptive rules provide agents with new reasons for action that are objective.

Prescriptive rules provide new reasons for action because their existence constitutes a fact counting in favour of performing the action required by that rule. An agent might have prior reasons for not parking on Mondays on a certain part of a street; nevertheless,

the rule "No parking on Mondays" still provides her with a new reason not to park. The rule can make a practical difference because an agent's prior reasons for not parking might not win out on the balance of reasons without the rule, or they might otherwise be inconclusive. Or, perhaps the reasons that an agent has for not parking are not the right ones (e.g. the agent might be under false beliefs), and the rule provides her with the right kind of reason. In the case when the agent has competing reasons that are in favour of parking, the agent will act in accordance with her balance of reasons.

Isolated instances when prescriptive rules are disobeyed do not make those rules any less prescriptive. However, there are cases when a rule will be disobeyed to such an extent that it will lose its normative force. There seems to be a critical point of disobedience that is reached when enough people disobey a rule (what counts as 'enough people' is basically impossible to generalise) which seems to render that rule powerless. As an example, consider that a 19th century law against Parisian women wearing trousers has only been completely overturned as of February 2013, although evidently the rule had lost any kind of effectiveness long before then. Absent this kind of level of mass or habitual disobedience, the fact that some subjects disobey a prescriptive rule does not affect its nature. This is because the rule's essential characteristics are not affected by isolated acts of disobedience.

Prescriptive rules give agents normative objective reasons to obey them. The objectivity of the reasons comes from the fact that their normativity is not conditional upon an agent's personal set of desires, beliefs, or reasons (Moore, 2004; Broome, 2000; Broome, 2004; Dancy, 2000). The normativity of the "No parking on Mondays" rule does not depend on whether or not a subject has any reasons not to park on Mondays. In contrast, the normative force of instructions depends entirely on the subjective reasons of the addressees. In this sense, instructions about how to make apple pies have normative force only to the extent that an agent wishes to make an apple pie.

The distinction between prescriptive rules and instructions has been drawn through a focus on the kinds of reasons that the rules respectively provide (i.e. the guiding or normative force of the rules). The kind of reasons that instructions provide are conditional on the reasons that an individual already has. The kind of reasons that prescriptive rules provide are in turn objective unconditional reasons that do not depend on the reasons of the agent to whom they apply. In this way, the feature of optionality present for instructions is absent for prescriptive rules. With the core distinction between instructions and prescriptive rules outlined, further analysis of the most relevant definitional features of prescriptive rules can proceed.

## 1.2.  Content-independence

The idea of content-independent reasons or justifications was introduced by the legal philosopher H. L. A. Hart in his seminal work, *Essays on Bentham* (1982). There, Hart treats content-independence as it manifests in the case of commands issued by authorities (Hart, 1982, pp. 254–255). In accordance with his conception, an authority can issue different commands and the actions commanded may have nothing in common

with one another (Hart, 1982, pp. 254–255). However, in the case of all of them the authority intends her expression of intention to be taken as a reason for performing the actions commanded (Hart, 1982, pp. 254–255). Consequently, the commands issued by an authority function as reasons for action independently of the nature or character of the actions that are to be performed (Hart, 1982, pp. 254–255).

Hart claims that an authority "intends her expression of intention to be taken as a reason" for performing whatever it is that she commands (Hart, 1982, p. 254). Taking the expression of intention to be a prescriptive rule, the authority intends for this rule to be taken as a reason for action. Thus, the claim is that that which makes the rule a reason for action need not have anything to do with the content of the rule but with the fact that the authority has intended it.[2] The orthodox reading of Hart is that commands and rules, examples of 'expressions of intention', issued by an authority are content-independent reasons for action. This means that they are reasons not in virtue of their specific content, but because of their source (Green, 1988; Raz, 1986; Shapiro, 2002).[3] So, content-independence consists in the fact that the same reason (e.g. the source of the rule) is a reason for a host of actions that may have only their point of origin in common.

Hart's original depiction refers specifically to commands issued by authorities, but the concept applies to prescriptive rules as well. Although lacking the feature of generality, commands possess traits that are similar to rules (Raz, 1985). Most relevant among these: commands prescribe that certain actions ought to be performed; they are issued by authorities; and, they provide content-independent reasons for actions to their subjects (Raz, 1985). It should be noted that this latter feature is not restricted to commands and rules. Promises, agreements, decisions, but also credible threats and requests all provide content-independent reasons for action (Hart, 1982; Raz, 1986; Raz, 2002).

Hart juxtaposes content-independent reasons for action with standard ones. He claims that in the case of standard reasons there is a connection of content between action and reason (Hart, 1982, p. 254). For Hart, action is a means to some valued or desired consequence, which in turn counts as the reason for performing the action. As an illustration, take shutting a window to keep out the cold (Hart, 1982, p. 254). The reason for shutting the window is to keep the cold from entering (Hart, 1982, p. 254). The desired consequence counts as the reason for performing the action which is a means to it.

Standard reasons for action are directly linked to their goodness (Raz, 2009, p. 208). If something is good (or valuable) then the fact of its goodness is a reason for action (Raz, 1975; Raz, 2009). In spite of standard reasons being linked to the goodness of their actional outcome, which demarcates their *content-dependence,* some rules also possess a dependent feature. The preceding section highlighted instructions as examples of rules that provide standard reasons for action. Again, the normative force of instructions derives from the likelihood that they will help achieve some valued goal. This stands in contrast, then, to rules and reasons that derive their normative force from their source rather than their content.

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[2]   The fact that many authorities are not individuals but rather collectives complicates matters as, at least according to some theories, the latter lack the capacity to form intentions. That being said, this doubt must be set aside as it is outside of our scope here.

[3]   For a non-orthodox reading see Sciaraffa (2009).

Another way of framing standard reasons, distinguishable from the good they help to achieve, is by reference to the transitivity of their justification. Take an example of transitivity as it appears in standard reasons: If the fact that a movie is fresh is the reason to watch the movie and the reason why the movie is fresh is because of its cool special effects then the fact that a movie has cool special effects is a reason to watch the movie (Raz, 2009, pp. 209–211). The preceding follows the standard account of transitivity, which is described as "if P is a justification for Q which is a justification for R then P is a justification for R" (Raz, 2009, p. 210). This transitive relationship of elements P, Q and R underscores a direct connection between action and the reason's content. In other words, performance of an action provided by a standard reason follows from the content of the reason itself.

Whereas standard reasons are transitive, content-independent ones by contrast are not. This is a view articulated by Joseph Raz, who writes that the breakdown in transitivity for content-independent reasons, which are provided by prescriptive rules, constitutes their key trait. As he writes:

> The justification of a rule is not, in and of itself, a justification for performing the action which the rule requires. It justifies giving the makers of the rule power to make the rule, and not more. Of course, indirectly it justifies the action the rule requires, as being an action in accordance with a rule which is thus justified. But, unlike content-dependent justifications, it does not justify the action without these additional mediating premises (Raz, 2009, p. 210).

The absence of transitivity means that the reasons for the validity of a prescriptive rule are not in themselves reasons to perform the act that the rule requires (Raz, 2009, p. 210). Put it another way, the grounds for a rule justify the existence of that rule. So, a valid source provides the justification for a prescriptive rule. However, the performance of the actions required by the rule is not justified directly: "The justification of a rule is not, in and of itself, a justification for performing the action which the rule requires" (Raz, 2009, p. 210). The breakdown in transitivity for prescriptive rules is marked by an exception; namely, those cases when following a prescriptive rule are valuable in itself.

For Raz, indirect justification for prescriptive rules allows for a *normative gap* (Raz, 2009, p. 208). This is defined as a divide between what one ought to do, which is the normative force of a reason, and what is good about doing it, which is the value of an action. In the case of rules, the normative gap points to a difference between the normative force of the rule and the value of having the rule (Raz, 2009, p. 208). Nonetheless, for Raz normativity is ultimately based on evaluative considerations (Raz, 2009, p. 209). In the case of rules, agreements and promises there exists the potential for a normative gap that allows for the mediating role of authorities. This points to the shift in justification for why something counts as a normative reason for action –from content to source.

Raz's depiction of the breakdown in transitivity, which ultimately explains his conception of content-independence, can be clarified by an example. Having an authority that has the power to issue prescriptive rules is, let us assume, a good thing. The justification for having an authority is based then on evaluative considerations. The authority issues a prescriptive rule that stipulates X-ing. X-ing may be good or bad, but evaluative

considerations about X-ing do not bear on its justification. The fact that the authority has issued the rule to X is a reason to X because having the authority is good.[4] This is an indirect justification of the action required by the rule.

Establishing that an authority is 'good' amounts to being able to provide a case for the authority's legitimacy, even if an underdeveloped one. For Raz, evaluative considerations are the ultimate bearers of justification. It can be helpful to represent this in a slightly different, non-Razian formulation. If authorities are evaluated as being legitimate, then the fact of their legitimacy establishes a sort of *prima* rule.[5] A rule of this kind states, in essence, that all rules originating from a legitimate authority should be obeyed. This is a rule about rules. If valid, a *prima* rule justifies the act of following all rules that meet its conditions. In turn, the rules that meet the conditions will justifiably prescribe other actions. This barely hints at the sort of normative framework required to support Raz's conception. Even in an abbreviated depiction like this one, it can still provide some insight into the structure of rules and justifications that might underlie content-independent prescriptive rules.

With or without the inclusion of an explicit *prima* rule, the conception of content-independence centres on the source of the rule as the (normative justifying) reason for following it. Untethered from certain constraints of content, an agent responds to a (prescriptive) rule because it comes from an authority. This broadly describes the breakdown of transitivity. Not only does this look different from the already-contrasted example of instructions, but it also underscores a unique and more generalised identifier of prescriptive rules. It indicates the capacity of an authority to provide rules as reasons that ought to be abided by because they come from an authority. It requires further explication to address a long-standing problem of political theory; namely, whether rules issued by legitimate authorities that are flatly immoral should still be followed. The preceding analysis cannot in and of itself be taken as an endorsement of the view that legitimate source alone justifies abiding by (substantively) bad rules. However, the more immediate relationship between content-independence and prescriptive rules need not delve into that territory just yet. The core relationship is that of content-independent reasons as expressed by prescriptive rules, and such rules being used by (ostensibly legitimate) authorities and agents.

## 1.3. Pre-emptive reasons

The final part of the conception of prescriptive rules to be considered here is that of pre-emptive reasons for action. The relationship between such reasons and prescriptive rules, as well as the connection to content-independence, will be the primary focus of this section. In keeping with the general methodological approach, the following

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[4]   There seems to be a problem with this way of framing the content-independent justification of prescriptive rules in as much as it allows for the possibility of both contradictory rules and very bad rules. Raz is aware of this problem and his service conception of authority is a possible solution.

[5]   This is similar to the master rule ("Let Lex decide") described by Alexander & Sherwin (2001, p. 53). However, the *prima* rule as identified here lacks their Hobbesian back-story.

presents a Razian account of pre-emption with emphasis placed on rule usage.[6] By way of preliminary definition, pre-emptive reasons for action can be taken to be reasons which displace other reasons (Raz, 1986, p. 42). Expanding upon this and outlining the practical boundaries and relations of pre-emptive reasons will not simply provide an abbreviated if substantial picture of Raz's account, but perhaps more importantly it will further delimit the role that prescriptive rules can play in the balance of reasons.

If a prescriptive rule is a content-independent consideration which counts in favour of an action, then how does that rule measure up to other considerations or normative reasons against or in favour of that action? This question is manifold as an answer to it needs to address reasons for and against the issuance of the rule, reasons for and against the action prescribed by the rule (from the authority's standpoint), as well as subjective reasons for and against the rule and the action prescribed by the rule (from the agent's standpoint). The following will not attempt to provide answers to all of these questions. Rather, these are the starting points for consideration of answers provided by Raz to some of these matters.

An authority issues a prescriptive rule when reasons in favour of issuing the rule defeat reasons which go against it. Underlying prescriptive rules are reasons that have counted in favour of issuing the rule, reasons in favour of the action prescribed by the rule, as well as reasons that were defeated in the process. An authority will balance the pros and cons of a particular action, but also the pros and cons of regulation (e.g. of behaviour) in the first place. The crowning jewel of these considerations will be a prescriptive rule (e.g. All Ss should X in C).

The above captures very roughly the process of issuing prescriptive rules from the point of view of a presumptive authority. The next step is to take the agent's perspective. The issue to be considered regards the role of prescriptive rules in the balance of reasons of an agent. Taking a presumptive subject S of a prescriptive rule R, which prescribes an action X in circumstances C, the challenge is to comprehend the way in which S ought to reason with R. A case has been made for regarding R as a content-independent reason for X-ing in C, but the question pertains to the position or strength of R relative to other reasons for or against X-ing.[7]

In *The Morality of Freedom* Raz writes: "When considering the weight or strength of the reasons for an action, the reasons for the rule cannot be added to the rule itself as additional reasons. We must count one or the other but not both. [...] To do otherwise is to be guilty of double counting" (Raz, 1986, p. 60). The urge is then to think of a prescriptive rule before its issuance by an authority. Ideally, an authority will assess a particular situation by weighing the reasons for and against issuing a rule. An authority will take into account all relevant considerations and issue a verdict in the form of a rule. The rule is meant to replace those reasons that were considered by the authority prior to the rule's

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[6]   The focus here is on pre-emptive reasons for action as they are essential to any complete analysis of prescriptive rules. Furthermore, pre-emptive reasons for action are the bedrock of Raz's service conception of authority onto which such concepts as exclusionary and later (in his work) protected reasons for action are erected.

[7]   Reasons for regulating take a subject perspective too. The Razian answer is the Independence Thesis. Basically, S has a reason to follow R when the independence condition is met; in other words when it is not more important that S decides for herself rather than follow the directives of an authority.

issuance. Without this pre-emptive or exclusionary quality the rule would fail to meet its purpose (Raz, 1975, p. 62).

The reasons underlying a prescriptive rule are those reasons which provide the justification for the rule. They are content-dependent first-order reasons in favour of the rule and the action prescribed. A prescriptive rule does not add to the first-order reasons in its favour, instead it replaces those reasons. Thus, the rule, if it is to function properly, will pre-empt agents from recounting those reasons that have already been counted by the authority.[8] It will not, however, exclude reasons that are in favour of the directive even though those may not have been counted by the authority (Raz, 2007, p. 1022). It will exclude those reasons which militate against it (Raz, 2007, p. 1022).

The picture of pre-emptive reasons painted above may appear to depict these as closer to Hartian pre-emptory reasons (i.e. reasons not to re-deliberate), rather than Razian pre-emptive or exclusionary reasons (i.e. second-order reasons not to act on some first-order reasons). Scott Shapiro criticises the Razian account of pre-emption on the grounds that Raz ignores a crucial aspect of deliberation – it is essential that deliberation is action-guiding – one who deliberates does so in order to form an intention to act on the results of deliberation (Shapiro, 2002, p. 407). Thus, to claim that an agent can deliberate, but is not to form an intention to act on the basis of her deliberation (when the agent faces an exclusionary reason), does not seem fully consistent (Shapiro, 2002, p. 407).

A way to reconcile Raz's and Shapiro's positions is by taking pre-emptive reasons to be reasons which exclude other reasons from deliberations undertaken with the intention to act. This will not exclude idle considerations. Deliberation appears intimately linked to action when one considers, like Shapiro, deliberations about how to act. However, deliberation does not necessarily concern action. One can deliberate or consider in a thorough manner all sorts of things without having the intention to act on such deliberation. One can deliberate about the appropriateness of a question without thereby withholding to answer it if the question is deemed inappropriate and one can deliberate about the appropriateness of the same question without being either its addressee or addressor, or one can deliberate about whether or not a cake is good. In all these cases the final aim of deliberation need not be action, but, for example, forming an opinion or understanding a certain matter. In this way, an agent can also deliberate about a rule's underlying justifications without making her actions conditional to the result of deliberation. Most likely, however, agents will find it fruitless or risky to engage in deliberation when they are barred from acting on it (Hurd, 1991, p. 1626). Contrastingly, from the authority's standpoint, it makes no difference whether agents deliberate or not as long as acting on the basis of their deliberation is limited (Hurd, 1991, p. 1626).

At this point, I want to draw a connection between the issue of content-independence and that of pre-emption. Content-independence pointed to the fact that a rule is a content-independent reason for action – a reason to do what the rule prescribes not because of the merits of the action prescribed, but rather in virtue of the fact that there is

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[8]   There is great debate and ambiguity in the literature with regard to whether or not pre-emptive or exclusionary reasons are to be understood as second-order reasons not to act on first-order reasons, second-order reasons not to act on and/or consider first-order reasons, as well as other aspects of pre-emption (Cf. Edmundson, 1993; Flathman, 1980; Hurd, 1991; Moore, 1989; Perry, 1989; Regan, 1989; Schauer, 1991, pp. 88–93).

a rule prescribing it. The merits of an action are on this account not the reasons for performing the action. They are, however, the justifying first-order reasons that an authority considers before issuing a rule. The rule replaces these reasons by incorporating them. As such, agents no longer have direct access to the first-order reasons which justify a rule and that were considered by the authority. Agents only have access to the rule. It is in this way that prescriptive rules are reasons for action *qua* rules.

The issue of why pre-emption is necessary to a proper understanding of prescriptive rules may still be unclear. For Raz, pre-emption can explain the way in which rules function. For rules to be the efficient error-eliminating, coordinating and time-saving devices that we normally take them to be, it makes sense that agents should follow them directly and not through recourse to the underlying reasons which justify them (Raz, 1975, p. 62). To do otherwise would be to double the work, re-deliberate, and count twice the same reasons which justify rules in the first place.

The justification of rules in terms of efficiency (saving both time and labour) and error elimination is the one preferred by Raz (Raz, 1975, p. 62). Generally speaking, this way of justifying rules is also the least controversial (Raz, 1975, p. 62). In light of these, the argument is the following: unless prescriptive rules are treated as giving rise to exclusionary reasons then the rules will not be serving their true purposes (Raz, 1975, p. 62). This way of arguing for the pre-emptiveness of prescriptive rules is in line with Raz's writings although not nearly as complex. Further, it has yet to say anything about the role of authorities. Only through a conception of legitimate authority can the concepts above be properly delimited and curtailed. I take it, however, as sufficient, given the aims of this paper, to have provided an outline of how pre-emption and prescriptive rules work.

To conclude, through the concepts of pre-emption and exclusion Raz changes the way we normally think about reasons for action. Reasons are typically weighed or balanced against one another with the weightier reasons prevailing over weaker ones (with the caveat that this kind of balancing is possible only for commensurable reasons). Raz assesses conflicting reasons, when one of those reasons is a prescriptive rule, in a different manner. Because of the rule's special standing it will not go through the same processes as standard or first-order reasons for action. Rather, the rule will incorporate the process of deliberation and adjudication already performed by an authority. Thus, the concept of pre-emption provides for an understanding of prescriptive rules by accounting for the special role they hold in the balance of reasons.

# 2. Conclusion

We might recall what this work has aimed to do; namely, to show what prescriptive rules are, how they operate, and what relationships they bear to other rule types and concepts. While instructions marked a contrastive example because of their optionality, they nevertheless were shown to share traits with prescriptive rules. In this respect, the positive and distinguishing characteristics of both kinds of rules contributed to a more complete depiction. Beyond the mere development of a conceptual framework, differentiation of prescriptive rules from instructions hit upon the central feature of

content-independence. Here, the rule's source was shown to be fundamental to its justification, and this in turn highlighted the way in which an agent's own reasons could be supplanted by the issuing authority's directive or rule. While content-independence was detailed by reference to its conceptual history starting with Hart, it was ultimately the conception advanced by Raz that served as this work's focus on the matter. The Razian account dovetailed into the final if brief reconstruction of pre-emptive reasons and their relationship to prescriptive rules. The core findings about content-independence (i.e. its meaning and functioning) undergirded the pre-emptive capacity of prescriptive rules. Throughout, this essay focused on rule usage as a part of agents' practical reasoning. Prescriptive rules have a strong guidance function for agents and can do so without the inclusion of agent-specific reasons. For prescriptive rules, issuing authorities become the decisive factor in determining the rules' standing in the balance of reasons, as well as their guiding force. This captures at least one sense of the significance of rules: the importance that different rule types have in guiding agents to act or not act in one way or another. Overall, the analysis offered helps to clarify the nature of prescriptive rules, which is a way of clarifying part of the law given that so much of it consists of legal norms that prescribe what it is that subjects ought to do and ought not to do.

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