
INDEPENDENT OF CONTENT*

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I. INTRODUCTION

Reasons appear to fall into well-recognized types: *pro tanto* or decisive, moral or nonmoral, and so on. Nowadays, it is widely held that reasons can also be “content-independent.” This paper is directed against this belief.

More precisely, it is directed against the belief that tokens of a certain type of reason are content-independent. Greenawalt refers to tokens of this type when he mentions reasons that “derive from the interposition of law.”¹ Raz refers to them as well; he describes situations in which at least a part of “the reason to do that which is required by the law is the very fact that it is so required.”² For convenience, I call them “legal reasons”: a reason to ϕ is *legal* just in case at least a part of the reason is the fact that ϕ -ing is legally required.³

For more than twenty years, legal theorists have claimed that legal reasons are content-independent.⁴ Moreover, the claim’s truth has been taken to have a number of significant implications. The implications are said to pertain to the nature of judicial interpretation and legislative authority, whether there is an obligation to obey the law, and the demands of a criminal

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1. Kent Greenawalt, *CONFLICTS OF LAW AND MORALITY* 25 (New York, 1989).

2. Joseph Raz, *THE AUTHORITY OF LAW* 234 (Oxford, 1979).

3. This definition is arbitrary in that the paper’s arguments would hold even if “legal reason” were allowed a wider extension (even if, for example, it were sufficient for a reason p to ϕ be legal that p is the fact that ϕ -ing has some or other legal status—mandated by law, falls under a valid legal rule, commanded by an Austinian sovereign, etc.).

4. For claims about content-independence, including its relevance to legal reasons in particular, see R.A. Duff, *Inclusion and Exclusion*, 51 *CURRENT LEGAL PROBS.* 247 (1998), and *PUNISHMENT, COMMUNICATION, AND COMMUNITY* 56–9 (New York, 2001); Leslie Green, *THE AUTHORITY OF THE STATE* 40–62, 225–6 (Oxford, 1988); H.L.A. Hart, *ESSAYS ON BENTHAM* (Oxford, 1982) ch. 10; Kenneth Einar Himma, *Hart and the Practical Difference Thesis* 6 *LEGAL THEORY* 26–7 (2000); Gerald J. Postema, *Jurisprudence as Practical Philosophy*, 4 *LEGAL THEORY* 349–4 (1998); Joseph Raz, *THE MORALITY OF FREEDOM* 35–7 (Oxford, 1986), and *PRATICAL REASON AND NORMS* 70 (Princeton, NJ, 1990); Frederick Schauer, *PLAYING BY THE RULES* 125 (Oxford, 1991), and *Critical Notice*, 24 *CANADIAN J. PHIL.* 499 (1994); Roger Shiner, *NORM AND NATURE* 52–3 (Oxford, 1992).

code that is committed to values such as autonomy and pluralism.⁵ On one widely accepted interpretation, however, the claim is certainly *not* true. Or so I shall argue in this paper. I will delay commenting on what follows when we see that the aforementioned implications cannot be drawn.

Section II describes an important supplement to the claim—the assumption that not all reasons are content-independent. In Sections III to VII, I describe when a reason is content-independent, working from less to more refined definitions. In Section VIII, I draw a distinction between two types of reason. The distinction indicates the sense in which the fact that an action is legally required could be “a part of a reason” to perform it. Sections IX to XII argue that the claim at issue is actually false. The argument has two parts. The first: when the fact that ϕ -ing is legally required is no more than a part of a reason to ϕ , the reason need not be content-independent (Sections IX and X). The claim at issue is false because a reason can be legal without having the relevant property. The second: when a fact fully constitutes a reason to ϕ , the reason is content-independent whether or not it is the fact that ϕ -ing is legally required (Sections XI, XII, and XIII). The claim at issue is false because it implies that content-independence is a property that distinguishes legal reasons from certain others.

II. DISTINCTIVELY CONTENT-INDEPENDENT

No theorist has maintained that legal reasons are uniquely content-independent. Moreover, many have held that each of the following facts constitutes a content-independent reason to ϕ :

- ϕ -ing would fulfill a promise;
- failure to ϕ would be penalized;
- ϕ -ing has been authoritatively commanded.⁶

Yet an important assumption has been that some reasons are *not* content-independent, that is, that content-independence is a property that distinguishes legal reasons from certain others.⁷

Take those who argue that one can show that the law is obligating only if one can show that it supplies a content-independent reason to obey it (those who hold that “the idea of content-independent force is . . . necessary . . . in any argument purporting to establish the existence of” an obligation to obey

5. See, for example, Duff, *Inclusion and Exclusion*, *supra* note 4, at 245–9, and PUNISHMENT, COMMUNICATION, AND COMMUNITY, *supra* note 4, at 56–9; William A. Edmundson, THREE ANARCHICAL FALLACIES 12–13, 50, 52–3 (Cambridge, 1998); Green, *supra* note 4, at 41–6, 112–14, 225–6; Hart, *supra* note 4, at 18, 255–62; Andrei Marmor, *Authorities and Persons*, 1 LEGAL THEORY 345–9 (1995); Thomas May, *On Raz and the Obligation to Obey the Law*, 16 LAW & PHIL. 21, 25 (1997); Scott Shapiro, *On Hart’s Way Out*, 4 LEGAL THEORY 492–3 (1998).

6. See, for example, Raz, THE MORALITY OF FREEDOM, *supra* note 4, at 35–7.

7. See, for example, Green, *supra* note 4, at 49, 56–7; and Raz, THE MORALITY OF FREEDOM, *supra* note 4, 35.

the law.⁸) If all reasons were content-independent, proposing this necessary condition would be without point.

It will be useful to see examples of reasons that have been described as *not* content-independent. Here are two:

- (i) Suppose Compson would maximize utility on an occasion by performing a legally required act. Some would claim that the fact that the act would maximize utility is a reason for Compson to perform it (some hold that x has a reason to ϕ if and because x would maximize utility by ϕ -ing). More pertinently, some would claim that reasons of this type—following Harman, I shall call them *utilitarian reasons*—are content-dependent rather than content-independent.⁹
- (ii) Theorists frequently observe that criminal codes often include offence definitions that describe *mala in se*. In addition, they observe that the fact that these actions are independently immoral (for instance, the fact that they cause unnecessary harm) is a reason not to perform them. Consider assault: purposely, knowingly, or recklessly causing bodily injury to another human being.¹⁰ It is widely observed that the most obvious reason not to commit assault—the fact that assault is independently immoral—is nonlegal (witness the commonplace that “[w]e ought to refrain from assaulting people even if it were not a crime”).¹¹

I shall say that x has *moral reason* not to ϕ just in case x has reason not to ϕ if and because x would act immorally by ϕ -ing. According to a common view, a moral reason is not legal reason (even if it is a reason to conform to the law), since a moral reason is content-dependent.¹² Like utilitarian reasons, then, moral reasons are thought to be a reason-type that is *not* content-independent.

Soon I shall evaluate this claim. To increase the claim’s plausibility, I shall ignore two complicating factors. The first is the possibility that a single reason can be both legal and moral.¹³ The second is that it seems that the

8. Green, *supra* note 4, at 226. Edmundson, *supra* note 5, at 50, believes that the fact that there appears to be a content-independent reason to conform to the law’s administrative prerogatives is an example of “doubts about the existence of a general duty to obey the law fail[ing] to carry over when the subject is the duty to comply with administrative prerogatives.”

9. Green, *supra* note 4, at 56–7, 230. Harman uses the term, though without mentioning content-independence, in *THE NATURE OF MORALITY* (New York, 1977) ch. 13. Green refers to utilitarian reasons (though not using this term) while considering whether acting on content-independent reasons will “indirectly produce conformity with content-dependent reasons of the ordinary sort”. It is possible that Green is attempting to answer this question without presupposing that *it is true* that a person has reason to ϕ if and because ϕ -ing would maximize utility.

10. See MODEL PENAL CODE §1.13(9) (material elements) and §2.02 (culpability elements).

11. Green, *supra* note 4, at 225; compare Robert F. Schopp, *JUSTIFICATION DEFENCES AND JUST CONVICTIONS* 28 (Cambridge, 1998).

12. See, for example, Green, *supra* note 4, at 225 (using assault as an example), and Schauer, *Critical Notice*, *supra* note 4, at 499 (referring to agents taking “the norms of the legal system to be reasons for action . . . independent of the reasons . . . supplied by the intrinsic moral worth of the norm itself”).

13. For instance, consider the example described in Section IX below.

immorality of an action is not itself a reason against performing the action (arguably, the most obvious reason not to assault is the fact or facts *in virtue of which* assault is immoral).¹⁴

III. CONTENT-INDEPENDENCE

Those who argue that legal reasons are content-independent contend that some reasons are *not* content-independent (Section II). But when *is* a legal reason content-independent?

This question has received two main answers. One is that a legal reason is a reason to perform a specific legally required act-type (to drive on the left, for example), but it is content-independent because there would be reason to perform a different act-type if a different act-type were legally required.¹⁵ In this paper, I shall consider an alternative answer. It is more widely accepted, and elsewhere I have argued that the first answer must be rejected.¹⁶

The alternative answer is seen if we examine remarks by Shapiro, Postema, Hart, Green, and Edmundson.

According to Shapiro, Able's request gives Baker a content-independent reason since "[i]t is the fact *that* Able asked, rather than *what* he asked, which gives Able a reason to act."¹⁷ Shapiro appears to assume that the fact that a person has been requested to ϕ is a reason for that person to ϕ . If we grant this assumption, Shapiro's claim is plausible. Plausibly, Baker's reason is the fact that Able requested Baker to ϕ rather than some independent fact about ϕ -ing (some fact about "what" ϕ -ing is).

Postema offers a similar characterization of content-independence; he says that the recognition of content-independent reasons

"in no way depends on an assessment of the desirability or moral merits of the actions for which they are reasons."¹⁸

Imagine that Able requested Baker to perform an independently desirable action. It appears that Postema would say that Baker's reason to ϕ (the reason given by the fact that Able has requested Baker to ϕ) is content-independent because one could recognize it without determining that ϕ -ing has independently desirable qualities.

Shapiro and Postema acknowledge that they are inspired by Hart's famous claim that a reason supplied by an authoritative command is

14. I shall also ignore the possibility that p is a moral reason to ϕ just in case p is a utilitarian reason to ϕ .

15. For evidence of this interpretation, see Duff, *Inclusion and Exclusion*, *supra* note 4, at 247; Green, *supra* note 4, at 41; and Raz, PRACTICAL REASON AND NORMS, *supra* note 4, at 70.

16. Markwick, *Law and Content-Independent Reasons*, 4 OXFORD J. LEGAL STUD. 579–596 (2000).

17. Shapiro, *supra* note 5, at 493.

18. Postema, *The Normativity of Law*, in ISSUES IN CONTEMPORARY LEGAL PHILOSOPHY 86 (R. Gavinson, ed., Oxford, 1987). Compare Green, *supra* note 4, at 113, and Duff, *Inclusion and Exclusion*, *supra* note 4, at 247.

content-independent since it is intended to “function independently of the nature or character of the action[s] to be done.”¹⁹ Ignoring the fact that Hart refers only to what is *intended* to be true of the reason, the claim is as follows: an authoritative command to ϕ is a content-independent reason since it is a reason to ϕ that is independent of those qualities of ϕ -ing that constitute “its nature and character.”²⁰

An analogous claim for legal reasons is not difficult to imagine: a legal reason to ϕ is content-independent because it is independent of qualities of ϕ -ing that constitute ϕ -ing’s nature and character. Green appears to make exactly this claim when he says that laws supply content-independent reasons because they have a normative force “which does not depend on the nature of the action prescribed.”²¹ According to Green, “[t]he core idea” of content-independence is

“that the fact that some action is legally required must itself count in the practical reasoning of the citizens, independently of the nature and merits of that action.”²²

Presumably, this is a matter of *content-independence* because “the nature and merit” of a legally required action are to be equated with its content: a legal reason is independent of the requirement’s content if it is independent of “the nature and merit” of the required action. Notice that Postema indicates this same sense of content-independence. He refers to the possibility of laws being reason-giving “in virtue of their existence alone and not in virtue of their content.”²³

Edmundson is another who indicates this sense of content-independence, though he directs his attention to the special case in which there is a *duty* (not just a reason) to conform to the law. According to Edmundson, a duty to conform to the law is content-independent when its

“existence and weight should be determinable without reference to the character or consequences of the [relevant] actions.”²⁴

Like Postema, Edmundson appears to hold that if S has a content-independent reason to ϕ , S could identify this fact without identifying certain properties of ϕ -ing. However, Edmundson adds two complications. First, he mentions that S could identify the reason *and its weight*. Second, he divides the identifiable properties of ϕ -ing between those concerning ϕ -ing’s character and those concerning ϕ -ing’s consequences.

19. Hart, *supra* note 4, at 254. Citing Hobbes, Green, *supra* note 4, at 40–1, 225, agrees; he says the reasons supplied by commands “function in a way independent of what they are commands to do”; the reason “seems to have nothing at all to do with the merits of the actions commanded.”

20. The reference to Hobbes appears at 253–4 in Hart, *supra* note 4.

21. Green, *supra* note 4, at 225.

22. Green, *supra* note 4, at 225.

23. Postema, *The Normativity of Law* *supra* note 18, at 97.

24. Edmundson, *supra* note 5, at 13. Compare Edmundson, *supra* note 5, at 52, and Schauer, *PLAYING BY THE RULES* *supra* note 4, at 125.

These remarks by Shapiro, Postema, Hart, Green and Edmundson suggest the following definition:

[A] When p is a reason to ϕ , p is a content-independent reason to ϕ just in case p is independent of certain properties of ϕ -ing.

IV. [A] AND REASONS

That said, it is doubtful that Shapiro et al. would accept [A] in its present form. This is because their claim concerns the content-independence of *reasons* and because it is unclear that we learn anything about p 's status as a reason by learning that p satisfies [A]'s condition. Given [A], p is a content-independent reason to ϕ when p is independent of certain qualities of ϕ -ing. But surely p is a content-independent *reason* to ϕ only if there is independence between (i) certain properties of ϕ -ing and (ii) the fact that p is a reason to ϕ .

To see this, consider Shapiro's remark about Able's request. The request is said to supply a content-independent reason to ϕ since Baker's reason is

(1) Able requests Baker to ϕ

rather than a fact about "what" Able requested. But surely Shapiro's thought is that (1) is content-independently reason-giving since (1)'s *status as a reason* is independent of what Able requested Baker to do. It would be insufficient for (1) to be independent of this action in some alternative respect.

Or consider Edmundson's reference to the weight of a content-independent duty. Edmundson says that this weight is "determinable without reference to the character or consequences" of the action there is a duty to perform. So, if (1) gave Baker a content-independent duty to ϕ , Edmundson would say that (1)'s weight *as a duty* is independent of ϕ -ing's character or consequences. He would not just say that there is some or other respect in which (1) is independent of ϕ -ing's character or consequences.

In short, it appears that Shapiro et al. would reformulate [A] as follows:

[B] When p is a reason to ϕ , p is a content-independent reason to ϕ just in case the fact that p is a reason to ϕ is independent of certain properties of ϕ -ing.

V. NOT DEPENDENT ON WHAT THOSE WITH REASON TO ϕ (COULD) REALIZE

Unlike [A], [B] makes it clear that content-independence is a property of reasons. In this respect, [B] is a significant improvement over [A]. Still, [B] is unacceptable, since it is vague in two important respects. Firstly, it includes

the phrase “certain properties of ϕ -ing”; until we know *which* properties of ϕ -ing—something addressed in Section VII—we cannot know whether legal reasons satisfy [B]’s condition.

Secondly, [B] includes the term “independent.” Suppose the following fact is a reason for Compson to pay tax:

- (2) Compson is legally required to pay tax.

How would (i) the fact that (2) is a reason for Compson to pay tax stand to (ii) relevant properties of this action if it were “independent” of these? Would some sort of semantic or temporal or physical independence suffice?

In this section and the next, I shall consider two alternative (nonsemantic, nontemporal, nonphysical) meanings of [B]’s “independent.” These are meanings that Shapiro et al. appear to have had in mind, and they add greater plausibility to the claim that legal reasons are content-independent.

The first meaning is “not dependent on what those with reason to ϕ (could) realize.” Edmundson suggests this meaning when he writes that if there is a content-independent duty to perform an action

“that duty’s existence and weight should *be determinable* without reference to the character and consequences of the actions *available to the actor* at the time she acts.”²⁵

Postema suggests this meaning as well; as we have seen, Postema writes that a content-independent reason to ϕ is one we can *recognize* without assessing “the desirability or moral merits” of ϕ -ing.

In this paper, I shall assume that [B]’s term “independent” does *not* mean “independent of what those with reason to ϕ (could) realize.” Three considerations count in favor of this assumption. The first is that part of the claim at issue is that certain nonlegal reasons are *not* content-independent (see Section II). This part of the claim would be implausible without the assumption. For example, utilitarian reasons are said to be content-dependent rather than content-independent, but it is plausible that there are situations in which p is a utilitarian reason for a person to ϕ even though p ’s status as a reason (indeed, p ’s obtaining) is not dependent on what he or she (could) realize.

The second consideration counting in favor of the assumption is that some of Shapiro et al. do *not* take content-independence to be a property that is relative to what agents (could) realize. Think of Shapiro’s remark that Able’s request gives Baker a content-independent reason to act since “[i]t is the fact *that* Able asked, rather than *what* he asked, which gives Baker a reason to act.” Shapiro’s claim does not concern Baker’s ability to make correct judgments about his reason to fulfill Able’s request; Shapiro’s claim concerns the nature of the reason itself.

25. Edmundson, *supra* note 5, at 52, emphasis added.

The third consideration is that the remarks I have quoted from Edmundson and Postema tolerate an alternative—nonepistemic—interpretation. Edmundson says that the existence and weight of a content-independent duty to ϕ can be determined without reference to the character or consequences of ϕ -ing. For all Edmundson says, however, the existence and weight of a content-independent duty to ϕ can be determined in this way because the duty's existence and weight *are* independent of the character and consequences of ϕ -ing.²⁶ According to Postema, a content-independent reason to ϕ is one we can recognize without assessing the desirability or moral merits of ϕ -ing. But he gives no grounds to doubt that the explanation of this fact is the most obvious one: a content-independent reason to ϕ is independent of the desirability and moral merits of ϕ -ing.

VI. [B] AND “INDEPENDENT”

Section V rules out one possible meaning of [B]'s “independent”; now for a second meaning. Suppose p is a reason to ϕ , where ϕ -ing is a specific act-type. I think Shapiro et al. would say that p is a content-independent reason to ϕ just in case it would follow *merely* from the obtaining of p that there is reason to perform a token of ϕ -ing. If this is correct, Shapiro et al. would say that there would be reason to perform such a token if p obtained, *whatever* is true of this token.²⁷

To see the plausibility of this interpretation, consider Edmundson's remark that, “If a duty to ϕ is content-independent, that duty's existence and weight . . . [are] determinable without reference to the character and consequences of [ϕ -ing].”²⁸ Edmundson's claim appears to be the following. If there is a content-independent duty to perform a certain act-type, this duty would exist, and this duty would have the particular weight it does, no matter the character or consequences of particular tokens of this act-type. For Edmundson immediately goes on to observe that a duty to perform a particular act-type is *not* content-independent if its application “depends on . . . the circumstances in which a ‘token’ of that type of action would be performed.”²⁹

Or consider Green's remark that “the fact that some action is legally required” supplies a content-independent reason if it is reason-giving “independently of the nature and merits of that action.” More precisely, think of

26. Note that there are places at which Edmundson indicates that he is *not* referring to what agents (could) merely realize (*see, for example*, Edmundson, *supra* note 5, at 52).

27. No doubt Edmundson would wish to add that p 's weight as a reason does not depend on this either.

28. Edmundson, *supra* note 5, at 52. Actually, Edmundson thinks that the duty's existence and weight are determinable without reference to the character and consequences of additional actions (“actions available to the actor at the time she acts”).

29. Edmundson, *supra* note 5, at 52. Admittedly, Edmundson also refers to “the moral quality of *the type of action* the law . . . commands” (at 52, emphasis added).

how Green's remark might pertain to Compson's reason to pay tax:

(2) Compson is legally required to pay tax.

Green suggests that (2) is a content-independent reason just in case it follows merely from the obtaining of (2) that Compson has reason to pay tax. It appears that Green would say that Compson would have reason to pay tax if (2) obtained, even if the "nature and merit" of particular tokens of paying tax were to vary.

If my interpretation of Shapiro et al. is correct, [B] is more precisely formulated as follows:

[C] If p is a reason to ϕ , p is a content-independent reason to ϕ just in case there would be reason to perform a token of ϕ -ing if p obtained, even if certain properties of this token were not instantiated.

VII. "CERTAIN PROPERTIES OF THIS TOKEN"

If (2) is a content-independent reason for Compson to pay tax, then there would be reason for Compson to perform tokens of this act-type if (2) obtained, even if certain properties of these tokens were not instantiated. This is the proposal described in Section VI. In Section VII, I shall examine what the "certain properties" in question could be.

Unfortunately, Shapiro et al. do not express a uniform view on the matter. Postema refers to the "desirability and moral merits" of the action there is content-independent reason to perform, but Hart refers to its "nature and character." Edmundson refers to the action's "character or consequences," but Shapiro refers to "*what*" the action is (see Section V).

Nonetheless, the relevant phrase in [C]—"certain properties of this token"—can be made more precise. This is because the passages I have quoted indicate three more specific meanings. The first meaning is "properties constituting the token's nature." This meaning of "certain properties of this token" is seen in the reference to the "nature and character" (Hart), "character" (Edmundson), and "nature" (Green) of the action there is reason to perform, and in the reference to "*what*" this action is (Shapiro). The second meaning is "properties constituting the token's (moral) value." This meaning is seen in the reference to the "desirability or moral merits" (Postema) and "merits" (Green) of the action that there is reason to perform. The third is "properties pertaining to ϕ -ing's consequences." This meaning is seen in Edmundson's reference to the "consequences" of the relevant action.

In what follows, I take the phrase "certain properties of this token" to cover exactly the three possible meanings mentioned. Put differently, I interpret

[C] as follows:

[D] If p is a reason to ϕ , p is a content-independent reason to ϕ just in case there would be reason to perform a token of ϕ -ing if p obtained, even if properties relating to the nature or (moral) value or consequences of this token were not instantiated.

Consider Compson's reason to pay tax:

(2) Compson is legally required to pay tax.

I shall take it that (2) is content-independent just in case there would be reason for Compson to pay tax on a particular occasion if (2) obtained, even if properties constituting the nature or (moral) value or consequences of paying tax on this occasion were not instantiated.

VIII. PARTIAL AND COMPLETE REASONS

According to Marmor, content-independence is notoriously difficult to define.³⁰ This claim is remarkable; as far as I can determine, Marmor is the first theorist to have even mentioned that there are definitional difficulties, and no theorist (Marmor included) has offered an explicit definition.³¹ To this point, my aim has been to offer a reasonably precise statement of what is true when a reason is content-independent. I have described different possible definitions of content-independence and I have argued that [D] is most plausible of these. From Section IX, I argue that legal reasons are not content-independent by arguing that they can fail to satisfy [D]'s condition.

In the present section, I shall draw a distinction between two types of reason. This distinction appears in the work of those who argue that legal reasons are content-independent, and the distinction will be useful in explaining why this argument is unconvincing. For the sake of argument, I shall assume that the distinction is a valid one. But I could show that the argument is unconvincing even if reasons—reasons in general or legal reasons in particular—came in only one of the two types I shall describe.

If p is a reason to ϕ , one obvious consequence is that:

if p obtains, then there is reason to ϕ .³²

30. See Marmor, *supra* note 5, at 345.

31. There is one possible exception; Green, *supra* note 4, at 51, mentions that the claim that content-independence is a matter of degree trades "on an unexplicated theory for individuating contents."

32. For elaboration of this point, see Roderick Chisholm, *Practical Reason and the Logic of Requirement*, in PRACTICAL REASON (Stephan Körner, ed., Oxford, 1974).

Many theorists accept that the conditional expressed by “if p obtains, then there is reason to ϕ ” is partly logical, and many follow Raz in accepting that the logical relation can be stronger or weaker. I shall describe a strong relation first.

If p is a *complete* reason to ϕ , one consequence is that the proposition that there is reason to ϕ can be validly inferred from the proposition that p obtains. At places, Raz puts the point in terms of a relation of entailment:

“The fact stated by any set of premises which entail that there is reason to perform a certain action is a complete reason for performing it.”³³

Consider the fact that Coldfield would fulfill a promise by avoiding pleasure:

(3) Coldfield would fulfill a promise by avoiding pleasure.

Raz would say that (3) is a complete reason for Coldfield to avoid pleasure only if the proposition that there is reason for Coldfield to avoid pleasure could not be false if (3) obtains, whatever else is true.³⁴

Now for a weaker relation. I shall begin by describing an example in which it is instantiated. Suppose Dilsey would suffer pain if he ran more than normal, and suppose he would run more than normal if he moved to Massachusetts. Plausibly, it follows that Dilsey has reason not to move to Massachusetts (more generally, it is plausible that the fact that an act is painful is a complete reason not to perform it).³⁵ In this example, it seems that

(4) Dilsey would run more than normal if he moved to Massachusetts

is of normative significance. But notice that (4)’s normative significance does not consist in the fact that it is a complete reason for Dilsey not to move to Massachusetts. If (4) were a complete reason for this action, the proposition that there is reason for Dilsey not to move to Massachusetts would be validly inferable from the proposition that (4) obtains. Given our description of the example, however, this is *not* validly inferable: Dilsey could lack reason not to move to Massachusetts even if (4) obtained (think of a state of affairs in which (4) obtains yet Dilsey would *not* suffer pain if he ran more than normal).

33. Raz, PRACTICAL REASON AND NORMS, *supra* note 4, at 24. Compare PRACTICAL REASON AND NORMS at 28 and Postema, *Jurisprudence as Practical Philosophy*, *supra* note 4, at 346.

34. For present purposes we can ignore which exact type of conditional is at issue here. For Raz’s precise view, see Raz, PRACTICAL REASON AND NORMS, *supra* note 4, at 23–5. For possible complications (should we prefer a relation of supervenience?), see Simon Blackburn, SPREADING THE WORD (Oxford, 1984) ch. 5.

35. There is no presumption that the complete reason in question is decisive rather than *pro tanto*.

Intuitively, (4) is only “a part of” Dilsey’s complete reason, the fact constituted by the conjunction of (4) and

(5) Dilsey would suffer pain if he ran more than normal.

According to Raz, however, (4) counts as a reason nonetheless:

“A fact is a reason only if it belongs to a complex fact which is a complete reason, and yet not only the complete reason but its constituent facts as well are reasons.”³⁶

As mentioned, p is a complete reason to ϕ only if “there is reason to ϕ ” is validly inferable from “ p .” How could p be a reason (a constituent of a complete reason) without meeting this necessary condition? I shall say that, if p is a *partial* reason to ϕ , then “there is reason to ϕ ” follows from “ p ,” but only given the obtaining of certain additional facts. Notice that (4) meets *this* necessary condition. For it would follow from (4)’s obtaining that Dilsey has reason not to move to Massachusetts, given that (5) obtains.

IX. DO PARTIAL LEGAL REASONS SATISFY [D]’S CONDITION?

The present relevance of the distinction between complete and partial reasons is plain. The claim we are considering—the claim that legal reasons are content-independent—might pertain to legal reasons which are complete reasons or to legal reasons which are partial reasons. For the sake of completeness, I shall assume that the claim is intended to pertain to legal reasons of both types; my argument will be that the claim is false as it pertains to either.

First, consider the case of partial legal reasons (Sections IX and X). If p is a partial rather than complete reason, p might not have been a reason at all if one or more additional facts had failed obtain. We saw this in Section VIII: (4) would have lacked normative significance if (5) had failed to obtain, and (4) is a partial reason. Of present interest is the fact that the same is true when p is a *legal* reason—when p is the fact that an action is legally required. A single example will suffice to show this.

Suppose Sutpen has promised to abide by any legal requirement that prohibits an injurious action. Then Sutpen has reason not to assault, since assault is both illegal and injurious (this follows, at least, if we assume—plausibly—that the fact that a person would violate a promise by performing an action is a complete reason not to perform it). Moreover, it follows that Sutpen has *legal* reason not to assault, since the fact that he is legally required

36. Raz, PRACTICAL REASON AND NORMS, *supra* note 4, at 25.

not to perform an action is a reason not to perform it.³⁷ Finally, suppose that Sutpen has no other reason not to assault.

Sutpen's reason not to assault is a legal reason, but it is partial rather than complete. In the example, the proposition that Sutpen has reason not to assault is not validly inferable from a proposition stating the obtaining of:

(6) Sutpen is legally required not to assault.

The first proposition is inferable, if it is inferable at all, only given the obtaining of *three* facts; (6) is only one of these, since the complete reason is partly constituted by:

(7) Sutpen has promised not to perform acts which are both injurious and illegal;

(8) assault is injurious.

In this example, (6)'s normative significance depends on the obtaining of (7) and (8).

Why does it matter that the normative significance of a partial legal reason depends on the obtaining of one or more additional facts? Because it demonstrates that it does *not* follow from the fact that p is a partial legal reason to ϕ that p satisfies [D]'s condition.

Actually, Sutpen's reason illustrates this. If (6) satisfied [D]'s condition, then there would be reason for Sutpen not to perform an act of assault if (6) obtained, even if properties relating to the act's nature or value or consequences were not instantiated. But imagine that (8) had failed to obtain. (8) surely pertains to the nature, value, and consequences of an act of assault (Edmundson and Green would accept that (8) is a matter of the act's "character," for example). Therefore there should be reason for Sutpen not to assault if (6) obtains, even if—as we are imagining—(8) had failed to obtain. However, Sutpen *would* lack reason not to act: given our description of the example, Sutpen has a particular reason not to assault only because assault is both illegal *and injurious* and he has no other reason not to assault.

X. THREE QUALIFICATIONS

According to Section IX's argument, a partial legal reason can fail to be content-independent in the sense [D] specifies. I used Sutpen's reason not to assault as an illustration. Now I shall qualify this argument, making three points.

37. Notice that I am not assuming that it is *sufficient* for p to be a reason to ϕ that the following conditions are met: p is a conjunct of q; the proposition that p obtains entails the proposition that there is reason to ϕ .

(i) The first point is that I admit that it seems that there are situations in which (6) *would* satisfy [D]'s condition. For example, I admit that it seems that there are situations in which there would be reason for Sutpen not to assault if (6) obtained, even if (8) did not obtain. Think of a situation in which the fact that a person is legally required to perform an act is a *complete* reason to perform it. In such a situation, it seems that the proposition that there is reason for Sutpen not to assault could be directly inferred from a proposition stating the obtaining of (6).³⁸

Notice, however, that attention in Section IX was explicitly directed to the case of *partial* reasons. The question at issue was the following: if (6) obtained but (8) did not, would it follow that Sutpen had partial (but not complete) reason not to assault? The answer is "no," we saw, since (6) and (8) are both constituents of a single complete reason. Hence my conclusion that it does not follow from the fact that p is a partial legal reason to ϕ that p satisfies [D]'s condition. To see the force of this conclusion, recall Postema's reference to the possibility of laws being reason-giving "in virtue of their existence alone and not in virtue of their content." Section IX shows that this possibility is not realized in every case: (8) pertains to the content of the law requiring Sutpen not to assault (assault's legal definition refers to the injuriousness of assault, and (8) pertains to the nature, value, and consequences of the acts for which (6) is a reason), but Sutpen could lack legal reason not to assault if (8) failed to obtain.

(ii) The second point is that I did not claim that partial legal reasons fail to satisfy [D]'s condition as a matter of course. For example, I did not claim that p is partial legal reason only if p fails to satisfy this condition. Imagine that Sutpen had promised to abide by the law *in general*. Then I admit that Sutpen would have reason not to assault whether or not (8) obtained.³⁹

Section IX's limited claim is that p can be a partial legal reason without having the property [D] specifies. Section IX shows that it is at most *possible* that a particular partial reason satisfies [D]'s condition. It shows that if properties relating to a particular act-token's nature or value or consequences were not instantiated, then there is no guarantee that there would be reason to perform it when there is partial legal reason to perform tokens of its type.

Notice that Section IX's argument does *not* assume the following: if p is a partial legal reason to ϕ , the complete reason of which p is a part will include facts relating to the nature or (moral) value or consequences of ϕ -ing. The

38. Or think of a situation in which (i) (6) is a constituent of more than one complete reason for Sutpen not to assault and (ii) these other constituents would obtain even if (8) did not. I stipulate that (i) and (ii) are *not* true of the state of affairs described in Section IX.

39. Arguably, promises can be void *ab initio*, for example, when one promises to do something that is morally indefensible; see Postema, *The Normativity of Law*, *supra* note 18, at 91. As David Lyons informed me, it would follow that a promise to obey the law might create at most a reason to obey the law with limited scope. For discussion of the idea that content-independence may be a matter of degree, see Markwick, *supra* note 16, at §IX and XIII, and Green, *supra* note 4, at 51.

assumption is that the complete reason *could* include such facts. This weaker assumption is sufficient to show that p can be a partial legal reason without satisfying [D]'s condition.

(iii) The third point is that I anticipate that Shapiro et al. would respond to Section IX's argument as follows: "since Sutpen's reason is 'assault is legally prohibited *and injurious*' rather than 'assault is legally prohibited,' it is not a reason of the type we had in mind when we claimed that the law supplies content-independent reasons." Shapiro et al. might add that the law is normative, according to their view, only when it supplies *complete* reasons to act—only when there would be reason to conform to the law even if one had not promised to do so, for example. Or they might add that the law is normative, strictly speaking, only if there is reason to conform to *all* of its requirements—only if there is reason to refrain from an illegal act whether or not it is injurious, for example.

To accommodate this response, we need to consider whether *complete* legal reasons are content-independent. For example, we need to consider whether (6) would satisfy [D]'s condition if it were a complete rather than partial reason for Sutpen not to assault. I take up this task in Section XI.

XI. DO COMPLETE LEGAL REASONS SATISFY [D]'S CONDITION?

If [D] correctly defines content-independence, then the claim that legal reasons are content-independent is false. At least, the claim is false as it pertains to partial legal reasons: p can be a partial legal reason yet fail to satisfy [D]'s condition (Section IX). The remainder of the paper allows for the possibility that the claim is intended to pertain to complete legal reasons only. Here is our question: do *complete* legal reasons satisfy [D]'s condition?

One response to this question is to say that since no legal reason is complete, the answer is of no consequence. Nowadays, many theorists accept the antecedent of this response: few believe I can have reason to perform an action "simply and only because the law to which I am subject says I must."⁴⁰ For the sake of argument, however, and since some jurists do *not* accept the antecedent, I shall assume that the fact that an action is legally required *is* a complete reason to perform it. For example, I shall assume that

(9) Compson is legally required to drive on the left

is a complete reason for Compson to drive on the left.

The second observation to make about this question is that Section IX's argument fails to answer it. Section IX's argument exploits the fact that a partial legal reason is of normative significance only given the obtaining of

40. Edmundson, *supra* note 5, at 12.

one or more additional facts; with respect to Sutpen's reason not to assault, for example, it exploits the fact that (6) is of normative significance only given the obtaining of (8). The normative significance of a complete legal reason is *not* conditional in this way. If assault's illegality were a complete reason not to assault, for example, then (i) the proposition that Sutpen has reason not to assault would follow directly from (ii) a proposition stating the obtaining of (6). As a consequence, Sutpen would have reason not to perform a particular act of assault even if properties pertaining to its nature or (moral) value or consequences were not instantiated.⁴¹

In saying this, I indicate that I actually accept that, if *p* is a complete legal reason, *p* satisfies [D]'s condition. Still, I do not accept the claim at issue. Fully spelled out, this claim is that legal reasons are content-independent, *unlike certain other reasons* (see Section II). As mentioned, I am prepared to admit that a legal reason is content-independent in [D]'s sense if it is a complete reason. But I am prepared to argue that *any* complete reason satisfies [D]'s condition.

When *p* is a complete reason to ϕ , and *p* obtains, it follows unconditionally that there is reason to ϕ ; this is exactly how the completeness of a reason is defined (Section VIII). If *p* is a reason to evade her, for example, and *p* obtains, then it follows unconditionally that there is reason to evade her. Now, according to [D], a reason is content-independent if it is independent of certain properties of ϕ -ing. But, as just noted, *any* complete reason to ϕ is independent of *every* property of ϕ -ing (every property unrelated to *p*, of course). With regard to any reason to ϕ , the only non-independent fact—the only fact that *must* obtain—is *p*. However, if no fact other than *p* must obtain, then properties of ϕ -ing that are unrelated to *p* need not obtain. Most relevantly: if no fact other than *p* must obtain, then properties unrelated to *p* but pertaining to ϕ -ing's nature or (moral) value or consequences need not be instantiated. It follows that *any* complete reason satisfies [D]'s condition.

Consider the following example of a complete legal reason:

(9) Compson is legally required to drive on the left.

Since (9) is a complete reason, it follows just from (9)'s obtaining that Compson has reason to drive on the left. But notice that it would follow just from the obtaining of *any* complete reason for Compson to drive on the left that Compson has reason to drive on the left. To see this, suppose that the following fact is a second complete reason for Compson to drive on the left:

(10) Compson would suffer pain if he failed to drive on the left.

41. If *p* is a complete reason to ϕ , then the proposition that there is reason to ϕ is inferable from the proposition that *p* obtains. On some meanings of "inferable," this means that there is reason to ϕ in every logically possible state of affairs in which *p* obtains.

Then, if (10) obtained, there would be reason for Compson to perform a token of driving on the left, and even if one or more properties of this token were not instantiated (one or more properties unrelated to the obtaining of (10), of course). It follows that (10) satisfies [D]'s condition for content-independence. There would be reason for Compson to perform a particular token of driving on the left if (10) obtained, even if properties relating to that token's nature or value or consequences were not instantiated. By definition, it would be enough that (10) obtained.

XII. BACK TO [A]

Given Section XI's argument, it is tempting to think that Raz et al. should not invoke [D]'s condition but instead claim the following. A complete legal reason p to ϕ is content-independent because p —the fact that ϕ -ing is legally required—is not a fact about ϕ -ing's nature, (moral) value, or consequences.

There are two main problems with this thought. First, it does not increase the claim's plausibility. It is far from clear that p is not a fact about ϕ -ing's nature, (moral) value, or consequences when p is the fact that ϕ -ing is legally required—whether or not p is a complete reason to ϕ . Take (moral) value. Many believe that the legal status of an act is relevant to whether one ought to perform it, and it is plausible that the question of whether one ought to perform an act is a question about its (moral) value. Take consequences. One consequence of performing a legal required act (that there is complete reason to perform) will be that someone has performed an act that was legally required (and that there was complete reason to perform).

The second problem is identical to that faced by [A] (see Section IV above). Agreeing (i) that p is not a fact about ϕ -ing's nature, (moral) value, or consequences and (ii) that p is a complete reason to ϕ is not in itself agreeing (iii) that p has this or that status as a reason. Perhaps there is an important respect in which a legal requirement to ϕ is independent of ϕ -ing's "content."⁴² In this paper, however, this possibility of no consequence. The claim at issue—the claim expressed by Green et al.—pertains to the content-independence of *reasons*.

XIII. UTILITARIAN AND MORAL REASONS

Recall Shapiro's claim that Able's request gives Baker a content-independent reason to act since "[i]t is the fact *that* Able asked, rather than *what* he asked, which gives Able a reason to act." In Section XI, I argued that it would be no less true to say the following. For any complete reason, it is the fact which is the reason, rather than any other fact—rather than any other fact about

42. For further discussion, see Markwick, *supra* note 16. at §VIII.

the action's nature or (moral) value, or consequences, for example—which is the reason.

As we saw in Section II, utilitarian and moral reasons are taken to be examples of reasons that are *not* content-independent. To lend credence to Section XI's claim that *any* complete reason satisfies [D]'s condition for content-independence, I shall now show that utilitarian and moral reasons do so.

(i) First, consider the case of utilitarian reasons. Suppose:

(11) Coldfield would maximize utility by telling the truth.

Then Coldfield has a utilitarian reason to tell the truth; our assumption, recall, is that the fact that an action maximizes utility is a reason to perform it. Utilitarian reasons are supposed to be content-dependent, but Coldfield's reason is content-independent, given [D]. This is because there would be reason for Coldfield to perform a particular token of telling the truth (for Coldfield to tell the truth to his daughter at noon tomorrow, for instance) if (11) obtained, even if properties of this token that relate to its nature or (moral) value or consequences were not instantiated. For example, there would be reason for Coldfield to perform this token if (11) obtained, even if the token would not have the consequence (as it actually would) that his daughter would acquire a belief.

In Section III, I observed that Hart holds that an authoritative command to ϕ is content-independent if it is a reason to ϕ which is independent of the "nature and character" of ϕ -ing. My present observation is that there is an obvious sense in which Coldfield's reason—a utilitarian reason—is no less independent of the "nature and character" of the acts for which it is a reason. These acts surely share the "character" of *Coldfield telling someone something*. But there is an obvious sense in which Coldfield's reason is independent of this fact. He has reason to act solely in virtue of the fact that telling the truth will maximize utility, and it is irrelevant that the act which maximizes utility is one that involves Coldfield telling someone something.

(ii) Now consider the case of moral reasons. The illegality of assault is irrelevant to the most obvious reason not to assault (the fact that assault is immoral). Many take this reason to be content-dependent, as we have seen, but the reason actually satisfies [D]'s condition. If the fact that assault is immoral—for example, the fact that assault causes unnecessary suffering—is a complete reason not to assault, then it is a reason not to perform a token of assault which is independent of *every* property of this token (every property except those constituting the token's immorality, of course).

It is useful to recall Shapiro's remark about the content-independence of the reason supplied by a request ("[i]t is the fact *that* Able asked, rather than *what* he asked, which gives Able a reason to act"). The point to make about moral reasons is that it would no less true to say that it is the fact *that*

assaulting would be immoral (the fact that assault would cause unnecessary suffering, for instance), rather than some other fact about assault (the fact that it involves bodily movement, for example), that gives one reason not to assault.

XIV. CONCLUSION

According to Schauer, the claim that legal reasons are content-independent “is unlikely to be controversial.”⁴³ One aim of this paper has been to demonstrate the ambiguity of the claim to which Schauer refers (Sections II and III). Another has been to offer a tolerably precise definition of the property in question (Sections III to VII). But the main aim has been to show that the claim is false on one widely accepted interpretation. According to this interpretation, a legal reason is content-independent just in case it satisfies the condition specified in [D].

The claim is false because a reason can be legal without satisfying [D]’s condition. The partial legal reason described in Section IX shows exactly this. Admittedly, *p* satisfies [D]’s condition if *p* is a *complete* legal reason (Section XI). But *any* complete reason satisfies [D]’s condition (Sections XI and XII). Consequently, content-independence is not a property that discriminates between legal reasons in particular and reasons in general, as Shapiro et al. claim (Section II).

Of course, [D] provides the basis for only *one* sense in which legal reasons could be “content-independent.” I have shown that the claim to which Schauer refers needs serious re-evaluation, given a standard interpretation. But the paper leaves open the possibility that there is an alternative, less problematic interpretation. We could expend labor investigating this possibility; we could emend arguments that assume that legal reasons are content-independent.⁴⁴

43. Schauer, *Critical Notice*, *supra* note 4, at 499.