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LEGAL PHILOSOPHY THROUGH THE PERSPECTIVES OF MORAL AND POLITICAL PHILOSOPHY: A DIALOGUE WITH JOSEPH RAZ

I

Question:

During an interview in 2009,[1] you summarised the turns and transitions in your academic interests: 'my academic interest was jurisprudence in the 1970s, political philosophy in the 1980s and the theory of ethics in the 1990s'. Of course, this is a general abstraction, as in 1975 you had already published your book *Practical Reason and Norms*, which is an oft-quoted work in moral philosophy. In *Between Authority and Interpretation*, you developed your views on some of the central questions in practical philosophy: legal, political, and moral. The book provides an overview of your work on jurisprudence and the nature of law in the context of broader questions in the philosophy of practical reason. We also know that you always resist the disciplinary division and specialisation of academic research, with the focus of your research interests and topics in constant change.

For this, our questions are: first of all, what is the internal correlation between these researches in different fields? Is there a core issue that you are interested in? Or, were these changes the result of your close and constant attention to certain issue(s)? Secondly, we are quite interested in the changes in your academic interests. Can you explain why you changed from jurisprudence to political philosophy and then again to the theory of ethics?

Reply:

I tend to think of the changes in the direction of my work not so much as shifts of interest but as the fulfilment in stages of one interest, which always informed everything I did, namely curiosity about the nature

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* Editor's Note: This interview was conducted in September, 2009. We thank Professor Timothy Endicott for his help in editing and correcting errors in the text.

[1] The interview referred to was carried out by Peter Momtchiloff in 2001, and is discussed in Michael Sevel, 'Historical Origins of Raz's Legal Philosophy' (2024) 10 Rechtsphilosophie 5.

of normativity in its various manifestations. The attempt to clarify normativity takes one to philosophy of mind and of action, to an exploration of rationality, of reasons for action and of the various types of reasons we have, including legal reasons, political ones and moral ones. I like to think that I never gave up any of my past interests. It is just that I move on to examine other aspects of the problems involved with an attempt to explain normativity, hoping that my work gains in depth and understanding over the years.

Many philosophers today seem to think that the explanation of normativity involves one big question: how can normativity be reconciled with a naturalistic world view? By way of contrast, I think that there are many puzzling questions about normativity, not one big question. And over the years I have been exploring various of them. So there is — I believe — what you may call a loose unity in my work: most of my publications contribute to one or another question about the nature of normativity. But it is merely a loose unity, as I do not believe that all the questions about normativity are really parts of one big question. So, for example, even though my writings in philosophy of law cover many topics, their core is the relations between law and morality, which is really just another name for the question about the normativity of the law. Most recently this extended to the question of how the fact that we are subject to reasons expresses itself in the doctrine of responsibility.

There is one limit to my interest that I should mention: I do not believe that philosophy on its own can offer practical solutions to what is known as applied ethics, or real detailed policy advice in any sphere. For example, I do not believe that philosophy by itself can offer a prescription for the drafting of a good constitution. Decisions about the shaping of a constitution depend on local conditions, on local traditions, on the cultural background and on the existing legal situation. Ideas for reform should be informed in all these ways. It follows that what would be good for one country is unlikely to be good for another. Of course there are in today's world strong pressures for increased uniformity across borders. Much of this is, for reasons I cannot go into here, welcome. But it is easy to exaggerate or to misunderstand the force of these reasons and to err by thinking that there is one solution for all countries. Philosophers are particularly prone to this mistake. They tend to exaggerate what philosophy can contribute by itself, and therefore to favour universal solutions. The desire to avoid this fallacy made me cautious about engaging with concrete policy questions.

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II

Question:
You have been regarded as an outstanding scholar in the Anglo-American academia of legal philosophy, moral philosophy and political philosophy. Through reading your works, it can also be seen that your research in political and moral philosophy has influenced your contribution in legal philosophy in no insignificant way. Moreover, in contemporary Anglo-American legal philosophy, these three philosophies are closely bound together. Such scholars as Dworkin, Finnis and Rawls are invariably philosophers of both law and morality. During your interview with Peter Momtchiloff, the Commissioning Editor for Philosophy at OUP, you mentioned that there is little for moral philosophy to learn from jurisprudence. Moral philosophers' attention to jurisprudence can be due to two misunderstandings: one being that moral philosophy can benefit from the relative certainties of the law and jurisprudence, while the other is that there is a shared set of terminologies such as rights and obligations between jurisprudence and moral philosophy. You have critiqued such notions, pointing out that legal philosophers have mistaken general normative concepts as certain legal concepts. Moral philosophy should study the former and it will be a mistake to use the latter as the starting point. For this reason, 'Jurisprudence has a lot to learn here from practical philosophy generally, but not much to teach it'.

So, what is your view on the relation between contemporary jurisprudence and moral philosophy? A related issue is that there are many young scholars in China dedicated to research on Anglo-American legal philosophy, especially legal positivism. Concerning the latest development in the research and understanding of contemporary legal positivism by non-Western scholars, do you have any advice for them?

Reply:
The important point is that the law is a normative system, purporting to authorise, require, or prohibit various form of conduct, purporting to endow people with rights, etc. That being so one cannot go far in legal philosophy without engaging in moral reflection. So legal philosophers must be familiar with general moral philosophy, and therefore with philosophy generally. Otherwise, legal philosophy becomes sterile. That is another of the ways much legal philosophy fails us today. The institutional division between philosophy and law departments is of course understandable, perhaps even necessary. But it is allowed to breed intellectual dislocation and isolation — a cutting off of legal philosophy

from its intellectual home in philosophy. Even young legal philosophers who come to the subject from philosophy departments, once they specialise in legal philosophy tend to neglect their familiarity with work in the rest of philosophy, to the detriment of their ability to contribute to the subject.

I do not wish to deny that there are many challenges in explaining the law which are specific to it. Many of them arise because the law is an institutionalised normative system. This gives rise to various questions regarding the analysis of systems as well as to moral issues. In recent times moral philosophy tended to ignore the effects of institutionalisation on how people should behave. Though I am glad to say that more recently interest in this has grown among philosophers. So the overall picture is, not surprisingly, complex, with parts of legal philosophy being relatively autonomous while others are, or should be treated as, thoroughly integrated with other philosophical issues and doctrines.

This view of the relations between jurisprudence and the rest of philosophy was not popular when I was a student, and in some quarters, it is not popular today. In some countries this was due to political repression and intolerance of any dissent. Treating jurisprudence as a technical, value-free subject was, is, in such circumstances a safe option, unlikely to attract the wrath of the authorities. Beyond that there was the deep and widespread influence of positivism, and scepticism about values, and about normative knowledge. Many legal philosophers reacted by embracing a technological, allegedly value-free approach to their subject. I am glad that as your question indicated that stage is behind us, at least in the sense that the best work in the subject rejects it.

III

Question:

In contemporary Anglo-American analytical jurisprudence, for legal positivism, the internal dispute between inclusive legal positivism and exclusive legal positivism has replaced the external dispute between legal positivism and natural law, thus becoming one of the most significant theoretical discourses. As Brian Leiter pointed out, ‘ … the Hart/Raz dispute — the dispute about whether there are constraints on the content of the Rule of Recognition as positivists conceive it — is both the most important on-going debate in recent analytical jurisprudence and one that has already moved beyond Dworkin: this debate will be settled on

the terms put forth by Raz, Shapiro, W.J. Waluchow, Jules Coleman, and others'.[2] As we can see, this dispute continues to be heatedly debated at the moment, far from its conclusion. As a leading scholar on exclusive legal positivism, you have proposed a hard version of positivism, arguing that 'the existence and content of every law is fully determined by social sources'.[3]

Then, do you agree with what Brian Leiter pointed out that (1) the Hart/Raz dispute has moved beyond Dworkin and (2) the terms put forth by Raz, among other scholars, can settle this debate? If possible, please comment on this debate and its theoretical implications.

Reply:

I have to confess that I do not see the debate between so-called inclusive and exclusive positivism as particularly important. True, I have contributed to it (and my doubts about inclusive positivism are explained most clearly in Chapter Seven of my *Between Authority and Interpretation* (OUP 2009) called 'Incorporation by law'. I am inclined to think that as between these two options the so-called exclusive positivists have the better of the argument. But that does not mean that I take this to be an important point of legal theory. I do not want here to go into the substance of the argument, but perhaps I could explain some of the background to my view. It is widely recognised that legal authorities in properly discharging their functions reach decisions based both on the law and on other reasons. It is also realised that they may make mistakes and ignore the law, or ignore other reasons which they should rely on, or that they may fail to recognise their proper significance. What jurisprudence aspires to provide is an account of the proper reasons legal authorities should rely on. It will also identify when they make mistakes. Such an account must, I think, divide the considerations or reasons legal authorities should properly rely on into three classes (with many further more subtle distinctions), namely: legal reasons, reasons binding according to law, and reasons which they properly follow even though the law prohibits that. The last category exists because the law may be imperfect in ways which justify, or even require one to disregard some aspects of it. The debate between the two kinds of so-called positivists is about the proper way to draw the line between legal reasons and reasons which are not legal reasons but which legal reasons require authorities to apply. A statute sets up legal reasons, prohibitions, rights, etc. But such

[2] Brian Leiter, 'Beyond the Hart/Dworkin Debate: The Methodology Problem in Jurisprudence' (2003) 48 The American Journal of Jurisprudence 17, 27.

[3] Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford University Press 1979) 46.

legal reasons may refer to other reasons: for example to contracts, to rules and regulations of voluntary associations, to customs and practices of various kinds, to religious laws or to foreign laws, and instruct the authorities to apply them. The law may also instruct the authorities to follow bare moral considerations. I mean moral considerations which have not been enacted into law. For example, a law forbidding murder enacts a moral consideration into law and creates a legal reason (which is also a moral one). A law which allows legal authorities to set aside as unenforceable contracts which are immoral instructs the authorities to apply what I called bare moral considerations about the justice of contracts (though with time there may also accumulate a body of legal reasons binding on the authorities on this issue).

As I said, the dispute between the inclusivists and the exclusivists is about what constitutes the distinction between legal reasons and reasons binding according to law. To my mind recognition of the two categories and of their broad nature is more important than the determination of where the boundary between them lies. This is so because what is common to both sides is the view that the dispute is about the way the distinction is recognised in the life of the law, in the way legal arguments are conducted. But the life of the law benefits from ambiguities and unresolved disputes. It benefits from avoiding clarity when it is not needed for some purpose. This is a common feature of all interactions between people including legal ones. Therefore, it is difficult to find clear unambiguous demarcation of the distinction in the life of the law. Any suggested demarcation, such as I and other theorists have offered, must find echoes in legal discourse, but can also be expected to conflict with some features of legal discourse. In the end, as I said, what matters is recognition of the significance of the different categories rather than their precise delineation.

IV

Question:

Recently, the Raz/Alexy dispute has attracted a lot of attention. You seem to have become the major interlocutor and an Anglo-American jurisprudent who received most attention from Robert Alexy, the contemporary German jurisprudent. As you and Andrei Marmor summarised, Alexy has a core proposition that 'The law essentially makes a claim to its moral correctness'.[4] Obviously, Alexy's intention is to use the argument from the

[4] Joseph Raz, 'The Argument from Justice, or How Not to Reply to Legal Positivism' in George Pavlakos (ed), *Law, Rights and Discourse: The Legal Philosophy of Robert Alexy* (Hart Publishing 2007) 31.

claim to correctness to establish the necessary connection between law and morality. Your opinion can be summarised as that the law can make a moral claim. For instance, 'the law claims to have legitimate authority'. This nonetheless is not a claim to moral correctness. Legal rules, even if incorrect, are still valid, which is the nature of authoritative rules. Moral wrong and moral validity are two separate issues.[5]

Therefore, we would like to discuss with you the issue of correctness, which has become the core distinction between positivism and non-positivism. We have noticed that the main evidence you used to refute Alexy's theory came from the authority theory of law. According to the dependence thesis and the normal justification thesis, the reasons for authority reflect a balance of first-order reasons, of which the results constitute 'the demands of right reason'. But you didn't explain in detail what the 'right reason' is. For Jules Coleman, 'the demands of right reason' point to the 'proper balance of first-order reasons', while Michael Moore argued that it is dependent upon those antecedent reasons only, regardless of its correctness.[6] Obviously, Coleman argues for a strong sense of right reason, while Moore a weak sense.

Our question is: in your theory, in which sense is the 'right' used? What are its implications? To clarify this issue will not only help eliminate an equivocation concerning the service conception of authority, but also elucidate the discussion of the correctness of law. If used in a strong sense, your theory will approximate that of Alexy; if used in a weak sense, then your service conception of authority will be a comparatively weak justification, for law commands as practical authority will often face and deal with the more complicated and important dispute between political morality and right. Unless successfully dealing with these issues, authoritative commands will not effectively play a mediating role between reasons and agents.

Reply:

One clarification to start with: In my answers to previous questions, I followed the terminology you used, and referred to so-called positivists of the different varieties. I qualified the reference, calling them 'so-called positivists' because I have been arguing for many years that the distinction between positivism and natural law is no longer helpful, given developments in legal philosophy over the last 40 or 50 years. My point is that with the growing sophistication of the different accounts of

[5] See Raz (n 4) 31–2.

[6] See Jules Coleman, *The Practice of Principle* (Oxford University Press 2001) 122; Michael S Moore, *Educating oneself in Public: Critical Essays in Jurisprudence* (Oxford University Press 2000) 149.

the relations between law and morality the classification of accounts as natural law or legal positivist tends to obscure rather than to illuminate. It helps people to ignore the complexities of the issues. Alexy's writings are a case in point. His book against legal positivism was written in complete ignorance of the work in analytical jurisprudence over the last 40 years. Since then, he has been catching up, and as you say he is now familiar with some aspects of my work, and with some others.

Talk of the law's claim to moral correctness is liable to confuse two ways in which the law may relate to morality: First, if we break up the law into individual rules or doctrines then the content of each one of them, or of some of them, may be morally correct in the following sense: if the law says that P (where 'P' stands for a proposition such as 'murder is prohibited', or 'all adult citizens have a vote in the parliamentary election') then P is — in the circumstances of the country and the time in which this is the law, a morally true proposition (i.e. it is true that morally speaking murder is prohibited or that every citizen has a vote). Let me call this 'content correctness'. But the law may be morally binding even if it is not morally correct in content. It is generally recognised that even misguided, inefficient, morally deficient law may be morally binding on the people subject to it, that is they may have an obligation to obey it. Let me call that phenomenon the systemic moral validity of the law. I call it 'systemic' for what makes the law morally valid (binding) when it is not morally correct is that it is part of a legal system with certain properties, a legal system which is morally legitimate. So the moral validity of any rule or doctrine of law is systemic when it derives from properties of the legal system as a whole, i.e. from its moral legitimacy.

My view is, as you mentioned, that the systemic moral validity of the law derives from the moral legitimacy of legal authorities. My account of authority sets out the conditions under which authorities are morally legitimate. According to it the fact that the decisions of legal authorities are likely to be correct in content is relevant to their legitimacy, but the two (legitimacy and content-correctness) are logically independent. I have argued that the very fact that legal authorities maintain the law commits them to the claim that it is morally systemically valid. It does not commit them to the view that it is morally correct in the sense of having the correct content. I have known authorities which allow that the law they apply is morally deficient, but maintain that it is morally binding and ought to be obeyed and enforced until changed by proper process of law.

You complain that I did not explain what 'right reason' is. I think that I did, at least enough to explain the nature of authority. The use of the expression 'right reason' acknowledges that the question of the moral

standing of an act or a law can be complex. There may be reasons for it and reasons against it. 'Right reason' refers to the outcome of that complexity, i.e. to the standing of the act or the law which is determined in light of the fact that it is subject to all those conflicting considerations. So what have I not explained? First, I have not given you here a doctrine of normative reasoning which explains how the right reason is determined by the many reasons which affect the issue. That is a complex theoretical question much discussed, and not yet satisfactorily answered by anyone. I contributed to the discussion, but I do not have a general theory of the matter. I wish I had. The absence of such a theory is not, however, relevant to the more abstract debate about the relations of law and morality that we are now discussing. Second, I have not expressed a view of whether the Chinese government or that of any other country is legitimate, nor whether Chinese law, or that of any other country, is correct in content. I did not do so regarding this or that case because I do not know enough about most of these cases to have an opinion, and (as I explained earlier) because even when I have an opinion it is not my 'philosophical' opinion, being determined by my view of the social, cultural, and economic conditions prevailing. And therefore, it is inappropriate for me to express it as a piece of philosophical judgement. Third, I did not provide a general formula which enables one, given the facts which the formula takes to be relevant, to determine which laws are correct in content and which are systemically valid. The reason for this failure is that there is no such formula in matters moral, any more than there is one regarding factual or mathematical truths. To establish whether any law is correct in content or whether any government is legitimate one has to look at the particular case and find out what are the reasons which apply to it.

V

Question:

Most recently, the Anglo-American jurisprudential academia is in a heated discussion of methodology. Different from the German academia's attention to the method of application of law and the general methodology of social science in legal research, the Anglo-American academia has a particular context, namely that this methodology debate started from the 'descriptive jurisprudence' thesis as proposed by Hart in the Postscript of The Concept of Law, which attempts to provide a general, descriptive theory on what the law is. Analytical jurisprudence is no longer satisfied

with attending to such issues as how to revise or strengthen Hartian positivism as a response to Dworkin's critiques for the purpose of defending positivist traditions. Instead, the focus of the debate changed to such issues as the construction of the theory of law per se, the nature of the theory of law and further, the nature of law, i.e. with the main focus on this issue: 'how should we carry out research in jurisprudence?' This enables jurisprudence to start discussing fundamental methodological issues such as describability and normativity, making 'jurisprudence's ignorance in methodology history'.[7]

In fact, although you did not discuss in detail the right and wrong of the two methods of describability and normativity, 'the nature of law' and 'the nature of the theory of law' are the methodological issues that attracted your close attention. We are very interested in your thesis on 'how to explain the nature of law', which in fact is concerned with your own theory on explaining the nature of law, namely that 'the law will necessarily claim legitimate authority'. For you, explaining the concept of law is to explain certain inevitable or essential characteristics of law, with contexts of both history and the present day. '[T]he concept of law is not a product of the theory of law. It is a concept that evolved historically, under the influences of legal practice, and other cultural influences, including the influence of the legal theory of the day'.[8]

For this, we would like to discuss with you: (1) for you, the understanding of the nature of law and the theory of law thus constructed are bound by territory and history, for the living experiences and self-perception of the people vary considerably by times and locations. For this reason, the theory of law cannot possibly be universal. What is your view on the theoretical effort by legal positivism to construct a 'general jurisprudence'? (2) A follow-up question is: if the purpose of this theory is untenable, does there still exist a 'general' and 'descriptive' research methodology in jurisprudence? We know that the Hartian 'descriptive jurisprudence' thesis attempts to provide a general, descriptive theory on what the law is. (3) A related question is: what's your view on establishing a globalised jurisprudence with universal values? In an age of globalisation, how can jurisprudence and legal philosophy in China construct their own theories?

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[7] Ian Farrell and Morten Ebbe Juul Nielsen (eds), *Legal Philosophy: 5 Questions* (Automatic Press/VIP 2007).

[8] Joseph Raz, 'Two Views of the Nature of the Theory of Law: A Partial Comparison' (1998) 4 Legal Theory 249, 281.

Reply:
It is one of the defining marks of philosophy that it is self-reflective, that it is concerned about its own standing and method. I have discussed these matters in various places, most recently in the first chapter of my new book ('Can there be a theory of law?' in *Between Authority and Interpretation*). As I explained there legal philosophy is a general discipline, not a local discipline, and its general part studies the nature of law, that is its necessary feature — again not one which it has in one place rather than another, or at one time rather than another. The concept of law is, however, in an important sense a historical, and thus a local concept. That means that it was not a concept which people always had. All concepts are historical in that sense. That in itself tells us nothing about the science or other discipline in which they figure. For example, the concept of atomic weight is a historical concept, and has become available to people only with the rise of modern physics. But atoms had an atomic weight since the time there were atoms in the world. Of course, unlike atoms which always existed legal systems did not. They are, relatively speaking, late arrivals. But not as late as the concept of law. That is, there were legal systems in the world even when people did not think of them as such, just as there were atoms in the world even when people did not think of them. This claim is of course more controversial when made of the law than of atoms, because the existence of the law presupposes activities referring to various aspects of it. But as I have argued elsewhere, it does not require referring to the law as a separate distinct normative system, and that means that it does not require possession of the concept of law.

You ask about the possibility of something like a value-free account of the law. You did not use the term but I believe that you mean something like that. I do not believe that something like that is either possible or desirable. If I am right in saying that the law enjoys systemic validity only if legal authorities are morally legitimate (call this 'the thesis') then the statement that that is so is part of the theory of law for it states a necessary feature of it. Now the thesis does not strike me as a value-free thesis. It says something about normative matters. Given that the law is a normative system we could hardly expect that an account of it will not include normative statements. It is true that we can make true statements about normative propositions which are not themselves normative. But we will miss important features of the law if we confine ourselves to such statements. Some writers have proposed false theses about the nature of law. For example, some think that the law is necessarily systemically valid. But what is wrong with such theses

is not that they are not value-free but that they are false.

What I said earlier about the universality of jurisprudence applied to its general part, to its discussion of the nature of law. But legal philosophy is a broad subject with no generally recognised boundaries. So, to the extent that Chinese scholars are interested in the nature of law in general their being Chinese contributes little directly to the subject, just as being French does not. But I should qualify this: accounts of the nature of law identify, as I said, necessary properties of the law. There is an indefinite number of those and no writer is looking for all. Scholars are looking for those properties which help with puzzles which occupy them. What puzzles us is again a matter of historical contingency. People of different cultural backgrounds may bring with them new puzzles and enrich jurisprudence by stating them clearly and compellingly, and hopefully by solving them. Beyond that lies all the rest of jurisprudence. It includes the comparisons of types of legal systems, of different methods of adjudication, and of course of the choice of policies to be pursued by law. All these are based on universal values, but their application to different conditions yields different results.

VI

Question:
In his article 'Thirty Years On', Ronald Dworkin vehemently criticised your theory of authority. His first doubt was that adequate evidence is lacking to regard 'the claim to legitimate authority' as the essential characteristic necessary to the concept of law. This is an empirical assertion that cannot become a necessary feature of the concept. Dworkin illustrated this point with examples. Even if law officers regard law from the Holmesian realist perspective, this doesn't mean that for them, law does not exist. Therefore, the concept of law is an evaluable and interpretative concept. Your 'social understanding thesis' argues that the law's claim to legitimate authority accords with the understanding of law among members of the society, and is thereby capable of illuminating the essential feature of law. For this, you have an incisive summary: 'We are not free to pick on any fruitful concepts. It is a major task of legal theory to advance our understanding of society by helping us understand how people understand themselves.'[9]

Our concern is not Dworkin's critiques per se, but a fundamental methodological issue on the construction of the theory of law as inherent

[9] Joseph Raz, 'Authority, Law, and Morality' in Joseph Raz, *Ethics in the Public Domain* (Clarendon Press 1994) 237.

in his critiques, namely that regardless of 'social understanding' or the 'theoretician's understanding of social understanding', it is invariably an issue of construction and explanation, and a theoretical construct of social practical experiences. Then, how can we ensure the theory of law thus constructed will assert propositions that are essential rather than empirical?

Reply:

Your question raises difficult issues. I am not confident that I know the answers, and I will not be able to do more than outline my thoughts about them here. Earlier I said that the law exists in societies which do not have the concept of law. But obviously my view that the law claims legitimate authority does not allow me to say quite the same here. The claim is that necessarily in every society which has law there are authorities, which are treated as such by at least some of the people, not least by people who occupy positions of authority. Does it not follow that they have the concept of authority? If it does, and as whether or not people have the concept is a historical matter, does it not make the thesis about the relations of law and authority contingent?

The answer to the second question seems to me easy: No, it does not. It is contingent whether a culture has the concept of authority and it is contingent whether it has a legal system. It does not follow that it is contingent that it has a legal system only if it has the concept of authority. It may well be a necessary feature of the law that those who live under it, or some of them, have the concept of authority. But is it?

Before answering this question one important preliminary: possession of the concept does not require that people have a correct understanding of it. Think for example of our own societies. They clearly have the concept yet there are sharp disagreements about its nature. It is common to concede that people can have a concept which they are unable to explain. My observation goes further: they may have wrong explanations of their own concept. An account of the concept is verified not by what people think about it but by the way they distinguish between correct and incorrect applications of it. Moreover, the account singles out some features of their conduct (i.e. the way they distinguish correct from incorrect applications) for special attention. It passes over some features and makes others pivotal to an understanding of the concept. In that it goes beyond the data (as all theoretical claims inevitably do). It does so in various ways. First, there is no complete uniformity in people's behaviour. It varies because many may have incomplete mastery of the concept, and contradict others, because judgements of correctness are heavily influenced by contextual features, and by pragmatic considerations. The boundary between semantics and

pragmatics is itself a theoretical one. Second, the concept that I aim to explain is not the meaning of the word 'authority'. It is, you may say, the meaning of the word as used in certain contexts or for certain purposes. So I am not explaining what it is to have authority to enter into a building (roughly to have permission to do so) but what it is to have authority to make law. The very activity of fixing what is the concept, the activity of distinguishing between various uses of related words and identifying some of them as focal for the concept, is again a theoretical activity, motivated by theoretical considerations.

Now having made these points I can approach the main question: must some people, say legal officials, have the concept of authority if there is a legal system in their country? Even with all the preceding explanations the answer is not straightforward. They must, I have claimed, either have the concept of authority or have an authority — like concept, a concept very similar to it. The theoretical claim, you will remember, is that there is no law without authorities claiming moral legitimacy. The existence of authorities will manifest itself in people's discourse, as well as in other aspects of their behaviour. That requires not necessarily that they have the concept of authority, but that they have a concept sufficiently similar to it which establishes that they regard certain people or institutions as possessing authority.

I am not sure whether the above answers your questions, but perhaps I should stop here, hoping that these remarks do something to explain the complexity of the theoretical inquiry we are engaged in.

VII

Question:

Since Hart, Anglo-American analytical jurisprudence has been developed by several generations of scholars and become a mainstream school of jurisprudence. The inclusive/exclusive debate originated from the internal dispute as a result of legal positivism responding to Dworkin's critiques of Hart. How to settle this criticism in the existing framework is a task facing legal positivism. Many positivists proposed different revisions to respond to Dworkin's critiques, while within positivism there have been many ongoing and heated debates, which on the one hand advanced the development of legal positivism, contributing to the unprecedented flourishing of analytical jurisprudence, while on the other, as certain scholars have criticised, the issues under discussions by

the new generation of analytical jurisprudents have become increasingly miniaturised, thereby restricting the depth in both theoretical perspectives and philosophy for many positivists. We have seen that contemporary Anglo-American legal positivism is still concentrated on explaining Hartian positivism, which in a certain sense reflects the absence of scholarly prowess to explore new theoretical issues. The disadvantage might have been what Brian Bix pointed out, namely that to the accompaniment of complicated revisions and clarifications of legal positivism, 'the positivists may have won the battle but lost the war'.[10]

We would like to ask you: what's your comment on the research and development of the contemporary Anglo-American legal positivism? What is the future of legal positivism?

Reply:

I entirely agree with your observations. Discussions of the inclusive/exclusive positivism issue have reached impressive sophistication, but some people also elevated a side issue into a major one. I hope that my preceding replies have already indicated my agreement with you, and explained why I feel that in this particular case the sophistication does not get to the heart of the matter, mistaking what is unimportant and in detail possibly irresolvable (the boundary between what is law and what is not) for what is important (that there is a fundamental distinction between the law and what is binding according to law). I do not, however, worry much about future prospects for legal philosophy. Progress does not always take the shape of better answers to known questions. Often it happens when new problems are identified or new aspects of the law become the focus of attention. It also happens through cross-fertilisation between disciplines. I would not like to predict future directions. But I feel confident that we will not be stuck in the same spot for too long.

VIII

Question:

Recently, academia, especially the legal philosophy circle, resumed the discussion of your thesis on 'the service conception of authority' as proposed in your article 'Authority and Justification' that was published

[10] Brian Bix, 'Legal Positivism' in Martin P Golding and William A Edmundson (eds), *The Blackwell Guide to the Philosophy of Law and Legal Theory* (Blackwell Publishing 2005) 38.

in 1985 in Philosophy and Public Affairs.[11] This article proposed a justification of legitimate authority, namely the normal justification thesis. Among the critiques, one comparatively common and important critique is that your justification of authority is only a representation of the service conception. Moreover, this mode of justification has fundamentally overlooked democracy. The scholars who hold these critiques include Scott J. Shapiro and Scott Hershovitz. For Shapiro, your justification approach is an instrumental one, namely regarding authoritative commands as instrumental reasons for action. This instrumentality also determines the mediating role to be played by authority, namely mediating between agents and reasons for action, so as to attain beneficial results. Shapiro further classified the service model into a Mediation Model and an Arbitration Model, arguing that the latter is the dominant model in modern liberalism, for it is more reasonable than the former. The instrumentality as represented in the Mediation Model overlooks the internal value of democracy, while the Arbitration Model has enabled democratic rules to play an important role in legitimating authority. The legitimacy of authority lies in the liberal democratic process of constructing this authority, in which every citizen participates, thus creating a moral obligation for citizens to obey authority. It can be summarised in this way: the Arbitration Model and the Mediation Model are two different models of justification, the former on the legitimacy of procedure, while the latter only pays attention to a 'good' outcome, so as to solve the feasibility and justifiability of practical reasoning. Moreover, through defining self-discipline as a moral concept, Shapiro argued that the Mediation Model is incapable of solving the paradox of authority and self-discipline, as well as underestimating the internal value of democracy and its role in preserving and advancing self-discipline. For this reason, the Mediation Model is not desirable.

It is well-known that the issue of authority is a central issue in political philosophy. It is due to your unwavering efforts that it has been re-interpreted in practical philosophy and thoroughly applied to legal philosophy. The central issue of political authority and legal authority is to

[11] cf David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton University Press 2008); Noam Gur, 'Legal Directives in the Realm of Practical Reason: A Challenge to the Pre-Emption Thesis' (2007) 52 The American Journal of Jurisprudence 129; Scott Hershovitz, 'Legitimacy, Democracy, and Razian Authority' (2003) 9 Legal Theory 201; Scott J Shapiro, 'Authority' in Jules L Coleman and Scott Shapiro (eds), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford University Press 2002); for other working papers, see Lars Vinx, 'Authority, Arbitration and the Claims of the Law' (EUI MWP 2007/15); David Dyzenhaus, 'Consent, Legitimacy, and the Foundation of Political and Legal Authority' in Mattias Klatt (ed), *Institutionalized Reason: The Jurisprudence of Robert Alexy* (Oxford University Press 2012).

justify the legitimacy of authority, or in more general terms, to justify the legitimacy of political governance. In the contemporary context of political philosophy, especially with Habermas' efforts, the justification model in favour of liberal democratic procedure has become increasingly popular. So our question is: considering these latest developments in contemporary political philosophy, what's your view on the Shapiro-led criticisms of the service conception of authority?

Reply:

As before, I will answer with no more than a sketch of a proper refutation of Shapiro's criticism, a full treatment of which will have to be longer than this. By the way, the account I outlined in the 1985 article that you mentioned has been amplified and slightly modified in later writings. Its core has not, however, changed. I want to make three points.

First, as Shapiro is aware, my account is meant to be open to various views about what justifies authority. It is not meant to be neutral, as I do not believe that neutrality is achievable. The account is merely intended to be as open as is reasonable in the following sense: supporters of different theories about what makes authority legitimate can reconcile their views with that account. They can express their theories as being about the way in which the conditions of legitimacy which I argued for are satisfied. That does not make my account neutral, for some people while able to accommodate their views about legitimacy within the terms of my account may well find alternative accounts more congenial. I think that my account of authority succeeds in that. It would have failed had it implied that authority can be legitimate only if the conditions of legitimacy which it sets out can be met only in one way, even if that turned out to be the only correct way to meet them. To repeat: it must make sense to claim that, e.g. Plato had the right theory of political authority for his preferred authority to meet conditions of legitimacy according to the service conception, and at the same time supporters of Aristotle, or of Machiavelli, or of Hobbes, or Rousseau or Kant, or Bentham etc. can use the service conception as the correct account of authority, and claim that their political theories show how its conditions of legitimacy can be satisfied. The truth or falsity of their theories depends on independent considerations, which do not affect the soundness of the service conception.

Not all possible theories of authority can be reconciled with my account. For example, someone might claim that what endows a person or institution with authority is the quality of its pronouncements, irrespective of whether or not anyone has any reason to pay attention to them in any way. They may say that a person has authority so long as he recites the

contents of the telephone directory, and nothing else, to himself every day. That view is inconsistent with my account. Its supporters cannot say: this is the correct view for a person who recites the telephone directory meets the conditions set out in the service conception. It is patently clear that he does not. You will remember that the fact that that is a false, indeed an absurd, view of authority does not matter. The service conception, as I explained, is meant to be reconcilable with false views of authority. The reason I do not mind that it is not reconcilable with this kind of account is because I believe that no sensible person ever suggested it.

Given all that, it is clear that the service conception fails if it presupposes a consequentialist account of authority since many sensible people advocated and advocate non-consequentialist theories of authority. But why think that my account is committed to consequentialism? There is a clear sense in which the opposite is the case. The service conception is anti-consequentialist inasmuch as it says that A has authority over S only if S ought to act as A directs. The authority is invested by what ought to be the case, not by what are likely to be the consequences of the authority's activities for the person who is subject to it. However, this is a misleading way to understand the objection: Shapiro and some others think that on my account S ought to do what A directs only if A's doing so will have the best consequences. But that has no support in my writings. The Normal Justification Thesis says that A has authority if by following it S will conform to reason better than if he tries to follow reason independently of A's directives. As you pointed out earlier, I do not say what reasons apply to S. So far as the service conception goes the best reason may be determined by considerations such as that one has to obey the will of god, that certain acts — like murder — are absolutely forbidden come what may, that one may only pursue public policies which are unanimously supported, etc and etc. So the allegation that there is an instrumentalist bias in the service conception is baseless (note by the way that Shapiro uses 'instrumental' in an idiosyncratic and unexplained sense). And so is the thought that the service conception does not accommodate the value of democracy. How it does the latter depends on what the value of democracy is meant to be, and there are many mutually inconsistent views about that. But whatever it is (reasonably) supposed to be it can be represented as a way of meeting the conditions of the service conception.

It was crucial to my defence of the service conception in the preceding comments that it is not an alternative to a religious, or a democratic, or a utilitarian etc. theory of politics. It is an account not of the goals of political action, etc., but of the concept of authority. That is why it succeeds only if it

accommodates different approaches to ethics and to political action. So in a way my response to your question is now complete. But as you mentioned the way some writers refer to democracy, let me briefly say something about that. I live in a democratic country (Britain) and would have it no other way. But I feel that there is a good deal of thoughtless veneration of democracy in the writings of many political philosophers today. This of course has not always been so. Plato and Aristotle were not enthusiasts, nor were many of their successors. One of the father figures of liberalism, whose views I find most congenial, John Stuart Mill, cautioned that democracy is apt for people under certain conditions. It is not, in other words, the only acceptable political regime, and under some conditions it may not be acceptable at all. Moreover, as the best political scientists have always known, democracy is not the name of one type of government. There are many different types of democratic regimes. And the differences among them can be huge. They can be even greater than the differences between some of the democratic regimes and some of those not considered in — say — the U.S. as democratic. What is common to all democratic regimes is (a) that they institutionalise ways in which government is responsive to the views of the governed, and (b) they institutionalise ways in which people can actively participate in public life, and thus encourage identification with the collective. Both are among the main virtues of any political system, but they can be achieved in a variety of ways, not all of them normally regarded as democratic in some circles, and they can be achieved, and to be successful have to be achieved, in informal, that is uninstitutionalised ways as well.

Many democratic enthusiasts will say that these comments leave out what are the most important things about democracy: that it is self-rule, a system where no one is ruled by anyone else, or that it is a system in which everyone has equal political power, etc. All these are fantasies, not realisable, and of dubious value. The two virtues I mentioned are hard enough to realise to an adequate degree. But, as we are becoming more aware every day, the actions of governments of some countries have enormous effects on people in countries other than their own. Democracy, in the sense I identified, is not enough. In fact, it never was. We are facing the challenge of articulating ideals about the ways politics should be responsive to considerations other than those of direct concern to their own citizens. We are some ways away from having adequate theories of that aspect of politics.

IX

Question:
It is generally held that reasons for action concern two aspects. As is pointed out by Robert Audi, 'there are at least two quite different though overlapping kinds of reasons: motivational reasons, roughly the kind that explain why an agent does a particular thing, and normative reasons, roughly the kind that indicate what an agent ought to do'.[12] Bernard Williams' differentiation of internal reasons and external reasons has transformed the discussion on reasons in academia. For him, reason is the cause of actions. A presentation of reason, if true, should be linked to the internal motivations of agents. Motivation is a fundamental aspect of the structure of practical reason, while reasons for action, should they have significance for actions, should have subjective application conditions, referred to as the 'subjective motivational set' by Williams. The concept of 'internal reasons' directly represents this subjectivity.[13] Your categorisations of reasons did not give a sufficient amount of attention to the motivational reasons, but instead, regarded reasons as a matter of fact, arguing that only the reasons understood as facts can determine what ought to be done. Therefore, you define practical authority as a content-independent and peremptory reason for action or content-independent and exclusionary reason for action.

Compared to Shapiro's criticism, our understanding is that the role of mediating between reasons and agents is to be played by authoritative commands. This instrumental function is more profoundly rooted in your conceptual analysis of the reasons for authority, which may have fundamentally influenced the approach to the justification of authority. Your conceptual analysis of authority as reason only considers the external rather than its internal aspects. That is, your analysis of reasons fundamentally fails to pay much attention to the internal motivation and acceptance of agents, so that agents are absent from your conceptual analysis of reasons. The existence and thoughts of an agent are immaterial, so that agency is absent from the justification of authority. As long as authoritative commands can bring good outcomes, for them this shall be enough.

Since the publication of Williams' article 'Internal and External

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[12] Robert Audi, 'Moral Judgment and Reasons for Action' in Garrett Cullity and Berys Gaut (eds), *Ethics and Practical Reason* (Clarendon Press 1997) 125.

[13] See Bernard Williams, 'Internal and External Reasons' in Bernard Williams, *Moral Luck* (Cambridge University Press 1981) 101–13.

Reasons', the discussion of this issue has become popular among the circle of moral philosophy. In combination with the aforementioned literature, our question is: (1) what's your comment on the classification of reasons for action as proposed by Williams, among others? (2) how can your conceptual analysis of practical authority deal with the internal aspects of reason? (3) we have noticed that you have published two articles on reasons respectively in two books that were published this year.[14] Would you please briefly introduce your latest thoughts on reasons?

Reply:

I am afraid that I disagree with some of your observations here. You say that I neglected to discuss motivational reasons. But there is not category of reasons which could be described as motivational reasons. The word 'reasons' has two senses. We distinguish between them by using the pair 'explanatory reasons' and 'normative reasons'. The explanatory reasons of X are those facts which figure in the explanation of X. For example: 'The lightning is the reason for the fire' says that the explanation of the fire includes the occurrence of the lightning. Needless to say, social and individual behaviour can also be explained. So we may say, for example, that the incomprehension by bank managers of the risks they were running was one of the reasons for the banking collapse last year. Some explanations of conduct refer to motives: for example, the reason he shot his brother was that he was very jealous of him. Here jealousy is the motive which explains the action, and is therefore the reason for it. Some explanations of conduct refer to normative reasons, as for example when one says that the reason John bought the medicine is that his mother is very ill. Some explanations proceed not by reference to reasons, but to people's belief that there are some reasons, as when one says that the candidate forged the election results because he believed that he alone can save his country.

By and large philosophers do not say much about explanatory reasons. They have much to say about explanations, and there is little that needs saying about explanatory reasons once we have an account of explanations. Philosophers are, however, interested in normative reasons. Bernard Williams reminded us that necessarily if that P is a normative reason for X, then that P must be capable of explaining some occurrences of X. In particular that if that P is a reason for someone to do A, and if that person does A for the reason that P then that P can explain his doing A. That

[14] Joseph Raz, 'Reasons: Explanatory and Normative' in C Sandis (ed), *New Essays on the Explanation of Action* (Palgrave/McMillan 2009); Joseph Raz, 'Reasons: Practical & Adaptive' in David Sobel and Stephen Wall (eds), *Reasons for Action* (Cambridge University Press 2009).

point is generally accepted, and probably always was. But after Williams's reminder of it philosophers started debating in greater detail the way in which normative reasons can feature in the explanation of behaviour. Williams had one view of that, which led to his slogan that all reasons are internal reasons. As you mention, that view has been much discussed, and much criticised. But we cannot enter into that debate here. It requires too detailed an examination.

It is important, however, to realise, that whatever view one takes about the nature of normative reasons has no effect on the service conception of authority. The service conception explains authority in terms of reasons. But it is committed to no particular view of the nature of reasons and is compatible with any plausible view of their nature, including with the view that all reasons are internal, or that not all reasons are internal, to use Williams' terminology. You say that my account of authority neglects the internal aspects of reasons. But it no more neglects the internal than it does the external aspects of reasons. It neglects — if you like — both, for it is not an account of reasons, and is compatible with whatever is the truth about reasons, as well as with many false views about reasons. Of course, people with different views about reasons, when applying these views to the service conception of authority will come to different conclusions about when people are subject to legitimate authority. But as I explained in answer to other questions, that is the aim, and the strength of the service conception. It is consistent with a variety of view regarding what reasons are as well as with a variety of views about what reasons we have.

It was kind of you to refer to my recent articles on reasons. In fact, my interest in authority derives from my interest in normative reasons generally. Starting with my book *Practical Reason and Norms*, I argued that we understand the law and legal authorities by understanding that they provide special kind of reasons. That thesis has been further developed in my later work, and so have my suggestions about the nature of reasons, which have been explored further in *Engaging Reason*, as well as in the recent articles you mentioned. At the same time, I also made some suggestions regarding what constitute normative reasons for actions, in the short books *Value, Respect and Attachment and The Practice of Value*, as well as in some chapters in *Engaging Reason*. I hope to be able to continue to develop these ideas.

Finally, let me correct one point you make. You say that according to my writings an authority is legitimate so long as it 'can bring good outcomes, for them', its subjects. But that is not my view. My view is that it is legitimate if following it enables people to conform to right reasons. It may be your

view, or that of some other people, that the right reasons for an agent are those which secure what are for him good outcomes, but that is not part of the service account of authority.

X

Question:
We can see that your justification of the legitimacy of authority is fundamentally related to the understanding of such political philosophical concepts as autonomy, neutrality, coercion and perfectionism. Among these the most important is the understanding of autonomy, which results in your placing emphasis, in the justification of authority, upon how authority can provide right reasons — in other words, how the reasons for authority can provide conditions for advancing autonomy. The importance of this issue lies in the fact that the justification of authority has to face the paradox of authority and autonomy. Autonomy as commonly accepted is a Kantian notion and a moral concept. Autonomy has two aspects: the first is free will, which as a legislation capacity, is not conditioned on external factors and means autonomy. The second aspect is that the agent applies moral laws to itself, meaning self-discipline. Your understanding of autonomy can be summarised in these few propositions: (1) self-discipline is not defined in a moral sense, but as a principle of practical rationality. *The Authority of Law gives this explanation*, 'It is clear that this principle of autonomy is not really a moral principle but a principle of rationality'.[15] (2) Autonomy is regarded as part of human well-being, which 'holds the free choice of goals and relations as an essential ingredient of individual well-being'.[16] (3) Compared with Kantian absolute autonomy, more emphasis has been placed upon the 'conditions of autonomy', namely appropriate mental abilities, an adequate range of options and independence. In this sense, it can be seen that authority can promote the conditions to create autonomy, and further to promote freedom. Authoritative commands complement autonomy and freedom, rather than conflict with them.

So our question is: (1) if autonomy can be mainly understood as a concept of rationality rather than of morality, then this might result in a deliberate avoidance of one important aspect of autonomy, namely self-determination in the sense of free will. A man in action cannot be subject

[15] Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford University Press 1979) 27.

[16] Joseph Raz, *The Morality of Freedom* (Clarendon Press 1986) 369.

to self-determination and authoritative determination at the same time, as these two are in mutual conflict. Moreover, as Scott J. Shapiro has pointed out, man should be encouraged to act according to his own judgment, for without this process, a man will not be able to develop his own necessary capacity for autonomous actions. Then the next question is (2) how can the justification of authority deal with autonomy in the moral sense? (3) Your understanding of autonomy has an inherent emphasis upon strengthening the positive role to be played by government, which will necessarily involve power and coercion. You argue that coercion is necessary for a liberal democracy, which does not necessarily mean a violation of personal autonomy. 'Coercion can be genuinely for the good of the coerced and can even be sought by them.'[17] As has been argued, your understanding of autonomy and coercion has gone beyond the bottom-line of liberalism and become a defence for state legitimacy of any kind, as a state of any kind will invariably propose a promotion of autonomy.[18] If autonomy is indeed understood as mainly conditional, then will the constraint of state power that depends upon holding certain ideals confine power more reliably than traditional liberal use of right (autonomy)? Perhaps your argument is founded on a more problematic base.

Reply:

I am afraid that I do not share the view of autonomy that you attribute to me. That people have free will (in whatever sense they have it) is a fact about people, not a moral or political value. Similarly, that people have rational powers, and do form beliefs and intentions, is a fact about them, not a value. So when I write about autonomy I never have these facts in mind, as I write only about autonomy as a valuable condition or capacity. I do not believe that there is any substance to the Kantian idea of autonomy as moral self-legislation, and it too does not feature in my writing. Finally, I do not believe that there is a conflict between legitimate authority and personal autonomy. There is certainly no conflict due to the fact that when people are subject to authority, they cannot form their own judgements, or that they cannot act upon them. They can do both, and in particular they can examine the question whether the putative authority is really a legitimate one, and to what extent it should be obeyed. Nor do I take the view that the principle of autonomy is a principle of rationality, not of morality. I take the opposite view. I believe that you attributed

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[17] Joseph Raz, *The Morality of Freedom* (Clarendon Press 1986) 157.

[18] Dazhi Yao, *What Is Justice? Contemporary Political Philosophy Research in the West* (People's Publishing House 2007) 191 (姚大志：《何為正義：當代西方政治哲學研究》，人民出版社 2007 年版，第 191 頁).

to me these views which I do not hold for two reasons: First, in The Authority of Law, in the passage you quoted from and the text around it, I describe the views of Robert Paul Wolff, not my own views. Indeed, having described them I proceed to repudiate them. Second, you were misled by the somewhat misleading discussion of authority, and of my views on it, by Scott Shapiro.

So, in *The Authority of Law* I discuss autonomy as a power to choose one's own course in life, and as the autonomous life is a life in which that capacity is used, to chart one's course in life. That, I say, for reasons I return to in my answer to your next question, is a local value, that is, possession of the capacity and the opportunity to use it are valuable in most contemporary societies, having become a condition for having a successful life in those societies. It was not always so, though some aspects of autonomy in that sense were always valuable and important. My view was, and is, that contemporary governments can and should secure the conditions which make the autonomous life possible. But I do not believe that that is their only function or goal. Explaining this point takes us to your next question.

XI

Question:
Your liberalism differs from the contemporary mainstream liberalism (as defended by Rawls and Nozick), and it critiques Hayekian liberalism, as both of them are anti-perfectionist: they hold that government should maintain neutrality among conceptions of good. Any conception of the good, however beneficial, cannot become the reason for state coercion, which may violate personal freedom and make a particular conception of the good dominant. The principle of autonomy is the core of Razian liberalism. Autonomy needs conditions and valuable opportunities, which means that 'the autonomy principle is a perfectionist principle'. Therefore, 'the autonomy principle permits and even requires governments to create morally valuable opportunities'.[19] From this, it can be seen that your view of freedom places more emphasis on positive freedom and the role to be played by government in promoting conceptions of the good. It is perfectionist liberalism, by which the state is responsible for creating autonomous conditions to promote freedom.

As far as your view of liberalism is concerned, our question is: it has

[19] Joseph Raz, *The Morality of Freedom* (Clarendon Press 1986) 417.

been suggested that your liberalism is somewhere in between liberalism and communitarianism, different from the former in that it is perfectionist, and different from the latter in that it emphasises autonomy and competitive pluralism without supporting stronger government. Do you have any comment on the significance and implication of your perfectionist liberalism in explaining and resolving the liberalism/communitarianism dispute?

Reply:

Rawls was steeped in the knowledge of the history of moral and political philosophy, but I cannot help but feel that the enormous popularity of his work was and is due in no small measure to ignorance of that history among students and young scholars. The appeal of his work was in part that it offered a way out of value scepticism into constructing a theory of justice based on the compelling doctrines of decision theory, that it promised to overcome the deep schisms and disagreements in contemporary societies by resting all political action on unanimous agreement to the principles on which it is based, by seeming to vindicate the beliefs of idealistic Americans in the ideas which inform their society anyway, in espousing a theory of politics which would be justified if all problems of social life were resolved on the individualistic assumption that the only problem really is how to divide benefits in ways which equitably promote the self interests of all citizens, and so on. Some of these were sentiments shared by Rawls but inevitably the popularity of his views rested on more simplified variations of them. The central tenets of this creed became that government is legitimate only if the governed (if they are reasonable) agree to the principles on which it is based. Second, that political action can be justified only by considerations which form part of the public culture, shared by all reasonable citizens, and that politics is a matter of regulating the production and distribution of benefits for the equitable promotion of self-interest. All these are based on bad arguments and on misunderstanding the nature of both individual and social life. Rawls, and to an extent his followers, recognised the problematic nature of social bonds, of feelings of belonging together which are needed for societies to function well together in spite of the fact that some of their members are required to forego benefits or make sacrifices for the sake of others, for the sake of people whom they do not know. But they mistakenly exaggerated the degree to which these social bonds rest on common belief in the truth of principles of government. Social bonds have a lot to do with sentiments, with a deep-rooted sense of identity, and little with intellectual beliefs. A long time ago I argued

in a paper written together with my friend Prof. Margalit that that is a great virtue of social bonds. They are like family bonds — ties which transcend (up to a point) ideology and beliefs. This is a presupposition of the ability of our societies to sustain pluralistic cultures with a good deal of disagreement. Common beliefs help to strengthen social ties, but in thinking of ways of maintaining or strengthening them, the importance of common beliefs should not be exaggerated.

As to the goals of government or of political action generally the clue is in the nature of decent, or better than that, life which individuals deserve. The crucial point about the decent or good life is that (a) it is a life which individuals are keen on, a life in which they invest themselves, pursuing it by their own judgment and will-power; (b) the good or decent life has to be filled with the pursuit of worthwhile relationships and various worthwhile ambitions.

You will notice that I did not say that people must have a free choice in navigating their life. What matters, morally speaking, is their whole-hearted engagement in worthwhile relationships and pursuits. But in today's economic conditions which require a high degree of social mobility, and capacity to retrain and relocate in adult life, people need to prospect, to have significant choices among worthwhile options.

All of that requires on the one hand that they have the psychological stability, the self-discipline, the sense of self esteem, to be able to conduct their own life independently in a relatively fast changing world, and that the society in which they live will enjoy a sense of pride in its history and cultural identity, and that in spite of all the evils which we find everywhere it will also have enough valuable opportunities to offer its people. The role of government is to protect people's enjoyment of such opportunities, but also to make sure that they have access to them in the first place. Deprivation and repressive discrimination are the great evils of our time. Many people are denied a chance to have a decent life through poverty and disease, and lack of educational and psychological preparation needed to cope with the conditions of their societies, and many others are denied the chance of a decent life, or have it greatly restricted through repressive discrimination. The task of government is to secure conditions in which these phenomena do not occur.

XII

Question:
Finally, in the age of globalisation, do you have any advice on the

development of legal philosophy, political philosophy and moral philosophy? In your point of view, are there issues of globalisation to which we need to pay special attention? Moreover, in legal philosophy, political philosophy and moral philosophy, is there any knowledge that urgently needs to be critically reviewed?

Reply:

Obviously changes are opportunities and challenges. I intimated one or two such challenges in the previous responses. And I am happy to leave it with the general remark that as new forms of economic powers emerge or grow in importance in the world of globalised economy, politics and the theory of it encounter new challenges of political regulation and control, and as new forms of legal organisation emerge under that pressure and the pressure for co-ordination and harmonisation, there are new challenges in understanding the potential and pitfalls of political power. New forms — mostly IT dependent — of social interaction, new forms of sociability and interpersonal relations, as well as new forms of congregation and organisation pose perhaps even more fundamental questions about the nature of social relations and of cultural products. In all these developments philosophy must take a back seat, but should be a keen observer, commentator, and advisor.

Thank you very much!

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