REVIEW ARTICLE: LEGAL THEORY, LAW, AND NORMATIVITY

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Abstract

Joseph Raz’s new book, *Between Authority and Interpretation*, collects his most important papers in the philosophy of law and the theory of practical rationality from the mid-1990s to the mid-2000s. In these papers, Raz not only advances earlier theses but also breaks new ground in a number of areas. I focus on three of Raz’s topics here: theories of law, separability and necessity, and the normativity of law. While I am generally sympathetic to Raz’s thinking on these topics, I raise some room for doubt – especially with regard to his pessimism about finding a uniquely best theory of law and the relationship between law and morality.

Keywords

Joseph Raz, legal positivism, reasons, normativity


1. Introduction

Joseph Raz has, quite reasonably, been called, “the foremost theorist in contemporary English-language analytical jurisprudence,”¹ and *Between Authority and Interpretation* is a collection of his most important papers in the philosophy of law and the theory of practical rationality from the mid-1990s to the mid-2000s. While many of the papers develop ideas that Raz articulated in earlier works,² the book is no mere rehashing of familiar

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themes. Raz not only advances earlier theses but also breaks new ground in a number of areas. In fact, there is no possibility of doing justice to the thematic and dialectical richness of a book like this, even in an extended review. Instead of attempting the impossible, I divide the rest of this essay into three sections, each reflecting one of the many topics which Raz addresses in *Between Authority and Interpretation*: the first section focuses on the nature of theories of law, the second turns to separability and necessity, and the third concerns the normativity of law. Sadly, much that is worth discussing must be put to the side here. For instance, I cannot discuss Raz’s theory of interpretation, his thinking about civil disobedience, or his so-called “service conception of authority,” and can only touch in passing on one or two aspects of his many instructive disagreements with Ronald Dworkin. These topics will have to wait for another day.

2. *Theories of Law*

According to Raz, a theory of law is a theory of the central concepts involved in legal actions. Moreover, such a theory is (or, at least, can be) “general.” That is to say, it can be correctly applied not only to our own society and culture but to other societies and cultures as well, even to societies and cultures with different concepts of law – or with no legal concepts at all. More specifically, theories of law are composed of “theses [that], if true, apply universally, that is they speak of the law, of all legal systems: of those that exist, or that will exist, even those that can exist though they never will” (p. 91). Nevertheless, a theory of law must also acknowledge its locality and temporality. Our own concept of law has developed over time and will continue to do so. As Raz puts it, “Talk of the concept of law really means our concept” (p. 31, emphasis in the original) – i.e., our concept in the here and now. Since theories of law are “parochial” in this sense, they attempt to explain “a product of a specific culture, a concept which was not available to members of earlier cultures