

Chapter 15

Rules as Reason-Giving Facts: A Difference-Making-Based Account of the Normativity of Rules

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Abstract In his “Reasoning with Rules,” Joseph Raz raises a puzzling question about the normativity of rules: “How can it be that rules are reasons when they do not point to a good in the action for which they are reasons?” In this paper, we put forward a difference-making-based theory of reasons to resolve Raz’s puzzle. This theory distinguishes between reasons and reason-giving facts, and we argue that rules are not reasons but rather reason-giving facts. Based on this distinction, we recast and criticize some of Raz’s theses about the nature of rules, such as their opaqueness, the normative gap, and the breakdown of transitivity in the content-independent justification of rules. Finally, we propose a difference-making-based account of the reason-giving force of rules.

Keywords Difference-making · Normativity of rules · Raz · Reasons · Reason-giving facts

15.1 Introduction: Raz’s Puzzle About the Normativity of Rules

The aim of this paper is to give an account of the normativity of rules in terms of reasons. A representative view of this approach is that of Joseph Raz, who writes:

The normativity of all that is normative consists in the way it is, or provides, or is otherwise related to reasons. The normativity of rules ... consists in the fact that rules are reasons of a special kind (Raz 1999a, p. 67)

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The claim that rules are reasons for action seems at odds with the value-based theory of reasons advocated by Raz, when he says that “reasons for action are facts that establish that the action has some value” (Raz 2011, p. 70). As Raz observes,

Yet rules are unlike most other reasons. Most reasons are facts which show what is good in an action, which render it eligible: it will give pleasure. It will protect one’s health, or earn one money, or improve one’s understanding. It will relieve poverty in one’s country, or bring peace of mind to a troubled friend, and so on. What is the good in conforming to a rule? (Raz 2009, p. 205)

Raz thus raises a puzzling question about the normativity of rules: “How can it be that rules are reasons when they do not point to a good in the action for which they are reasons?” (Raz 2009, p. 205). He calls this puzzle *the opaqueness of rules*. For example, the fact that smoking in a public place damages others’ health is a reason not to do it, because this fact shows the good in refraining from smoking in a public place: it will protect others’ health. By contrast, suppose that the fact that there is a legal rule prohibiting smoking in a public place constitutes another reason not to do it. This fact tells us that it is legally required to refrain from smoking in a public place, but it does not indicate that there is some good or value in the action required by this rule.

Of course, one can circumvent Raz’s question by denying that reasons depend on values, but we will not adopt this strategy here. Rather, we will draw on a difference-making-based theory of reasons, of which the value-based theory is just a special case, to resolve his puzzle. Although we think Raz is right when he says that the normativity of rules is to be explained in terms of reasons, we will argue, based on this difference-making account, that rules are not reasons but reason-giving facts.¹ In terms of rules as reason-giving facts, we shall reformulate Raz’s puzzle about the opaqueness of rules and then provide an alternative way to account for the normativity of rules.

15.2 Reasons and Reason-Giving Facts

The main idea of the difference-making-based theory of reasons is that reasons are *difference-making facts*. Consider the fact that smoking in a public place damages others’ health. This fact is a reason not to smoke in a public place. When one asks whether there will be any difference if one does not smoke in a public place, the answer is positive: the health of other people will not be damaged. Therefore, this fact is a difference-making fact in that smoking in a public place makes a difference

¹ A reviewer of the Rules 2013 conference reminds us that whether rules can be facts is a controversial matter. Strictly speaking, it is not rules but their existence which are facts. A statement about the existence of a rule, such as “there is a rule prohibiting smoking in a public place,” can be true or false. If such a statement is true, as Raz (1979, p. 147) points out, then it is a fact that there is such a rule. For the sake of brevity, however, we will adopt the shorthand of referring to rules as reason-giving facts.

to whether or not others' health will be damaged. To take another example, driving to work will lead to an increase in your gasoline expenses, as opposed to if you take the metro. This is a difference-making fact because it shows that driving to work makes a difference to your gasoline expenses. It is therefore a reason for you not to drive to work.

This idea can be made more precise as follows:

(Reasons) R is a reason for A to ϕ if and only if R is a fact that A's ϕ -ing makes a difference to X.

There can be varied versions of the difference-making-based theory of reasons, each corresponding to a different way to characterize X in **Reasons**. For example, if X is characterized as the fulfillment of A's desires, then we get a desire-based theory of reasons. A value-based version of the difference-making-based theory can be formulated as follows:

(Value-Based Reasons) R is a reason for A to ϕ if and only if R is a fact that A's ϕ -ing makes a difference to whether a good or valuable outcome occurs, in other words, A's ϕ -ing leads to some good or valuable consequence.

Such a difference, characterized in **Value-Based Reasons**, might be called "*evaluative difference*." In this regard, Raz's value-based theory of reasons can be viewed as a special case of the difference-making-based theory of reasons.

The motivation to define reasons as difference-making facts is to capture the idea that normative reasons can be, and must be, *practically deliberationally useful*. By "being practically deliberationally useful," following DeRose (2010, p. 25), we mean that an agent can make use of a difference-making fact to deliberate over whether or not to perform a certain act as a way of producing (or preventing) some consequence. For instance, you can deploy the fact that driving to work leads to a rise in your gasoline expenses to consider whether to take the metro as a way of saving money. Likewise, the fact that smoking in a public place damages others' health can be used to deliberate over whether to extinguish a cigarette before entering a public place in order to prevent damage to others' health.

The deliberational usefulness also takes the explanatory dimension of normative reasons into account. A normative reason for A to ϕ , as Broome (2004) defines it, is a fact that explains why A ought to ϕ . By means of pointing out what difference an act makes, difference-making facts provide *quasi-teleological* explanations of ought facts. For example, an explanation of why you ought not to drive to work is that your gasoline expenses will increase if you drive to work. For the sake of reducing your gasoline expenses, you ought not to drive to work. In the same way, the fact that one ought not to smoke in a public place is explained by the fact that this act causes damage to others' health; in order to avoid this undesirable consequence, one ought to refrain from smoking in a public place.

An explanation provided by a difference-making fact differs from one that a difference-maker provides. That the health of other people will be damaged may be explained by the fact that someone smokes in a public place, given that the damage to others' health is a difference "made" (or "caused") by smoking in a public place.

In this sort of explanation, which may be called the *canonical* explanation, the explanans is a difference-maker, that is, an action (or a fact) that makes a difference to whether or not some consequence (the explanandum) occurs.² By contrast, the explanans in an explanation of why one ought to ϕ is not a difference-maker but rather a difference-making fact that one's ϕ -ing makes a difference to whether or not some consequence occurs. In such an explanation, which may be called the *inverted* explanation, the explanandum is a fact that a certain action, which plays the role of the difference-maker in a difference-making fact, ought to be done. Reasons as inverted explanations are useful for practical deliberation in that they can be so deployed in order for agents to deliberate the consequences of actions for which they are reasons, thereby providing the intellectual base for normative considerations concerning whether one should perform a certain action for some reason.

In light of practically deliberational usefulness and inverted explanations, reasons are to be distinguished from reason-giving facts. A reason-giving fact is not a difference-making fact, but rather a fact in virtue of which a difference-making fact obtains. For example, suppose the price of gasoline goes up. This fact does not point to what difference that an action, such as driving to work, makes, but it provides the background condition for the difference-making fact that driving to work leads to an increase in your gasoline expenses: Were the price of gasoline not to be raised, driving to work would not make a difference to your gasoline expenses. Therefore, the fact that the price of gasoline goes up, though it is not a reason, gives you a reason not to drive to work. Likewise, while the fact that smoking in a public place damages others' health is a difference-making fact, the fact that tobacco contains toxic chemicals is not. It is, however, the fact in virtue of which smoking in a public place causes damage to others' health. The fact that tobacco contains toxic chemicals is therefore a reason-giving fact.

Reason-giving facts can be defined as follows:

(Reason-Giving Facts) The fact P gives A a reason to ϕ if and only if, in virtue of P, A's ϕ -ing makes a difference to X.

Since a reason-giving fact does not point to any difference an action makes, it is not practically deliberationally useful, nor can it provide an inverted explanation in its own right. Consider the following statement: "Because the price of gasoline goes up, you ought not to drive to work." This is merely an enthymematic explanation. To deliberate over whether to perform a certain action, such as driving or not driving to work, you cannot rely only on the fact that the price of gasoline goes up, because it does not show what consequences will be produced (or prevented) by driving to work. Without resort to the difference-making fact that driving to work causes an increase in your gasoline expenses, it is unintelligible why you ought not to drive to work just because the price of gasoline goes up, and we do not know what reasons you really have not to drive to work, either. In other words, in order to provide an inverted explanation of why you ought not to drive to work, we still have

² For a detailed discussion of difference-making in the causal explanation, see, among others, Strevens (2004).

to appeal to a difference-making fact that obtains in virtue of a rise in the price of gasoline, and this fact accounts for the reason-giving force of the fact that the price of gasoline goes up.

15.3 The Opaqueness of Rules

Let us return to the opaqueness of rules. If rules are reasons, then the fact that an action is required by a rule has to be a difference-making fact. Rules automatically make a “difference” in one sense: they distinguish between what is correct and incorrect, or what is legal and illegal. An action is correct if it complies with a rule and is incorrect if it does not. However, the difference in this sense only reveals a feature of an action, that is, being correct (or incorrect), and is not deliberately useful because it does not point to the consequence to which performing a correct (or incorrect) action will lead. In other words, the fact that an action is required by a rule is not the one that an agent can employ to deliberate over whether to perform it as a way of producing or preventing a certain consequence.

For example, smoking in a public place is illegal because it is banned by a legal rule, but the fact that it is illegal to smoke in a public place does not show a difference this act makes, let alone any valuable outcome of refraining from it. Alternatively, consider Raz’s example: a chess club’s rule that members are entitled to bring no more than three guests to the club’s social functions. According to this rule, it is correct to bring three or fewer guests and incorrect to bring a fourth guest. However, from this rule, we cannot see any practically significant difference between bringing three and bringing four or more guests, nor can we discern that bringing fewer than three guests will lead to any desirable consequence.

In terms of the difference-making-based theory, Raz’s puzzle about the opaqueness of rules can be generalized in the following question: How can rules be reasons if they do not show what difference the actions they require make? In fact, since reason-giving facts are not difference-making facts, they are all opaque in this sense. For example, one might ask: “How can the fact that the price of gasoline goes up be a reason for you to not drive to work, even though it does not point to any difference this action makes?” or “The fact that tobacco contains toxic chemicals does not show what difference smoking in a public place makes, how can it be a reason not to smoke in a public place?” Although these facts are not reasons (that is, difference-making facts), they can still be reason-giving facts inasmuch as there are some difference-making facts which obtain in virtue of them. By the same token, if reasons are difference-making facts but rules are not, the straightforward answer to the question above is that rules are not reasons. Even though rules are not reasons, this should not preclude rules from being reason-giving facts.

With regard to the normativity of rules, instead of questioning whether rules are reasons, perhaps it is more sensible to ask how rules can be reason-giving facts. In other words, the problem about the normativity of rules will shift from “How can

it be that rules are reasons?" to "How can rules give reasons?" Applying **Reason-Giving Facts**, we get the following condition for the reason-giving force of rules:

(Reason-Giving Force of Rules: First Attempt) The fact that a rule requires A to ϕ gives A a reason to ϕ if and only if, in virtue of this fact, A's ϕ -ing makes a difference to X.

If we endorse the value-based theory of reasons, the right-hand side of this condition can be formulated as "in virtue of this fact, A's ϕ -ing leads to some valuable consequence."

According to this condition, if rules are reason-giving facts, there must be some difference-making fact R that obtains in virtue of the existence of rules, and R is a reason to do what they require. On this matter, rules are not different from other reason-giving facts. In order to account for why a fact is a reason-giving one, we have to point to a difference an action makes in virtue of this fact. However, whereas it is relatively clear what difference-making facts obtain by virtue of ordinary reason-giving facts, it is not straightforward to find out what (evaluative) difference an action makes in virtue of its being required by a rule.

For instance, because of the fact that the price of gasoline goes up, driving to work makes a difference to whether or not your gasoline expenses increase; the fact that tobacco contains toxic chemicals makes smoking in a public place dangerous to others' health. But what difference does bringing no more than three guests make in virtue of the fact that it is required by the rule? What is the difference-making fact that obtains by virtue of the legal rule prohibiting smoking in a public place? Now we face a puzzle similar to Raz's. This puzzle can be presented in the following way:

(The Opaqueness of Rules as Reason-Giving Facts) How can we account for the reason-giving force of rules if we cannot show that an action makes a difference in virtue of the fact that it is required by a rule?

At issue here is how to explain the normativity of rules, that is, their reason-giving force, given that they are opaque in the above sense. To answer this question, we have to look into Raz's view on the nature of rules in more detail.

15.4 Content-Independent Justification and Normative Gaps

According to Raz,

When we ask 'what makes rules bind?' the answer will revert to evaluative considerations. The rules of the Mastergame chess club may be binding because it is *better* for the affairs of the club to be governed by its committee than to be organized some other way, or be left in chaos... *Normativity is ultimately based on evaluative considerations*, but in a way which leaves room for a normative gap. (Raz 2009, p. 209)

If the binding force of rules is understood as their reason-giving force, Raz's idea might be put another way: In order to explain the reason-giving force of rules, we still have to appeal to certain evaluative difference-making facts that obtain in virtue of the existence of rules. With respect to this difference-making-based account of the normativity of rules, there are two related problems: First, what kind of difference-making facts are those that can explain the reason-giving force of rules? Second, are they concerned with the evaluative difference made by the actions required by rules?

Let us start with the latter problem. Raz's answer to this question is negative. In his view, the evaluative considerations on which the normativity of rules is based do not turn on the value of the actions for which they give reasons. Take the chess club rule as an example. The considerations which explain its normative force, as Raz claims, "do not turn on the desirability of members having a small number of guests, nor on the desirability of members having the option to bring guests, but on the desirability of the affairs of the club being organized by the committee which laid down the rule" (Raz 2009, p. 210).

Raz calls such an explanation of the normativity of rules *content-independent justification*:

It is content-independent in that it does not bear primarily on the desirability of the acts for which the rule is a reason. Here we see clearly how rules differ from other reasons. The insightfulness and subtlety of a novel are reasons for reading it because they show why reading it is good. But the considerations which show why the rule is binding, ie why it is a reason for not bringing more than three guests, do not show that it is good not to bring more than three guests. They show that it is good to have power given to a committee, and therefore good to abide by decisions of that committee. (Raz 2009, p. 210)

Since the justification of rules is content-independent, that is, it does not depend on the value of the actions they require, Raz claims that "[r]ules ... allow for a potential gap, a gap between the evaluative and the normative, that is between their value and their normative force" (Raz 2009, p. 208). Displaying a *normative gap* is a unique feature of rules:

Contrast this with 'ordinary' reasons. That a novel is insightful and subtle is a reason to read it. We cannot here drive a wedge between the evaluative and the normative, between the two questions 'is it good?' and 'is it binding or valid?' If being insightful and subtle are good characteristics of novels then they are reasons. There is no gap between being valid reasons and being good or of value, between the normative and the evaluative, as there is in the case of rules (Raz 2009, p. 208)

Let us make a clarification. According to the distinction between reasons and reason-giving facts, it is somewhat misleading when Raz says, "That a novel is insightful and subtle is a reason to read it." The fact that a novel is insightful and subtle does not show the difference to which reading this novel will lead. It is not a difference-making fact but rather provides the background condition for an evaluative difference-making fact, such as the fact that reading this novel will bring you enjoyment. This difference-making fact is an explanation of why you ought to read it, thereby being a reason for you to read it. Therefore, the fact that a novel is insightful and subtle is not a reason but a reason-giving fact.

Nevertheless, the content-independent justification and the idea of normative gaps help us see a difference between rules and other reason-giving facts. If the fact that a novel is insightful and subtle gives you a reason to read it, that is because, in virtue of this fact, reading this novel will lead to some valuable consequence. The reason-giving force of “ordinary” reason-giving facts derives from the evaluative difference made by the actions for which they give reasons; thus they do not display a normative gap.

By contrast, in Raz’s view, rules display a normative gap in that their normative force does not turn on the value of the actions they require. To put it another way, the normative gap consists in the fact that the reason-giving force of rules does not derive from the evaluative difference made by the actions for which they give reasons. For example, if the club rule gives its members a reason to bring no more than three guests, it is not because this act leads to some valuable consequence, such as reducing the cost of social functions. Likewise, the reason-giving force of the fact that smoking in a public place is illegal is not grounded in the fact that refraining from doing it will prevent damage to others’ health.

Yet we think that Raz’s view about the normative gap of rules is inaccurate in some respect. Just as the reason-giving force of the fact that a novel is insightful and subtle derives from the evaluative difference-making fact that obtains by virtue of the insightfulness and subtlety of the novel in question, so, if rules give reasons, their reason-giving force must be established on the difference-making facts that obtain in virtue of the existence of rules. But the evaluative difference-making facts mentioned above—that is, “Bringing no more than three guests will reduce the cost of social functions” or “Refraining from smoking in a public place will prevent damage to others’ health”—are not those facts that obtain in virtue of the existence of rules. Smoking in a public place will damage others’ health no matter whether it is forbidden by the law. Even if the club committee did not issue the three-guests-rule, bringing no more than three guests could still reduce the cost of social functions.

Since such difference-making facts, though they are concerned with the value of the actions required by the rules, are independent of the existence of rules, by definition, they cannot figure as the considerations that account for the reason-giving force of rules. Let us draw an analogy to illustrate this point: We cannot deploy the difference-making fact that not driving to work will reduce air pollution to explain why the fact that the price of gasoline goes up gives you a reason not to drive to work, because this difference-making fact is not a reason given by a rise in the price of gasoline. Whether the price of gasoline goes up or not, not driving to work will reduce air pollution.

Hence, the crucial issue in explaining the reason-giving force of rules is whether an action can make a distinctive difference in virtue of its being required by a rule. In Sect. 15.6 below, we will argue that it is possible to give an affirmative answer to this question. If so, rules will not differ so much from ordinary reason-giving facts. However, Raz seems to ignore this possibility and pursues another question: How can justification be content-independent? He says, “For a content-independent justification to be possible there must be reasons for an agent to behave in a certain way

other than the value of the behavior in question” (Raz 2009, p. 212). In terms of the difference-making-based theory, this point can be put as follows: In order to explain the normativity, that is, the reason-giving force, of rules, we still have to appeal to some difference-making fact that obtains in virtue of rules, but this difference-making fact is not concerned with the evaluative difference made by the actions for which rules give reasons (the so-called “content-independence”). So we are back with the first question above: What kind of difference-making fact would it be?

Consider the content-independent justification for the club rule: the goodness of governing club affairs by rules issued by the committee. To see that it is good to regulate club affairs by rules, let us imagine a counterfactual situation: What would be different if the affairs of the club were not governed by rules? The social functions would be in chaos if it were left to each member to decide how many guests she/he were entitled to bring, or it would be controversial and inefficient if members had to coordinate the policy on the number of guests by means of bargaining with each other. Hence, in our view, what the content-independent justification of rules appeals to is nothing more than a difference-making fact that governing club affairs by rules will lead to some valuable consequence. Such a difference-making fact, which can be called an “*institution-involving difference-making fact*,” is distinguished from “ordinary” ones in that its difference-maker is an institution (i.e., governing club affairs by rules) rather than an action.

15.5 The Breakdown of Transitivity in the Justification of Rules

Given that the content-independent justification appeals to the value of institution (the evaluative difference made by institution) rather than to the value of action, Raz claims that the most important feature of rules is the lack of transitivity in justification:

As a rule, normative justification, and justification in general, are transitive. If A justifies B and B justifies C then A justifies C. So if there is reason to read the novel because it is a good novel, and if it is a good novel because it is insightful and subtle, then that it is insightful and subtle is reason to read it. ... The opacity and content-independence of rules mean that transitivity does not hold. That it is good to uphold the authority of the committee is a reason for the validity of its rules, including the rule that one may not bring more than three guests to social functions of the club. But the desirability of upholding the authority of the committee is not a reason for not bringing more than three guest (not, that is, under this description). (Raz 2009, pp. 213–214)

The point of intransitivity in the justification of rules can be recast in the following claim: What accounts for the reason-giving force of the club’s rules is not an action-involving difference-making fact but rather an institution-involving one; in other words, it does not point to the (evaluative) difference made by the actions required by the rules; therefore, it cannot directly be a reason to perform these actions.

If intransitivity indeed holds in the justification of rules, the formulation of the condition for the reason-giving force of rules in our first attempt appears not entirely correct. Before making a slight revision to our first formulation, however, we will examine the structure of Raz's "normative justification" in more detail.

Once again, we have to stress that Raz's characterization of normative justification will be more enlightening if reason-giving facts are distinguished from reasons. As argued above, a reason to read a novel is a difference-making fact, such as the fact that reading it will promote some value, which obtains in virtue of its insightfulness and subtlety. Therefore, in Raz's case, the fact that a novel is insightful and subtle is not a reason but gives one a reason to read it. The distinction between reasons and reason-giving facts is not a verbal one. Rather, it is significant for a more precise analysis of the structure of normative justification.

In fact, if the justifying relation in Raz's normative justification is interpreted as the explaining relation between reason-giving facts, difference-making facts, and ought facts, the breakdown of transitivity is not unique to rules but common to all reason-giving facts. As argued in Sect. 15.2, a reason-giving fact, since it is not a difference-making fact, cannot provide an inverted explanation of an ought fact. For example, the fact that tobacco contains toxic chemicals explains why smoking in a public place damages others' health, and the difference-making fact that smoking in a public place damages others' health provides an inverted explanation of why one ought not to smoke in a public place, but the fact that tobacco contains toxic chemicals on its own cannot explain this ought fact. In Raz's case, by the same token, the fact that a novel is insightful and subtle, because it does not show the difference that reading this novel will make, cannot directly explain why you ought to read it. The explaining relation between reason-giving facts, difference-making facts (reasons), and ought facts is thus intransitive: Even if a reason-giving fact P explains why a difference-making fact R obtains and R explains why A ought to ϕ , P by itself does not explain why A ought to ϕ .³

Perhaps the structure of Raz's normative justification is not intended to characterize the explaining relation, but rather to provide a general structure to account for the reason-giving force of a fact. But this general structure can also be viewed in terms of the explaining relation. As mentioned above, a reason-giving fact P alone cannot intelligibly explain why A ought to ϕ . There is an explanatory "jump" from P to the fact that A ought to ϕ . In order to eliminate this "jump," we have to add a difference-making fact R (A 's ϕ -ing makes a difference to X), which obtains in virtue of P and provides an inverted explanation of why A ought to ϕ . Without this difference-making fact, which is a reason for A to ϕ , we cannot answer the question why P gives A a reason to ϕ . P explains why R obtains, and R is a normative reason for A to ϕ ; therefore P gives A a reason to ϕ .

The general structure of normative justification can thus be formulated as follows:

³ Raz seems to agree with the claim that the explaining relation is intransitive. He says (2011, p. 30), "[I]t is plausible to think that 'being an explanation of' is not a transitive relation. Sometimes even if C explains B and B explains A , C does not explain A ."

(Normative Justification) In virtue of the fact P, an *action-involving* difference-making fact R obtains, and R is a reason to ϕ , therefore P gives a reason to ϕ .

Let us take Raz's example to illustrate it. Because of its insightfulness and subtleness, reading a certain novel will lead to some valuable consequence. This evaluative difference-making fact is a reason for you to read it, therefore the fact that this novel is insightful and subtle gives you a reason to read it. Without the action-involving difference-making fact in question, we cannot explain why you have a reason to read this novel just because it is insightful and subtle.

It should be noted that Raz's characterization of intransitivity in the justification of rules has a structural problem. If the general structure of normative justification is formulated in the above way, a rule of which the reason-giving force is to be explained should play the role of the former term P in this structure, and the middle term R should be an action-involving difference-making fact that obtains in virtue of this rule. In Raz's characterization, however, the former term is an institution-involving difference-making fact, that is, it is good to uphold the authority of the committee, the middle term is that certain rules are valid (have binding force), and the consequence seems to be the fact that one has reason to do what these rules require.

But let us put aside this structural problem for a moment. As stated above, the insight of Raz's claim about intransitivity in the justification of rules is that the difference-making fact accounting for the reason-giving force of rules is an institution-involving one, which is not concerned with the evaluative difference made by the actions for which they give reasons and therefore cannot be a reason to perform these actions. If so, how can we deploy the general structure of normative justification to explain the reason-giving force of rules? This brings us back to the opacity of rules as reason-giving facts: How can we explain the reason-giving force of rules if we cannot show that an action makes a distinctive difference in virtue of its being required by a rule? In the following section, we will propose a solution to this problem.

15.6 A Difference-Based Account of the Reason-Giving Force of Rules

In our view, Raz might have exaggerated the significance of intransitivity. It is possible to transform an institution-involving difference-making fact into an action-involving one. In fact, Raz has suggested the possibility of this transformation, when he says that "all *prima facie* justifications are description-sensitive" (Raz 2009, pp. 210 fn. 12, 213 fn. 16). Precisely speaking, Raz's claim about content-independent justification is meant to indicate that the justification of a rule does not bear on the desirability of the action under the description in this rule, but he does admit that "the justification of rules bears on the desirability of actions required by the rules when they are described as 'actions required by the rule,' etc." (Raz 2009, p. 211 fn. 15).

The key point here is that the same action, as Davidson (1980, pp. 4–5) argues, can be described in various ways. For example, bringing no more than three guests can also be described as an action conforming to the club rule; smoking in a public place can also be described as an illegal act. Since the existence of rules makes it possible to describe the actions that fall under the rules as actions conforming to (or violating) the rules, the institution-involving difference-making fact that figures in a content-independent justification can be transformed into an action-involving one which has a rule-conforming action as its difference-maker. This action-involving difference-making fact constitutes a distinctive reason to perform a certain action if this action can be described as a rule-conforming one. Accordingly, an action *qua* rule-conforming action can make a difference that is distinct from other differences it makes.

For example, suppose the desirability of governing club affairs by rules consists in the fact that the club will run smoothly if its rules are followed. On this account, the institution-involving difference-making fact that figures in the content-independent justification of the club's rules can be transformed into an action-involving one, as follows:

(R*) Performing an action conforming to the club's rules makes a difference to the smooth operation of the club.

R* is obviously a reason for members to do any action required by the club's rules. It would not be a reason for a certain action if this action could not be described as one that conforms to the club's rules; therefore, it is a reason given by the club's rules.

There are two things to be noted, however. First, R* can account for the reason-giving force of various rules in a system, such as the rules of the chess club. As long as an action is required by some rule in this system and, accordingly, can be described as a rule-conforming action, R* constitutes a reason for this action, thereby explaining why this rule gives a reason to do it. To borrow Raz's phrase, the very same considerations can justify a variety of rules; they are in this sense content-independent (Raz 2009, p. 210). Furthermore, R* is concerned with the evaluative difference made by an action *qua* rule-conforming action instead of other differences made by this action under the description in the rule; therefore, R* constitutes a distinctive reason to do what the rules require.

Second, and more importantly, R* is a difference-making fact *in abstracto*. It cannot directly figure as a reason to bring no more than three guests, unless bringing no more than three guests can be described as an act conforming to the rule. At this point, Raz is correct when he says that "the lack of transitivity is that the reasons for the validity of the rule (in our phrase, the considerations that account for the reason-giving force of rules) are not in themselves reasons for performing the act required by the rule, as described in the rule" (Raz 2009, p. 210 fn. 12).

But this should not be a very serious obstacle. Whether R* can be a reason to perform a certain action depends on whether this action can be described as a rule-conforming one. Hence, for R* to be a reason to bring no more than three guests, it must be possible to describe "bringing no more than three guests" as a rule-con-

forming action. Such a description can be given precisely because there is a rule forbidding members to bring a fourth guest. In virtue of the existence of this rule, the act of bringing no more than three guests turns into the difference-maker in R^* , and accordingly, a difference-making fact *in concreto* obtains:

(R) Bringing no more than three guests, as an act conforming to the club's rules, makes a difference to the smooth operation of the club.

R can be viewed as an instantiation of R^* . R is a reason to bring no more than three guests and would not obtain if the three-guests-rule did not exist because, but for this rule, the act of bringing no more than three guests could not be described as a rule-conforming action and thereby would not make the difference that can be activated only by rule-conforming actions. Therefore, R is an action-involving difference-making fact that obtains in virtue of the existence of the three-guests-rule; in other words, it is a reason given by this rule.

On this construction, the account of the reason-giving force of rules still fits into the general structure of normative justification: Because there is a rule forbidding members to bring a fourth guest, the difference-making fact R obtains. R is a reason to bring no more than three guests; therefore, this rule gives members a reason to bring no more than three guests.

Now the condition for the reason-giving force of rules can be reformulated as follows:

(Reason-Giving Force of Rules: Second Attempt) The fact that a rule requires A to ϕ gives A a reason to ϕ if and only if, in virtue of this fact, A's ϕ -ing *qua an action conforming to the rule* makes a difference to X.

The second attempt differs from the first only in the qualifying phrase "*qua an action conforming to the rule*." This qualification indicates that the difference made by A's ϕ -ing as a rule-conforming action is a distinctive one: A's ϕ -ing would not make such difference if it were not required by the rule; in other words, this difference is distinct from others that A's ϕ -ing could still make even if the rule did not exist. Hence, the difference-making fact in this formulation is a rule-given reason and can explain why the rule gives A a reason to ϕ .

Finally, the difference-making-based account of the normativity of rules invites us to reconsider Raz's *autonomy thesis*, which says: "[R]ules, at least man-made rules, make a difference to practical reasoning. ... If valid, they constitute reasons which one would not have but for them" (Raz 2009, p. 214). In terms of rules as reason-giving facts, the autonomy thesis can be put the following way: No matter what reasons we have to do a certain action, the fact that it is required by a rule gives us another reason to do it, and this reason is distinguished from other reasons that we have for the same action.

In light of the difference-making-based account, it is quite clear why rules can affect the reasons one has in this way, because a difference-making fact that obtains in virtue of the existence of a rule—that is, a reason given by the rule—is not the same as other difference-making facts that obtain independently of the rule, even if both are reasons to do the action required by the rule.

Consider the smoking example: The fact that smoking in a public place damages others' health is a reason not to do it. If smoking in a public place is forbidden by the law, its being an illegal act will make another difference. The difference-making fact that performing a legal or illegal action will lead to a distinctive kind of difference, which might be termed "the legality-based difference,"⁴ is another reason not to smoke in a public place. If there were no legal rules forbidding smoking in a public place, this act would not make the legality-based difference. In this case, we still have other reasons not to smoke in a public place because this action is able to make other differences, such as causing harm to others' health, but there would no longer be a law-given reason not to do it.

In this view, rules are "autonomous" in the following sense: The difference an action *qua* a rule-conforming action makes is distinguished from other differences it makes. Hence, a rule-given reason is distinct from other reasons that one has independently of rules. But we have to point out that the autonomy thesis in this sense can be generalized to apply to all reason-giving fact: Any reason-giving fact gives a distinctive reason that one would not have but for it.

To illustrate this, let us consider another example: Whether or not the price of gasoline goes up, driving to work will produce air pollution. This difference-making fact is also a reason not to drive to work, but it is given by the fact that cars emit exhaust, not by the fact that the price of gasoline goes up. If the price of gasoline goes up, you will have another reason not to drive to work, but this reason is different from the former one, because the fact that driving to work produces air pollution and the fact that driving to work leads to an increase in your gasoline expenses are two distinct difference-making facts; in other words, they are two different reasons. If the price of gasoline does not go up, driving to work will not make a difference to your gasoline expenses, but it still makes a difference to air pollution. In this case, although you have the former reason, which is given by the fact that cars emit exhaust, you do not have the latter reason not to drive to work. Therefore, the reason given by the fact that the price of gasoline goes up is distinguished from reasons given by other facts, and the same is true for the reason given by the fact that cars emit exhaust.

To sum up, if the normativity of rules is understood as their reason-giving force, an account of the normativity of rules has the same structure as that of the reason-giving force of ordinary facts. Rules differ from other reason-giving facts only in that the difference-making facts which obtain in virtue of rules are distinct from those that obtain in virtue of other reason-giving facts.⁵

⁴ Note that the legality-based difference can be interpreted in different ways, such as avoiding a sanction, promoting the common good, or fulfilling the law's moral aim, but we will not pursue this issue here.

⁵ One might think that rules still differ from other reason-giving facts in that what a rule gives is an *exclusionary reason*, i.e., a reason not to act for some conflicting reasons. See Raz (1999b, pp. 39–48, 73–80; 2009, p. 216). But the exclusionary character of rules concerns the relation among competing reasons and has less to do with the question of whether and how rules give reasons, so we will not deal with this issue here.

15.7 Conclusion

In this paper, we put forward a difference-making-based theory of reasons to argue that rules are not reasons but reason-giving facts. What distinguishes rules from other reason-giving facts is not their opaqueness, normative gaps, or the breakdown in transitivity, but rather the distinctive kind of difference an action makes in virtue of its being required by a rule. Instead of questioning whether rules are reasons, perhaps there are more interesting issues to be explored about the nature of difference-making facts that account for the normativity of rules.

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