

## DETACHED STATEMENTS

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**SUMMARY:** Joseph Raz has introduced an interesting class of statements —*detached* statements— into the philosophical lexicon. In brief, such statements are (informative) *normative* statements, yet the speaker *does not*, in so uttering them, express or convey acceptance of the point of view of the hearer to whom they are addressed (as contrasted with *committed* statements, where the speaker *does* express or convey such acceptance). I propose to offer a novel analysis of such statements (and to clear away some confusions about them). In brief, such statements will be analysed as *wide-scope* normative conditionals.

**KEY WORDS:** Joseph Raz, normative statements, committed statements, wide-scope normative conditionals

**RESUMEN:** Joseph Raz ha introducido en el léxico filosófico una clase interesante de enunciados: los enunciados *no comprometidos*. Dicho de forma breve, éstos son enunciados *normativos* (informativos); sin embargo, al proferirlos, el hablante *no* expresa aceptación del punto de vista de la persona a la que están dirigidos (a diferencia de los enunciados *comprometidos*, en los que el hablante *sí* expresa tal aceptación). Propongo ofrecer un análisis original de esos enunciados (y deshacer algunas confusiones sobre ellos). En resumen, esos enunciados se analizarán como condicionales normativos de *alcance amplio*.

**PALABRAS CLAVE:** Joseph Raz, enunciados normativos, enunciados comprometidos, condicionales normativos de alcance amplio

### *Introduction*

Joseph Raz (1980, pp. 234–238, 1983, pp. 153–157, 1999, pp. 171–177) has introduced an interesting class of statements —*detached* statements— into the philosophical lexicon. In brief, such statements are (informative) *normative* statements, yet the speaker *does not*, in so uttering them, express or convey acceptance of the point of view of the hearer to whom they are addressed<sup>1</sup> (as contrasted with *committed* statements, where the speaker *does* express or convey such acceptance). Such statements seem commonplace in many areas of discourse. As such, giving an analysis of them is highly important. (Raz himself, in his latest work on such statements (1999, p. 173), confesses that “[a] detailed analysis [of them] is impossible here”.)

<sup>1</sup> Or, where the *addressee’s* point of view isn’t the point of view to which the speaker is giving expression, of the *relevant person*.

I propose to offer a novel analysis of such statements (and to clear away some confusions about them). Examples are necessary. And my discussion will proceed by working through two well-known non-legal examples, before concluding with consideration of a legal example. In brief, such statements will be analysed as *wide-scope* normative conditionals.<sup>2</sup>

For reasons to be discussed shortly (cf. §1.5), it is not clear that detached statements *give*—*provide*—*reasons*. Insofar as they do not, and insofar as giving a reason is a prerequisite of something counting as “normative”, such statements would not be normative. On a more capacious usage of “normative”, such statements, being “ought”-statements, would straightforwardly be normative: they set up “a notion of correctness: following the rules [or norms] is correct according to the rules [or norms]” (Broome 2008, p. 162). I follow the capacious usage for present purposes (so as to avoid committing on the question whether detached statements give reasons), but this is merely stipulative on my part.

A quick point before proceeding: the examples discussed, by turn, involve putative cases of “Rabbinical law-oughts”, “vegetarianism-oughts”, and “legal-oughts”. It’s a widely (though not universally) accepted success constraint on giving an analysis of statements involving these kinds of “oughts” that one give an analysis of them *in other terms* (though not necessarily in *non-normative* terms). I accept this success constraint in what follows. (One might instead have taken such statements to be *brute* or *unanalysable*—i.e. rejecting the demand for analysis.)

Finally, and relatedly, I take myself to be following most participants in this debate in that my analysis of such statements does not purport to be *eliminativist* about them. Insofar as one wishes to talk of my analysis in terms of being a *reduction*, it would be a *retentive*, and not an *eliminativist*, reduction: the target phenomenon, detached statements, is to be retained, and not eliminated like phlogiston.

## 1. *The Orthodox Jew Case*

1.1 Raz (1983, pp. 156–157) asks us to consider the following case:

<sup>2</sup> In-depth exegesis of participants in this debate—particularly Raz—is very difficult. As such, I will not attempt it. In proposing my analysis, I will consider likely objections, but I will not attempt to trace such objections to theorists (though the origins of such objections should be obvious). For a recent discussion of detached (legal) statements (and a comprehensive set of references to discussion of such statements in the literature), see Duarte D’Almeida 2011.

Imagine an orthodox but relatively ill-informed Jew who asks the advice of his friend who is Catholic but an expert in Rabbinical law. “What should I do?” he asks, clearly meaning what should I do according to my religion, not yours. The friend tells him that he should do so and so. The point is that both know that this is not what the friend thinks that he really ought to do. The friend is simply stating how things are from the Jewish Orthodox point of view.

Let us suppose the sentence uttered by the Catholic expert in Rabbinical law here is: “You ought to  $\phi$ ” (where “ $\phi$ ” ranges over actions or conduct). So, the substituent for “ $\phi$ ” here will be some (claimed) requirement of Rabbinical law. Such a statement would be informative (descriptively *and* normatively), as, ex hypothesi, the addressee is not equipped to work out the requirements of Rabbinical law.

One might object to the following conditional analysis of such a statement (considered, but not subscribed to, by Raz (1999)):

- (1) If you intend to act in accordance with the requirements of Orthodox Judaism, you ought to  $\phi$ .<sup>3</sup>

Why so? Well, there are many objections one might offer, but two are of central importance here. First, one might object on the basis that this is a *narrow-scope* normative conditional: the “ought” operator is contained *within* the conditional’s consequent. I agree with this objection. Such conditionals permit what is called *detachment*—which is to say, if the antecedent is met (i.e. the addressee intends to act in accordance with the requirements of Orthodox Judaism), it would follow that the addressee ought to  $\phi$ . But this would be to legitimate an illegitimate form of *bootstrapping*: no conclusion about what one ought to do can follow from how one intends to act (on this view). (There are clear parallels here with the so-called “is-ought” question: how can a set of purely descriptive facts entail conclusions about what one ought to do?) So, we have good reason to reject the narrow-scope reading.

<sup>3</sup> By contrast, consider:

- (1\*) If you *want* to act in accordance with the requirements of Orthodox Judaism, you ought to  $\phi$ .

For reasons to become clear shortly, I want to ground the normativity of detached statements in *rational requirements* (cf. Broome 2013). As I take rational requirements such as these to govern the coherence (or consistency) of one’s intentions (rather than wants or *desires*), I formulate things thus (here and in subsequent formulations).

1.2 The second objection is more general, and is to *any* form of conditional analysis of such statements. This objection could come in two forms, of differing strengths. More strongly, one might object that it is always impermissible to give a conditional analysis of the logical form of a statement whose *surface-syntax* is *not* conditional. I do not consider this strong objection in detail: I simply reject it (and invite the objector to give me reasons supporting this strong claim). Less strongly, one might object that, *if* one is to give a conditional analysis of the logical form of a statement whose surface-syntax is not conditional, one must overcome a burden of proof against doing so (i.e. default rule: don't depart from surface-syntax). And, the objection would continue, no such analysis has yet overcome this burden of proof. Now, I agree with this weaker objection. Moreover, no such analysis has yet overcome this burden of proof because discussion so far has (mistakenly) focused on narrow-scope conditionals, à la (1).<sup>4</sup>

1.3 Let me, then, propose my wide-scope reading of detached statements: wherein the “ought” operator governs the conditional as a whole. Still focusing on the Orthodox Jew case, I propose:

- (2) You ought: If you intend to act in accordance with the requirements of Orthodox Judaism, to  $\phi$ .<sup>5</sup>

A few words about (2). First, pretty obviously, there are two ways for the addressee to meet the requirement enshrined in (2): either failing to intend to act in accordance with the requirements of Orthodox Judaism, or  $\phi$ -ing.<sup>6</sup> (2) is neutral on which way of conforming the addressee takes. Though (2) is neutral on this, it is commonplace

<sup>4</sup> Discussion of such statements has piggy-backed on Raz's narrow-scope formulation (i.e. formulations in the ballpark of (1) above). For two representative examples, see Soper 1995 (n. 16) and D'Almeida 2011. As best I can make out, no wide-scope analysis has been explicitly attempted heretofore.

<sup>5</sup> Why not, instead, analyse such statements thus:

- (2\*) You ought: If you *are* to act in accordance with the requirements of Orthodox Judaism, to  $\phi$ .

Here's why: because this *putative* normative requirement is impossible to fail to conform with. As a matter of *form*, one would fail to conform with it by *acting* in accordance with the requirements of Orthodox Judaism *and failing* to  $\phi$ . But, by hypothesis, this is conceptually impossible. A “normative requirement” which it is conceptually impossible to violate is no normative requirement.

<sup>6</sup> Here is an (extensionally) equivalent formulation of (2):

- (2\*\*) You ought not: To intend to act in accordance with the requirements of Orthodox Judaism, and to fail to  $\phi$ .

in considering this example to consider the Orthodox Jew (assuming, *pro tem*, the correctness of (2) as an analysis)  $\phi$ -ing. But, of course, the addressee here might —say  $\phi$ -ing is wholly objectionable to him— reconsider his faith, and no longer intend to act in accordance with the requirements of Orthodox Judaism. Second, and more importantly, (2) does not suffer from the chief defect which plagued (1): such conditionals do not permit detachment, and so no illegitimate bootstrapping is legitimated. This is to say, if one intends to act in accordance with the requirements of Orthodox Judaism, it does not follow from (2) that one ought to  $\phi$ . The burden of proof on *going conditional* has been overcome (or, at least, one significant obstacle to going conditional has been removed).

By contrast with (2), it is worth considering:

(SK) You ought: If you intend to be a serial killer, to murder several people.

We've seen no bootstrapping is licensed by this formulation: it doesn't follow from (SK) that if one intends to be a serial killer, one ought to murder several people. However, isn't it odd to have a normative requirement like this neutral on which way it is to be complied with (whether by failing to intend to be a serial killer, or by murdering several people)? No, provided we recognise it is not the only relevant norm. There is a norm against murdering (several) people ( $\sim M$ ). And  $\sim M$  dominates (SK). So, all things considered, one ought to fail to intend to be a serial killer. Finally, what about the psychopath who cannot fail to intend to be a serial killer? He ought, all things considered, to violate (SK), by intending to be a serial killer, while failing to kill several people:  $\sim M$  dominates (SK) both in determining *how* to conform with it, and in determining *whether* to conform with it at all. Returning to the Orthodox Jew case, how to conform with (2), and whether to conform with it at all, will be determined by the relevant moral norms bearing on  $\phi$ -ing. (The same goes, *mutatis mutandis*, for the coming Vegetarian case.) I return to this issue in the coming Legal case, in 3.1.

1.4 It is appropriate, at this point, to consider the truth-conditions of the propositions semantically expressed by utterances of “You ought to  $\phi$ ”, depending on whether such utterances are detached or committed. It is commonplace in philosophy of language that

However, because the statement we're considering is an “ought”, and not an “ought not”, statement, I prefer the analysis given in (2).

sentences (semantically) express a proposition *in a context*.<sup>7</sup> Thus, one and the same sentence —one and the same lexical string— can express different propositions in different contexts. Still focusing on the Orthodox Jew case, I've proposed the following as the proposition expressed by the foregoing utterance in a detached context:

- (2) You ought: If you intend to act in accordance with the requirements of Orthodox Judaism, to  $\phi$ .

And, pretty uncontroversially, the following is the proposition expressed by the foregoing utterance in a committed context:

- (3) You ought to  $\phi$ .

Thus, one sentence-type expressing different propositions in different contexts.<sup>8</sup> No problem.<sup>9</sup> Both (2) and (3) can aptly be called normative propositions, on account of expressing propositions with (apparent) normative content. Their truth-conditions, however, will not be identical. (3) will be true just in case you *really* ought<sup>10</sup> to  $\phi$ . Different metaethical views will give different truth-conditions for that. We need not enter that dispute here, save to say that at least *some* metaethical views will give (3) exclusively normative truth

<sup>7</sup> Complications within philosophy of language arise over how to cash out the relevant context. But we can largely prescind from these complications here. For an excellent introduction to such issues, see Cappelen and Dever 2016.

<sup>8</sup> Thus, my view is that the detached/committed distinction is *not wholly* a matter of *far side pragmatics*, insofar as far side pragmatics pertain to matters beyond what is (literally) said —that is, matters not bearing on truth-conditions. Consistently with this, I can allow that far side pragmatics are germane to this distinction, and, moreover, that *near side pragmatics* —matters relevant to determining what is (literally) said— and in particular issues involving presupposition, are also germane. I can't presently argue against the view that this distinction is wholly a matter of far side pragmatics. But the spirit of my paper is not to conclusively establish my account of detached statements, but rather to propose it as a serious option. On these matters, see Korta and Perry 2011. Finally, for a recent comprehensive account of detached statements in pragmatic terms, employing Grice (and which also contains a good survey of the relevant legal and linguistic literature), see Mullins 2017.

<sup>9</sup> Thus, detached statements are assigned a *non-categorical* logical form; such committed statements a *categorical* logical form. What about committed non-categorical statements? These are certainly possible, but the sentences expressing them will not take the form of the sentences considered in this paper. Finally, what about detached categorical statements? If my analysis is correct, these are not possible.

<sup>10</sup> This will not necessarily be an all-things-considered ought.

conditions, by appealing to, for example, normative —here, plausibly, *moral*— facts (which will determine whether the requirement of Rabbinical law is one with which one ought to conform).

1.5 (2), by contrast, will have, at root, normative, but here, plausibly,<sup>11</sup> *non-moral*, truth-conditions. (2) is a normative requirement governing coherence (or consistency) between how one *intends* to act and how one *acts*. Why possess such coherence (or consistency)? That is a difficult question. It is best to approach it indirectly. I seek to ground the normativity of detached statements in cognate norms of *pure rationality* —rational requirements. The cognate such norm of (2) would be:

(2\*\*\*) You ought: If you intend to act in accordance with the requirements of Orthodox Judaism, to *intend to*  $\phi$ .

Why *pure* rationality? I follow John Broome (2013) in taking *rationality to supervene on the mind*. This means rationality (or otherwise) is, fundamentally, determined by the coherence (or consistency) of one's *mental states*. Let me explain with an example. Suppose the Orthodox Jew, upon receiving a statement analysable as (2\*\*\*) from the Catholic, conforms to it by intending to  $\phi$ . But suppose a militant Catholic is on the scene who physically prevents our Orthodox Jew from  $\phi$ -ing. On this view, our Orthodox Jew would be perfectly rational —indeed, just as rational as a counterpart who intended to  $\phi$  and  $\phi$ -ed. (Mental states *determine* rationality. Or: no change in rationality without a change in mental state.) And this would be a putative reductio of conceiving of (2) as a (pure) *rational* requirement: our physically prevented Orthodox Jew would fail to conform with (2) yet would be perfectly rational (in this regard).

Now it is not plausible to analyse the detached statement in question as (2\*\*\*). The statement (in part) speaks directly to action: if one intends to act in accordance with the requirements of Orthodox Judaism, one conforms with the detached statement's directive iff one  $\phi$ -s. However, there is a bridge principle —a putative conceptual truth— which means that any normativity inherent in (2\*\*\*) is *inherited* by (2). That principle is: If you have an intention and nothing prevents you, you perform the intended act. (Note this is not a norm of *rationality*, as it does not refer to coherence (or consistency) of mental states. Indeed, it is not a *norm* at all as it is putatively inviolable: if nothing prevents you from performing the act in question,

<sup>11</sup> Cf. Kramer 2009, chap. 10.

and you fail to perform it, this principle, as a putative conceptual truth, mandates that you didn't have the intention in the first place.)

Finally, here: What, if any, *is* the normativity inherent in (2\*\*\*)? Initially, note that the general rational requirement bearing on (2\*\*\*) is, plausibly, something like the following (as (2\*\*\*) does not involve strictly contradictory intentions —intending at time  $t$  that  $p$  and intending at  $t$  that  $\sim p$ ):

*Instrumental Requirement.* Rationality requires of [agent  $A$ ] that, if

(i) [ $A$ ] intends at  $t$  that [end]  $e$ , and

(ii) [ $A$ ] believes at  $t$  that, if [means]  $m$  were not so, because of that  $e$  would not be so, and

(iii) [ $A$ ] believes at  $t$  that, if she herself were not then to intend  $m$ , because of that  $m$  would not be so, then

(iv) [ $A$ ] intends at  $t$  that  $m$ . (Broome 2013)

Where, transposing things to (2\*\*\*), “ $e$ ” =  $A$  acts in accordance with the requirements of Orthodox Judaism, and “ $m$ ” =  $A$   $\phi$ -s. And note that I can operate with a broad conception of means/end reasoning so as to include, perhaps as here, means which are (part-)constitutive of the end. (For more on the bases for these conditions —particularly (ii) and, the more controversial, (iii)— see Broome 2013.)

More generally, though: Why be rational? This is an enormous, and controversial, issue in practical reason. We can note a few things, however. First, and uncontroversially, the norms of rationality are straightforwardly that —normative— in my capacious sense (cf. “Introduction” *supra*) in that they set up a notion of correctness: following the norms is correct according to the norms. But clearly we want to see if we can say more. In particular: Is there a reason to be rational? Niko Kolodny (2005 *inter alia*) and John Broome (2007 and 2008 *inter alia*) have perhaps written most probingly about this question (though see also Kolodny 2005, pp. 510–511 for a helpful survey of other philosophers’ standpoints). Kolodny (2005, p. 509) concludes that “rationality is only apparently normative, and the normativity that it appears to have is that of reasons [...]. The normative ‘pressure’ that we feel, when normative requirements apply to us, derives from [...] the reasons that, as it seems to us, we have.” Broome, meanwhile (2008, p. 177), concludes that “[i]t [...] seems intuitively plausible to me that rationality is normative.



Moreover, it seems plausible to me that this is so for a broadly instrumental reason. But I am sorry to say that I simply cannot find an argument.” What to conclude in light of all this? I cannot possibly adjudicate on this issue, other than to make three quick observations. First, note that Broome’s inability to find an argument seems to rest on consideration of “quirky worlds [in which] because of the way causal processes work [. . .] satisfying the requirements of rationality tends to be unsuccessful” (2008, pp. 173–174). Second, and somewhat tritely, an inability to find an argument doesn’t mean either that no such argument exists or that the conclusion to be reached isn’t true. Third, and to repeat —focusing on the Orthodox Jew case— any normativity inherent in (2\*\*) —and plausibly there *is* some, even if we cannot currently conclusively establish this by argument— is inherited by (2).

1.6 But (2)’s truth-value will also depend on (partly) descriptive facts —here, what Rabbinical law (as a matter of fact) requires of Orthodox Jews. So, the *source* of this normative requirement is Rabbinical law. Importantly, ascertaining what Rabbinical law requires may well involve difficult matters of interpretation. Such interpretation may —though need not— involve normative —here, moral— judgment. However the interpretation in question goes, though, there will still be descriptive facts playing a key role. I just do not see anything particularly controversial in all of this. And, this last point —cashing out the content of these norms— leads nicely to the Vegetarian Case.

## 2. *The Vegetarian Case*

2.1 Raz (1999, pp. 175–176) asks us to consider the following case:

If I go with a vegetarian friend to a dinner party I may say to him, “You should not eat this dish. It contains meat.” Not being a vegetarian I do not believe that the fact that the dish contains meat is a reason against eating it. I do not, therefore, believe that my friend has a reason to refrain from eating it, nor am I stating that he has. I am merely informing him what ought to be done from the point of view of a vegetarian. Of course the very same sentence can be used by a fellow vegetarian to state what ought to be done. But this is not what I am saying, as my friend who understands the situation will know.

The natural extension of my foregoing treatment of the Orthodox Jew case would be to propose the following analysis of this statement:

- (4) You ought: If you intend to act in accordance with the requirements of vegetarianism, not to eat this dish [it contains meat].

A few words about (4). First, most generally, all the foregoing remarks in opposition to (1), and in defense (and cashing out) of (2), can be marshalled, *mutatis mutandis*, in defense (and cashing out) of (4).<sup>12</sup> Second, the source of this normative requirement is the tenet(s) of vegetarianism. Third, I put the information “it contains meat” in square brackets, as I take it to be, while important, not central to the normative requirement expressed by the utterance in question—it is, as it were, auxiliary information which licenses the consequent.

2.2 We’ve mentioned in passing that it’s a success constraint on detached statements that they be informative—and, more precisely, I take it, *normatively* informative.<sup>13</sup> It might be objected that, unlike the Orthodox Jew case, this success constraint is not met in the Vegetarian case. I think this objection would go as follows. The statement in question is addressed to a vegetarian. We might suppose that it is a conceptual prerequisite on being a vegetarian that you believe that you ought not to (indeed: are obligated not to) eat meat. So, the only way this statement could be informative is by alerting the addressee to the purely descriptive fact that a meat dish is before him. But, so the objection goes, this would only ensure *descriptive*, and not *normative*, informativeness. Of course, the *committed vegetarian* would (likely: barring apostasy) use the information to conclude that he ought not to eat the dish in question. But that is a different matter from, and not expressed or conveyed by, the (content of the) detached statement.<sup>14</sup>

<sup>12</sup> And in opposition to the Vegetarian case’s equivalent of (1):

- (5) If you intend to act in accordance with the requirements of vegetarianism, you ought not to eat this dish [it contains meat].

<sup>13</sup> For a writer coming close to denying that this success constraint is met, see D’Almeida 2011 (p. 186): “detached normative statements are either pointless or uninformative”.

<sup>14</sup> Note: This objection would not be committed to denying (the attractive metaethical position) that moral facts supervene on descriptive facts. In brief: Suppose moral facts do supervene on descriptive facts, and suppose the utterer (and addressee) of the detached statement accepts this. The utterer would not, however, express or convey by his detached statement that the (descriptive) fact that the dish contains meat *determines* the (putative moral) fact that the vegetarian ought not to eat it (though, on this metaethical view, the vegetarian (likely) would so conclude—cf. §1.3 *supra*—). I touch again on issues relevant to this in the next paragraph.

Before answering this objection, to *ensure* that the statement in question has a standing chance of being informative, I think it is best to assume that the dish in question is a very unusual meat dish—perhaps one whose meat components are cunningly disguised. Now—to answer the objection—while this objection has force with respect to narrow-scope conditional readings of such detached statements (see note 12 *supra*), it palpably does not have force with respect to my proposed wide-scope reading. That is, it surely is the case that, if the *only new* descriptive information one is giving a vegetarian addressee is the fact that a meat dish is before him, *this alone* cannot result in it following (barring apostasy) that he (morally) ought not to eat the dish in question (as would be the case on the narrow-scope reading). However, as we've seen, there's nothing particularly puzzling in new descriptive information like this *triggering* a wide-scope conditional like (4), and thus being normatively—though not morally—informative.

In the language of our *Instrumental Requirement* of §1.5 *supra*, the triggering descriptive information at stake is, plausibly, information bearing on the truth of the propositional content of the beliefs contained in instances of conditions (ii) (and (iii)). In other words, in this case—focusing on condition (ii)—if you were to eat this dish, because of that you would not be acting in accordance with the requirements of vegetarianism. Why so? Because—the triggering descriptive information (cf. Enoch 2011)—this dish contains meat. (Regarding the more controversial condition (iii), things are more complicated in this case, as the relevant means involves an omission—though the Orthodox Jew and, with a little modification, Legal cases *could* also involve omissions. That condition, in this case, reads: if you yourself were not then to intend not to eat this dish, because of that you would eat this dish. Any oddity here can be dispelled by considering the dinner party context and assuming that the absence of an intention not to eat any dish will result in you eating that dish: put vernacularly, assume that your default mode is to have a nibble at each dish. Like points apply, *mutatis mutandis*, in other contexts in which such a detached statement could be meaningfully uttered. Finally, note that one might explore weakening condition (iii) by replacing “would” with “might”.)

### 3. *The Legal Case*

3.1 Raz (1999, p. 172) asks us to consider detached legal statements (made in a legal system, L, and perhaps uttered by a lawyer giving a

client legal advice), such as: “A ought to pay £80 income tax”. Once again, *mutatis mutandis*, the foregoing points against a narrow-scope reading, and in favour (and cashing out) of a wide-scope reading, are in force here. My (tentative) analysis of this statement is:

- (6) You ought: If you intend to conform<sup>15</sup> with the law in L, to pay £80 income tax.<sup>16</sup>

As before, this is a (putative) normative requirement on an agent subject to a particular legal system. And, again as before (cf. §1.3 *supra*), *how*, and *whether*, to conform with it, will be determined by the relevant norms bearing on conforming with the law (on this occasion). Determining the *content* and *force* of such norms involves addressing very deep questions concerning political obligation. But, crucially, providing an analysis of detached legal statements does not require entering such deep waters. Notwithstanding its normativity, (6)’s truth is dependent on certain (partly) descriptive facts about the legal system in question (i.e. whether the law in L in fact requires such a payment).<sup>17</sup>

3.2 Now the precise jurisprudential significance of detached legal statements is a matter of some —*much*— controversy. As I’ve suggested, I can *largely* bracket this debate for present purposes: providing a correct analysis of such statements can be seen as a prerequisite to making progress in understanding their function(s). Nonetheless, *something* should be said to justify —retrospectively motivate— our foregoing analysis of detached (legal) statements. Let me, thus, chart just one possible legal-theoretic implication.

Recently, Scott Shapiro (2011) has suggested:

<sup>15</sup> We can here follow Raz (1999, p. 178) in saying one *conforms* with a reason iff one does as it requires (whereas one *complies* with a reason iff one does as it requires *for that reason*). Clearly, the weaker notion of conforming is the right one for this detached statement.

<sup>16</sup> By contrast, consider:

(6\*) You ought: If you intend to *be law-abiding* in L, to pay £80 income tax.

I prefer (6) to (6\*). (6) makes clearer that the requirement is limited to the particular legal directive in question, whereas (6\*) does not: one could be *generally* law-abiding, yet fail to follow *a particular legal directive*.

<sup>17</sup> I think, on the issue of informativeness, the Legal case has more in common with the Orthodox Jew, than with the Vegetarian, case.

Hart seized on Raz's theory of normative statements and argued that the bad man can describe the law in normative terms and engage in legal reasoning because legal statements can be detached. Thus, when the bad man ascribes legal validity to a rule, he is not expressing his acceptance of the rule of recognition,<sup>18</sup> but rather the point of view of those who accept the rule of recognition. This detached statement is true just in case there is judicial acceptance of a rule of recognition which validates the rule in question, regardless of whether the utterer accepts that rule of recognition himself.

The background to this excerpt is that it is taken to be a success constraint on a theory of law that it explain how “the bad man can describe the law in normative terms and engage in legal reasoning”. Now suppose we represent a bad man's first-personal reasoning, in this context, as follows (McBride 2015, p. 288):

(Belief) [(A\*)] Social facts, *S*, determine rule of recognition, *R*.

(Belief) [(B\*)] *R* validates *RI*.

So:

(Belief) [(C\*)] I legally ought to do what *RI* prescribes.<sup>19</sup>

The basic thought is that conclusion (C\*) can be a detached normative statement, in the mouth of the bad man. And, insofar as our foregoing analysis of such statements is correct, this conclusion will be expressible as:

(C\*) I ought: If I intend to conform with the law in *L*, to do what *RI* prescribes.

What, if anything, the bad man does next —more reasoning, action, etc.— having reasoned thus far, will fall to be determined by a whole range of other factors. But the logical form of (C\*) —underlying its surface syntax— will determine, and constrain, the range of permissible practical inferences therefrom, and the range of permissible ways to conform therewith.

<sup>18</sup> My note: See McBride 2011 for some cautionary remarks about over-hasty transitions between acceptance of rules *validated* by the rule of recognition, and acceptance of the rule of recognition *itself*.

<sup>19</sup> My note: I here represent the 2-premise form of this inference; the 1-premise form is also considered in McBride 2015.

#### 4. Conclusion

This, then, is my analysis of detached legal statements. I think it works. Taken in conjunction with the foregoing analyses in non-legal contexts, I think they all work. I've considered, and parried, some objections. I invite more.<sup>20</sup> Focusing on the Legal case, the hope might be that making progress in providing an analysis of detached legal statements, can serve as a background, and catalyst, to making progress in understanding their jurisprudential import—in jurisprudential theorising, legal reasoning, etcetera.<sup>21</sup>

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<sup>20</sup> Clearly, the cases themselves—Orthodox Jew, Vegetarian, and Legal—have received a descending amount of attention in this paper. Of course, this is not to say they are of descending importance. Quite the contrary: the Legal case is undoubtedly the most important (at any rate, jurisprudentially-speaking). (See Hart 1982 (pp. 153–161) for discussion of the use of detached statements by “jurist[s] [...] academic lawyers and others in describing the content either of their own legal system or foreign systems.”) It seemed sensible, however, just for this reason, to do most of the heavy-lifting in the non-legal contexts, with my analysis of the Legal case almost dropping out of my analyses of the non-legal contexts. The end result is a (tentative) proposal in the Legal case, to which, as I say, I invite objections.

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