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Human rights and collective goods: a non-individualistic approach

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This article proposes¹ that Razian account of rights has to be read as “double dimension rights”, instead of an interest theory of rights. In such a new reading of Raz’s account of rights, two attributes of Razian rights are highlighted: the “why-dimension” and the “how-dimension.” In particular, the “why-dimension” gives due consideration to the relationship between rights and collective goods; it indicates that rights are adopted, first, in order to preserve a certain moral, public or political culture², and, second, in order to protect inherent public or collective goods³, which serve the communal peace.

In Razian thinking the initial idea of rights is not just to set limits in the name of “communal peace” or aiming to protect an individual and their personal autonomy from the demands of “collective goals”. Razian rights relate to autonomy and the protection of the well-being of the right-holder⁴ but are not restricted to it. He supports the view that most if not all rights are not side-constraints⁵. The main idea of rights is not just to protect individuals, as if they were isolated from the political community. Much more than this, rights enable people to live together harmoniously by preserving collective goods⁶. The well-being of the community is also a matter of rights, and in these terms Raz’s approach escapes individualism.

The second attribute of the double dimension, namely the “how-dimension” of rights indicates the practical significance of rights. From this perspective, rights can be seen as a checks and balances mechanism, or a weapon against state sovereignty. Moreover, one of the main functions of how-dimension rights is their dynamic character, which implies that from old rights, inevitably, new duties can be created. This article focuses mainly on the “why-dimension” and in particular on the notion “collective goods”.

Beyond an interest theory of rights

The “double dimension rights” introduced in this article is particularly important for, although Raz’s approach to rights has been categorised as an “interest theory”, his account is not concerned mainly with interests. In particular, the tradition of analytical legal theory distinguishes between the “will theory” (or “choice theory”) of rights and the “interest theory” (or “benefit theory”). Both focus on the relationship between rights and duties⁷. Razian account of rights has been categorized as foundational to interest theory⁸, in moral philosophy⁹ or political philosophy¹⁰. The interest theory of Razian rights relates to the idea that when an interest is sufficient reason to hold

another to be subject to a duty, a law may create a right¹¹.

Despite the fact that in Raz's approach the relationship between interests, duties and rights is central, Razian rights should not be conceived as being concerned mainly with interests. At the core of the Razian account of rights, collective goods are found, whereas interests have merely an instrumental value for rights. As opposed to this, Scanlon, among other scholars, supports the view that the justification of Raz's rights relates to individual interests. In Scanlon's perspective in spite the fact that the aim of Razian rights is to serve and preserve collective goods, this in practice implies that the justification of rights relates to *individual interests* in preserving certain collective goods. From this point of view, rights are justified on the basis of *individual interests* to serve collective goods that guide society to operate in a certain way¹². It seems that, for Scanlon, Razian rights cannot escape individualism.

However, Raz rejects individualistic approaches. For example, one of the reasons why he criticises the traditional approaches of rights is because, from Raz's perspective, traditional theories of rights adopt an individualistic perspective of rights, to the extent that they focus on the benefits of rights upon a person's private life and not upon the social aspects of life. Individualistic approaches to human rights have been criticized from Raz, mentioning that: "the rights tend to be individualistic in being rights to what each person can enjoy on his or her own: such as freedom from coercive interference by others, rather than to aspects of life which are essentially social, such as being a member of a cultural group"¹³.

If, as Scanlon claims, Razian rights were justified on the basis that individuals have an interest in the maintenance of public goods, this would imply that the interests of individuals are more important than the public goods themselves. Nevertheless, for Raz, collective goods have intrinsic value; rights are justified on the basis that they preserve intrinsically valuable collective goods, rather than on the basis of individuals' interests. However, at this point a clarification should be made. Interests are not totally marginalised in Razian thinking, despite the fact that collective goods are intrinsically valuable and in a sense are fundamental to Raz's rights. Razian rights cannot be described as teleological in the sense that Will Kymlicka (2002) uses the term; the protection of collective goods is not totally detached from the interests of individuals. In the Razian approach, as opposed to teleological approaches, people cannot be sacrificed in the name of collective goods¹⁴.

Teleological theories presuppose a tension between individuals' interests and the preservation of goods such as freedom, whereas in Razian thinking, there is no a priori competitive relationship among rights, individual interests, and collective goods. On the contrary, they do have a mutual relationship. Sacrificing an individual for the sake of a collective good would contradict the main idea of Razian rights, to the extent that people's interests shape the character of a society, and such a society has been shaped from interests, "making" collective goods, which are preserved through rights. Additionally, interests not only shape the character of the society but are one of the conditions for someone's becoming a right-holder; right-holders are described as "creators who have interests"¹⁵. Nevertheless, "the interest of individuals does not

translate itself into principles of rights”¹⁶.

The character of the society that consists of several collective goods is the main factor in securing rights. For example, individuals’ interests to live in an ideal society (e.g. economically prosperous society) do not imply that individuals have the right to do so. Moreover, being a human being does not automatically imply individual rights. Accordingly, individual interests are not protected automatically from societies. The character of societies may be shaped by individuals’ interests, and then rights protect that character, but rights are not identical to individual interests. If rights are adopted, then duties will also be developed¹⁷. Rights are secured principally in order to protect collective goods, the society’s political culture and individual well-being, not interests¹⁸; “without the public good the right would not have had the significance it did have”¹⁹. However, there is a “dual harmony” between common goods and interests for rights benefit both the right-holders and the collective goods²⁰.

The notion of collective goods

The terms “common good”, “general good”, “public good”, “inherent public good” and “collective good” are used interchangeably by Raz. In this article I use mainly the terms “common good” and “collective good” unless I am quoting Raz himself. First and foremost, the Razian common good should not be confused with the public interest. Razian common good on the one hand, and on the other hand the public interest or the economic notion of the public good, are not connected²¹. The main difference between these two notions is the fact that the common good is in everybody’s interest in a given society, whereas the public interest might only be in the interest of some members of the society. In the same vein, the public good (or public interest) might benefit some individuals and at the same time negatively affect others (e.g. railways). Therefore, a balance must be struck among conflicting interests for the sake of the public interest²².

For Raz, something is a public good only if the potential beneficiaries control its distribution and benefits. Public goods are divided into two categories: contingent public goods (e.g. water supply, clean air, etc) and inherent public goods (e.g. a tolerant or democratic society), which are also called collective goods²³. Collective goods can be “general beneficial features” which prevail in a given society and direct societies²⁴. In Razian account, collective goods have an intrinsic²⁵, not an instrumental, value²⁶. On the contrary, for Raz liberal rights have an instrumental, not an intrinsic, value for they aim to serve a collective good which does have intrinsic value.

Razian collective goods possess inherent value²⁷. As opposed to this, collective goods articulated from economists²⁸ have an instrumental value to the extents that possess value because they enable individuals to advance various interests. In Raz’s thought collective goods are inherently valuable because they are constitutive of the possibility to enable intrinsically valuable objectives. Social forms constitute an example of collective goods that might enable autonomously pursuing modes of life which are intrinsically valuable themselves²⁹. For Raz, in a given society a good is a public good when each potential beneficiary controls its distribution and takes

their share of its benefits³⁰. Furthermore, public goods are divided into contingent public goods and inherent public goods from Raz. The distribution of contingent public goods cannot be controlled by the potential beneficiaries (e.g. water supply controlled by a state or a company, clean air) and their value is instrumental³¹.

Inherent public goods or collective goods are attributes of societies that benefit the members of those societies. For example, an inherent public or collective good might be a society that is tolerant, educated or respects human beings. Inherent public goods have two principal features; the first one can be called non-exclusivity and the second one concerns their intrinsic value. The first characteristic implies that the members of the society cannot be excluded from enjoying them. The non-exclusivity of collective goods has two interrelated dimensions: all members of given societies benefit from and are constrained by collective goods. The preservation of a collective good does not serve just the interests of particular individuals or group of people, but it does serve the interests of the whole population³². The notion of “the common good” contains the idea of non-exclusivity, as it refers to goods that serve interests in a non-exclusive and non-excludable way.

As far as the second feature of inherent public goods, this concerns the idea that some collective goods are intrinsically valuable³³. Intrinsically valuable things are either valuable in themselves or they are constituent goods which they contribute to the enrichment of something which is intrinsically good. For example life is intrinsically valuable, and so are some things that can enrich it³⁴. Accordingly, intrinsically valuable collective goods or inherent public goods are not instrumentally good for they are valuable independently of their consequences³⁵; they are desirable for their own sake and not because they will enable someone to do something³⁶. Intrinsically valuable collective goods do not have a particular project or objective that has to be achieved at a certain point of time³⁷. The relationship between intrinsically valuable collective goods and human beings can be seen as a “participation-in-a-value” relationship, or a “commitment” whose purpose is not the attainment of a particular goal. From this perspective, only when the participants abandon the “commitment”, the “participation-in-a-value” relationship can be finished³⁸, not when they reach a destination.

Finnis’s and Raz’s collective goods

Raz has adopted Finnis’s notion of the general or common good³⁹. Therefore, I sketch out Finnis’s account of the common good and its relationship with Razian approach of collective goods. Despite the fact that Razian collective good has been inspired from Finnis’s common good, Finnis’s and Raz’s notions of common good have some differences, given that they offer different accounts of practical reasoning. Moreover, the two scholars conceive differently the relationship between rights and common goods. For Raz, human rights are secured in order to serve common goods, whereas for Finnis, human rights are not subject to the common good; “*aspects of the common good*” are able to limit human rights. In contrast, it would be self-contradictory for Raz to claim that in the name of common goods, it is possible to

limit human rights. For Raz the core idea of human rights is to preserve common goods, whereas in Finnis's thinking, human rights are preserved from the common good⁴⁰.

Both scholars' accounts of common goods is not utilitarian. Razian collective good is not related to utilitarianism or to calculating consequentialist goals, for it does not concern the sum of the good of individuals and does not reflect an aggregation of self-interests. Raz develops the idea that collective goods of a community refer to goods that serve people's interests in a conflict-free, non-exclusive and non-excludable way⁴¹. Similarly, "the common good", as defined by Finnis, does not aim to "the greatest good for the greatest number" and is not related to utilitarianism⁴².

For Finnis, common good is related to justice, to the extent that what is necessary for the common good of a community can be described from a theory of justice⁴³. His account of justice⁴⁴ is not limited to "the basic institutions of society" or, like Rawlsian theory, to the ideal conditions of a society⁴⁵. Finnis's justice contains the notion of "subsidiarity", which means "assistance" or "help" and is seen as precondition of the proper functioning of an association⁴⁶. In these terms, what is necessary for the prosperity and the well-being of members of the community is the effective collaboration of persons and the co-ordination of resources and enterprises. For Finnis common good is called this set of conditions of collaboration and enhances the well-being of all members of the community⁴⁷.

"The common good" of a political community has been divided by Finnis into three senses and can refer to values, concrete operational objectives or conditions. The first sense concerns its evaluative dimension and relates to the idea that some values are "common goods" because, according to practical reasoning, they are good for everyone⁴⁸. The second sense of "the common good" concerns its quality. Every value that is good in the practical reasoning, is a "common good" for it can be enjoyed by a limitless number of people (i.e. it is non-exclusive), in a limitless number of ways and a limitless number of times (i.e. it is non-excludable). In these terms, it could be claimed that this sense relates to Razian notion of "intrinsically valuable collective goods" and to what Raz calls the "non-exclusive and non-excludable" character of "the common good", which were described above. In the third sense, "the common good" is conceived as a set of conditions that contribute to the reasonable objectives and values of people. "The common good" in the third sense enables members of the community to realise for themselves the values that give them reason to collaborate with others in the political community; it refers to values, operational objectives and conditions⁴⁹.

Although some types of political arrangements and laws are excluded from the "common good," this does not mean that "the common good" concerns specific goals that have to be achieved by either the community or its members. Each member of the political community is free to choose and pursue their own objectives. "The common good" in the third sense does not indicate which values and aims the members of the community should share⁵⁰. It does imply that in order for each member of the community to achieve their objectives, a "set of conditions" or a "set

of sets of conditions” should be secured. There are several different reasonable ways of life that can be pursued by individuals, not only one that should be promoted by the community⁵¹. The existence of such a “set of conditions” or “set of sets of conditions” is possible because people have a “common good” in the first sense⁵². This means that a “set of conditions” is possible because there are some “goods” that are good for each and every person in the practical reason, not because all human beings share the same objectives and values. These “goods” are called “common goods.” In these terms, each member of a political community can set their own goals, but a “set of conditions” should exist within the community that enables its members to attain their goals⁵³.

It could be claimed that “the common good” in the first sense (i.e. some values are “common goods” for, in practical reasoning they are good for everyone), relates to “values which we do not exhaust”⁵⁴, that implies that such values do not have a specific objective to attain. These values are “good” in practical reasoning, and so constitute a “common good.” The common good relates to a “commitment” or a “participation-in-a-value” relationship; people “participate” in these values without reaching a destination, for there is no particular destination to reach⁵⁵. For Finnis, seven such values constitute the basic forms of human good, and each of them is a “common good” in the second sense as long as they fulfill the non-exclusive and non-excludable conditions⁵⁶. In particular, the seven values are: life, knowledge, play, aesthetic experience, friendship (sociability), (freedom in) practical reasonableness and religion⁵⁷. However, the fact that there are many different types of friendship, knowledge, religion and lifestyle that could be characterized as a “common goods,” this does not imply that “anything goes.” For example, not every relationship can be characterized as friendship and, therefore, as a “common good”. For a value to be classified as a common good, it should be good for everyone, in practical reasoning⁵⁸.

Approaching practical reason

If Finnis’s seven basic human values are good according to practical reason, what is practical reason and how does it function? Although Raz adopts Finnis’s notion of “common good,” the two scholars have different definitions of “practical reason.” For Finnis, human values and practical principles which are intrinsic values extend beyond time and individual communities. They contain a self-evident good and are grasped by human beings’ practical reason. In Finnis’s thought, practical reason grasps human goods that are intrinsically valuable; afterwards, practical reasonableness becomes one of the seven human goods that are identified by practical reason⁵⁹. These goods are neither products of society nor the creation of human beings. Although Finnis and Raz agree that “a proper understanding of practical reasoning will lead to a proper understanding of morality,” they develop different conceptions of practical reason⁶⁰.

Unlike Finnis, Raz supports the view that practical reason and goods are bound to social forms. For Raz, practical reason is not associated with a specific good or goods; On the contrary, Finnis claims that practical reason relates to particular goods. For Raz, goods – including Finnis’s seven basic goods – exist only within society. In Razian

thinking⁶¹, practical reason is able to grasp only values that are already constituted or implied by existing social forms. For example, life is a precondition of the good; though life is intrinsically valuable, it is not an intrinsic good. If someone accepts that life is an intrinsic good a priori before society, this might imply that particular social and personal conditions are not necessary to grasp it⁶². The good itself and the concept of the good are made available through culture⁶³. Given that for Raz practical reason does not grasp any kind of timeless values and goods that are independent of society, liberal perfectionism is needed in order to promote institutions “that create the social forms necessary for morality”⁶⁴.

All in all, in Razian thinking the idea of the creation of values is found, where as Finnis supports the view of the realization of values. For Finnis, practical reason grasps goods which already exist prior society and can be realized by all human societies, whereas for Raz, goods have been shaped by existing social forms and practical reason is able to modify them. Both Finnis and Raz agree that the role of the law is not restricted to sanctioning and is not just instrumental. More than this, law has a positive role which is to enable social co-ordination that makes a variety of goods possible. The legal positivist Raz and the natural theorist Finnis share the view that morality is a cognitivist conception, but they disagree about its definition. Their conception of morality is based on an idea of practical reason that makes possible social co-ordination. Finally, they both share the view that individuals co-ordinate their activities and use the law to secure their common good(s).

Conclusion

To conclude, approaches that categorise Raz’s account of rights as an interest theory are incomplete because they are unable to sketch out two crucial aspects of Raz’s rights. The first is the relationship between rights and collective goods. Interest theories focus on interests and duties, so they overshadow collective goods. However, the relationship between rights and collective goods is a core element of Razian rights. This relationship cannot be downplayed because it is Raz’s most important contribution to human rights theory. In these terms, one of the reasons why Raz’s account of rights have been read from the author as double-dimension rights, rather than as an interest theory of rights, is that in Razian thinking interests are merely instrumentally valuable. On the contrary, collective goods have an intrinsic value. Rights have interests at their core, because the direct objects of rights (i.e. the character of the society and collective goods) are partly shaped by interests. Nevertheless, rights are not restricted to individual interests. The justifications for rights are several, whereas only one of which is individual interests⁶⁵. The validity of rights is not confined solely to interests; an interest is merely one element of a larger whole⁶⁶.

The second issue that “double dimension of rights” illustrates, and not an interesting theory, is the dynamic character of rights, which concerns the “how-dimension” of rights. Several interest theories underestimate the additional duties that could arise from future changes in the society. Raz, on the contrary, takes the

future changes in circumstances seriously, and highlights the capacity of old rights to generate new duties.

NOTES

1. The idea of Razian double dimension rights has been initially articulated by the author at the book Maria-Artemis Kolliniati, *Human rights and positive obligations to healthcare: Reading the European Convention on Human Rights through Joseph Raz's theory of rights*, Baden-Baden, Nomos, 2019.
2. Joseph Raz, *The Morality of Freedom*, Oxford University Press, New York, 1988, pp. 245, 261.
3. *Ibid.*, pp 251-252, 255-256, 261-262 and *idem*, *Ethics in the public domain: Essays in the Morality of Law and Politics*, Oxford University Press, New York, 1996, pp. 52-53, 57, 59.
4. Joseph Raz, *The Morality of Freedom*, *ibid.*, pg. 187.
5. *Ibid.*, pp. 279-280.
6. *Ibid.*, pg. 251.
7. Jeremy Waldron, *Nonsense upon stilts: Bentham, Burke and Marx on the Rights of Man*, Methuen, London and New York, 1987, pg. 162.
8. See Eleanor Curran, "Hobbes's Theory of Rights – A Modern Interest Theory", *The Journal of Ethics* 6 no. 1 (2002): pg. 85.
9. Matthew H. Kramer, "Some Doubts about Alternatives to the Interest Theory of Rights", *Ethics* 123 no. 2 (2013): pg. 245.
10. Matthew H. Kramer, "Refining the Interest Theory of Rights", *The American Journal of Jurisprudence* 55 no. 1 (2010): pg. 31.
11. Joseph Raz, *Ethics in the public domain: Essays in the Morality of Law and Politics*, Oxford University Press, New York, 1996, pg 268.
12. Thomas M. Scanlon, "Rights and Interests", *Arguments for a better world: Essays in honor of Amartya Sen*, Kaushik Basu kai Amartya Sen, (ed.), Oxford University Press, Oxford, 2009, pg. 72.
13. Joseph Raz, "Human Rights Without Foundations", *Legal Studies Research Paper Series*, no. 14/2007, University of Oxford Faculty of Law, 2007, pg. 3.
14. Will Kymlicka, *Contemporary political philosophy: An introduction*, 2nd ed., Oxford University Press, New York, 2002, pg. 140.
15. Joseph Raz, *The Morality of Freedom*, Oxford University Press, New York, 1988, pg. 176.
16. *Idem*, "Rights and Politics", *Indiana Law Journal* 71 no. 27 (1995): pg. 31.
17. *Idem*, *The Morality of Freedom*, *ibid.*, pg. 202.
18. *Ibid.*, pg. 261.
19. *Ibid.*, pg. 251.
20. Joseph Raz, "Rights and Politics", *ibid.*, pg. 39.
21. *Ibid.*, pg. 35, footnote 12.
22. *Ibid.*, pg. 35.
23. Joseph Raz, *The Morality of Freedom*, *ibid.*, pg. 198.
24. *Ibid.*, pg. 198.
25. *Ibid.*, pg. 201.
26. *Ibid.*, pg. 198.
27. Loren E. Lomasky, "But is it liberalism?", *Critical Review* 4, 1-2 (1990): pg. 93.
28. For an account of public goods by economists see for example Mancur Olson, *The Logic of collective action: Public goods and the theory of groups*, 2nd ed., Harvard University Press, Cambridge, Mass., 1971, and Elinor Ostrom, *Governing the commons: The evolution of institutions for collective action*, Cambridge University Press, Cambridge, 1990.
29. Loren E. Lomasky, *ibid.*
30. Joseph Raz, *The Morality of Freedom*, *ibid.*, pg. 198.
31. *Ibid.*, pp. 198-199.
32. *Ibid.*, pg. 203.

33. *Ibid.*, pp. 199.
34. *Ibid.*, pp. 200-201.
35. *Ibid.*, pg. 200.
36. John Finnis, *Natural Law and Natural Rights*, 5th ed., Oxford University Press, New York, 1988, pg. 62.
37. *Ibid.*, pg. 64.
38. *Ibid.*
39. Joseph Raz, "Rights and Individual Well-being," *Ratio Juris* 5 no. 2 (1992): pg. 135, footnote 5.
40. John Finnis, *Natural Law and Natural Rights*, *ibid.*, pg. 218.
41. Joseph Raz, "Rights and Individual Well-being", *ibid.*
42. John Finnis, *Natural Law and Natural Rights*, *ibid.*, pp. 154, 111-118.
43. *Ibid.*, pg. 165.
44. Raz's account of justice depends on values of consensus-based stability and unity and the contrast between these values and a comprehensive conception of the good. See Joseph Raz, *Ethics in the public domain: Essays in the Morality of Law and Politics*, Oxford University Press, New York, 1996, pp. 70, 78, 81-82.
45. John Finnis, *Natural Law and Natural Rights*, *ibid.*, pp. 163-164.
Furthermore, for a critical analysis of Rawls's theory of justice by Joseph Raz, see Joseph Raz, *Ethics in the public domain: Essays in the Morality of Law and Politics*, *ibid.*, pp. 80-84.
46. John Finnis, *Natural Law and Natural Rights*, *ibid.*, pp. 146-147.
47. *Ibid.*, pg. 165.
48. *Ibid.*, pg. 155.
49. *Ibid.*, pp. 154-156.
50. *Ibid.*, pg. 156.
51. *Ibid.*, pg. 155.
52. *Ibid.*, pg. 156.
53. *Ibid.*,
54. "values which we do not exhaust" is a phrase used by Finnis. See *ibid.*, pg. 155.
55. *Ibid.*, pg. 64.
56. *Ibid.*, pp. 90-91, 100, 155.
57. *Ibid.*, pp. 86-90, 155.
58. *Ibid.*, pg. 155.
59. Leora Batnitzky, "A Seamless Web? John Finnis and Joseph Raz on Practical Reason and the Obligation to Obey the Law", *Oxford Journal of Legal Studies* 15, no. 2 (1995), pp. 162, 167.
60. *Ibid.*, pg. 167.
61. For J. Raz's forms of practical reason, which are not instrumental in nature, see Joseph Raz, "The Myth of Instrumental Rationality", *Journal of Ethics and Social Philosophy* 1, no. 1 (2005).
62. Leora Batnitzky, "A Seamless Web? John Finnis and Joseph Raz on Practical Reason and the Obligation to Obey the Law", *Oxford Journal of Legal Studies* 15, no. 2 (1995): pp. 167, 171-172.
63. *Ibid.*, pg. 169.
64. Joseph Raz, *The Morality of Freedom*, *ibid.*, pp. 110-164.
65. *Ibid.*, pg. 181.
66. *Ibid.*, pg. 202.