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RAZ AND HIS CRITICS: A DEFENSE OF RAZIAN AUTHORITY

by

JASON THOMAS CRAIG

Under the Direction of

Dr. Andrew Altman and Dr. Andrew I. Cohen

ABSTRACT

Joseph Raz has developed a concept of authority based on the special relationship between reasons and action. While the view is very complex and subtle, it can be summed up by saying that authorities *are* authorities insofar as they can mediate between the reasons that happen to bind their subjects and the subjects' actions. Authorities do this by providing special reasons via directives to their subjects. These special reasons are what Raz calls "protected reasons." Protected reasons are both first-order reasons for action and second-order "exclusionary reasons" that exclude the subject from considering some reasons in the balance of reasons for or against any action. I first make clear what Raz's view of authority is, and I then defend this view from some contemporary critics.

INDEX WORDS: Joseph Raz, Stephen Perry, Scott Shapiro, Robert Ladenson, Authority, Political obligation, Practical reason, Exclusionary reasons, The duty to obey the law, Political philosophy, Legal philosophy, Political legitimacy, Philosophical anarchism

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JASON THOMAS CRAIG

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JASON THOMAS CRAIG

Committee Co-Chairs: Andrew Altman
Andrew I. Cohen

Committee: Andrew J. Cohen
William A. Edmundson

Electronic Version Approved:

Office of Graduate Studies
College of Arts and Sciences
Georgia State University
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For Jim and Linda

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Orders and commands are among the expressions typical of practical authority. Only those who claim authority can command…[I]n requesting and in commanding the speaker intends the addressee to recognize the utterance as a reason for action. The difference is that a valid command (i.e. one issued by a person in authority) is a peremptory reason. We express this thought by saying that valid commands or other valid authoritative requirements impose obligations.[1]

CHAPTER ONE

INTRODUCTION

§ 1.1. Layout of the Argument

My main concern with the concept of authority in this essay is with political authority. In particular, I set out four general questions and two fundamental paradoxes that any explanation of the concept of authority must address. In what follows, I will first focus on one philosopher's attempts to answer these questions and to provide us with a coherent concept of authority that explains away the paradoxes and explains what it is that authorities do; the philosopher is Joseph Raz. After this, I will then put forth challenges to Raz's service conception of authority from three philosophers. I will then provide what I take to be some viable Razian answers to these challenges. I conclude by recapping the main points of the discussion and argument, and by formulating some new problems that arise from my discussion of the debate.

§ 1.2. What is Authority?

This seems like a silly question. In part it seems silly because we are enmeshed in societies that are saturated with people claiming to be authorities, and many people therefore think that the answer is an obvious one. Authorities, a common person might say, are those persons that, when they give us a *command*, impel us to do or forbear from some act. Our first approximation of the concept of "authority," then, is that authorities seem to be persons who,

[1] Raz, Joseph (1986). *The Morality of Freedom*. Oxford University Press, NY. (p. 37). Hereafter referred to as *MF*.

when they issue commands, give us a categorical or "absolute" or, in some cases, a *pro tanto* reason to do that action.[2] The parents who command their child to "go to bed!" and the police officer who commands us to "stop!" are to be understood as giving us an overriding reason for doing that action. Often such persons would inflict some kind of negative consequences for disobedience or noncompliance. But I argue this conception of authority is already incomplete and problematic.

One of the first distinctions that should be drawn, in order to get clear on the concept of authority, is the distinction between *theoretical* and *practical* authority. To the lay person, the experience of authority is mainly of the practical[3] variety. Examples of practical authorities include police officers and parents. Practical authority consists of having a special kind of normative power—be it to grant permissions, confer rights, or give authoritative commands. The essence of practical authority is normative power over the actions of people. Theoretical authorities, on the other hand, are those people, such as scientists and doctors, whose *word* on a subject matter is supposed to be taken as a weighty reason for or against believing some proposition. Friedman calls this the difference between being "in" and "an" authority:

> [H]e may be said to be "in authority," meaning that he occupies some office, position, or status which entitles him to make decisions about how other people should behave. But, secondly, a person may be said to be "an authority" on something, meaning that his views or utterances are entitled to be believed.[4]

We might say then, roughly, that practical authorities have domain over *actions* and theoretical authorities have domain over *beliefs*.[5] One way of understanding this relation between

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[2] The kind, degree, and scope of these authoritative reasons will be one of the focuses of this essay.

[3] Political authority is also commonly experienced, but political authority, as I will discuss below, can straddle both the practical and theoretical kinds of authority.

[4] Friedman, R. B. (1990). "On the Concept of Authority in Political Philosophy." *Authority*. Joseph Raz, ed. New York University Press, NY. 57.

[5] Another way to think about the distinction is that theoretical authorities are often "experts" in a field of study. Doctors are experts, and thus their diagnosis of your medical condition has a certain weight that it

authorities, actions, and beliefs, is that decisions or statements made by an authority of either kind have the feature of "authoritativeness." For instance, some translators—their expertise making them theoretical authorities—have a reputation for precision and elegance in their translations. Their work is considered to be "the authoritative translation of X." This is a shorthand way of saying that some authority has produced this product, and therefore we should accept that product as the best or decisive version of X. Similarly, but in this case involving practical authority, when a court case is heard by the Supreme Court, the decision reached there is the "authoritative"[6] one. Buchanan defines something as "authoritative" "if and only if the fact that it issues a rule can in itself constitute a compelling reason to comply with that rule."[7] Authoritativeness, then, is one aspect of the intension of the concept of authority, but it does not provide the full conceptual picture of what authorities are. For instance, someone might have a permission to enter a building after hours. This grants them the authority to do that action. But that person could not then bring other people into the building with them (unless that was part of their permission). Their authority does not extend beyond their permission to do some action,

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wouldn't have if someone on the street "diagnosed" you with a disease. But this kind of authority is different in kind from the authority that a police officer exercises. The police officer's authority is focused on action and not on belief.

[6] Note that this does *not* mean that the ruling is incontrovertible. It is conceptually possible for an authoritative ruling or translation to never be supplanted by another, but remaining authoritative through time is not a necessary feature of authoritativeness. This, of course, raises questions about when something is no longer authoritative, but this is not a concern for this essay.

[7] Buchanan, Allen (2002). "Political Legitimacy and Democracy." *Ethics*. (112), 692. It might appear that this definition is slanted towards practical authority only, but Buchanan points out that "[t]he notion of authoritativeness has a much broader application that extends beyond the political [practical] (and, for that matter, the moral). An expert in auto mechanics or astronomy can be authoritative with respect to his or her relevant domain of expertise, without having the right to wield power over anyone" (*Ibid*, 692).

and thus we can understand these people as "in authority" but lacking "authoritativeness." Authoritativeness, then, is not a necessary condition for being an authority. [8]

Another problem with defining authority is that many people understand authorities *merely* in terms of those commands issued by people we take to be authorities (and which, if we don't follow that order, usually has a negative consequence for noncompliance). But as H.L.A. Hart noted in *The Concept of Law*, it is insufficient, or better, conceptually undermining, to view authorities as merely giving us reasons for actions backed up by coercive force.[9] Holding this kind of interpretation of practical authority has forced many theorists to posit that governments and their organs are really something like a large, systemic, and dominant criminal organization. That is, if there is no such thing as practical authority without coercion then practical authority may just collapse into power relations. But, as Hart, Raz, and many others have noted, authorities trade in many kinds of distinct actions, of which legal commands and coercion are only a part. Raz writes that, "[t]o have authority is, sometimes (1) to have (a right created by a) permission to do something (which is generally prohibited). It is also (2) to have the right to grant such permissions, and finally, it is (3) to be an expert who can vouch for the reliability of particular information."[10] Thus, we need to distinguish the *phenomenology* of authority, as experienced through commands and coercive rules, with the full *conceptual* range of what authority is. It is tempting to be a reductionist about authority in the vein of Austin and Kelsen, and take the authority of the law and of the political order to be one of thinly disguised *power*, or as merely a set of conditionals with material acts as the antecedents and some coercive act as the

[8] Raz explain this by showing that often people who are in authority merely have a permission or power over some narrow scope of actions. His example involves the permission a secretary has to open mail. This makes the secretary someone *in* authority without appealing to the concept of "authoritativeness."

[9] Hart, H.L.A. (1994). *The Concept of Law*. Oxford University Press, NY. See chapter two in which Hart engages Austin (and implicitly Kelsen) on their problematic reduction of the authority of law to commands backed by coercive actions.

[10] Raz, Joseph. "Introduction." *Authority*. Joseph Raz, ed. New York University Press, NY. 2.

consequent.[11] But this is proven wrong by the fact that we can coherently think of someone as "in authority" when she is acting on permission by someone else "in authority," and her authority has nothing whatsoever to do with coercive powers.[12] What I mean by this is that someone who is in authority via a permission, say, a secretary's permission to open his boss's mail, can be understood as having authority that is not based on coercive powers.[13]

Of course, philosophers with Hobbesian and Austinian sympathies will probably resist this claim. They will claim that there is still (and always will be) an explicit or latent power structure that is guiding all those people we see as authorities—even persons merely acting on a permission. In short, it seems that we can conceive of people acting on permissions and non-command based directives as proxies of some version of the Hobbesian sovereign. Here I think we need to distinguish between the material facts surrounding authority and the conceptual nature of authority. It may very well be the case that wherever there are practical authorities, then there will be some kind of coercive power apparatus behind them—be it a legal system or secret police—but it is too simplistic to then claim that we cannot understand authority *without* these power structures. We can understand what it is that authorities must do to be authorities without taking into account all of the material facts that may or may not concomitantly exist. In short, authorities trade in many activities that do not necessarily involve coercion, such as certain

[11] Kelsen writes, "[w]hat distinguishes the legal order from all other social orders is the fact that it regulates human behavior by means of a specific technique. If we ignore this specific element of the law, if we do not conceive of the law as a specific social technique, if we define law simply as order or organization, and not as a coercive order (or organization), then we lose the possibility of differentiating law from other social phenomenon" (Kelsen, Hans (2007). *General Theory of Law and State*. Anders Wedberg, translator. The Lawbook Exchange, Ltd. Clark, NJ. 26).

[12] See footnote 4.

[13] Although it could be the case that the person who granted the permission originally has authority that allows for the use of coercive means. This does not mean, however, that the person granted the permission necessarily has a coercive power.

permissions, and furthermore, we do not need to understand this permission as resting on an implicit threat of coercion from some "higher up."

With this understanding of some basic distinctions in the concept of authority, we can now focus on the task of this essay, which is to understand what political authority is, and to see how it relates to the practical and theoretical distinctions. This question, "What is political authority," once again, seems to have obvious answers. Political authority, it seems, straddles both the practical and theoretical sides of the concept of authority. Political authorities are "in" authority insofar as they have a certain discretionary power to issue directives and create rules and laws, all of which are supposedly binding upon their subjects. At the same time, it is reasonable to say that many, but not all, political authorities are also "an" authority insofar as they have access to information and resources that can make them theoretical experts.[14]

There is one distinct feature that applies to political authorities as opposed to other kinds of authorities. This feature is the "legitimacy" of that authority. "Legitimacy" in this context means the moral right to rule.[15] One might ask why the question of legitimacy is important. If we know the people in power, if we can accurately pick them out, and we have rules and laws that are being enforced according to those rules, then why should we care about legitimacy? It seems reasonable to ask why we should care about anything more than efficacious *de facto* authority. The problem with this is that most people enmeshed in a normative system, especially those in political authority, take themselves to be generating special reasons that bind people and,

[14] Here I'm thinking about something like the preparation to be on a senate oversight committee regarding the federal budget, or intelligence oversight, something like this. Of course, while most political authorities have access to the kind of information that would be requisite for them to be considered theoretical authorities, it seems obvious to me that not all political authorities exploit or strive towards this kind of authority. Thus, I am resisting the claim that all political authorities ought to be considered theoretical authorities.

[15] I do not mean to imply by this that other kinds of authorities are not legitimate or illegitimate. A doctor may be an illegitimate theoretical authority if her degree is from an offshore online college. I am concerned with the unique claim that authorities make to have a *moral right to rule*. In short, only political authorities (and maybe parents) claim this kind of legitimacy.

in virtue of these reasons, create a correlative duty to be obeyed. Simmons puts this point well when he writes:

> We can justify arrangements simply by demonstrating that their existence is a good thing, that we have good reason to create or refrain from destroying such things. We justify them by showing that arrangements have value, that their benefits outweigh their costs, that they possess interesting virtues. By contrast, legitimating an arrangement that involves some claiming the authority to control others involves showing that a special relationship of a morally weighty kind exists between those persons, such that those particular persons should have authority and those particular others should have a duty to respect that authority.[16]

Political authorities, then, also can be understood in terms of the "in" and "an" distinction. They exercise their authority through commands, directives, permissions, and the like, while also *claiming* that their commands, directives, and permissions, place people under a special obligation—a duty to obey.[17] Thus, to reduce authority to mere power is to miss out on the deeper conceptual and normative claims that are inherent in the actions of political authorities. Moreover, whether or not a political authority is legitimate or not will have repercussions on both how efficacious their directives are, and how binding their directives are.[18]

§1.3. The Problems of Political Authority

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[16] Simmons, A. John (2005). "The Duty to Obey and Our Natural Moral Duties." From *Is There a Duty to Obey the Law?* Cambridge University Press, NY. 148.

[17] It might be argued that authorities take themselves to be generating a weaker duty than *obedience*. Perhaps, it might be argued, they are only really demanding *compliance*. I think that in some cases, thinking that authorities are demanding compliance makes sense. For instance, many laws, perhaps traffic laws are a good example, seem to be there not because of *moral reasons*, but rather, because it would be better for everyone if they complied with them. This is why sanctions for speeding are not always strictly enforced. On the other hand, I think it is apparent that with many laws and directives, a stronger duty is being demanded by authority. For instance, with laws regarding national security or harming fellow citizens, authorities seem to be demanding more than mere compliance.

[18] Another important aspect of political authority *qua* the government is that "the state's authority…also claims to be supreme: even when it lacks a monopoly of authority in the society, when it shares it with other persons or groups, the state does so on its own terms. It claims to bind many persons, to regulate their most vital interests, and to do so with supremacy over all other mechanisms of social control." Green, Leslie (1988). *The Authority of the State*. Oxford University Press, Oxford. 1.

As I mentioned above, my main concern with the concept of authority in this essay is with political authority.[19] In this section, I set out four questions that I think are central to understanding what a political authority is. I raise these questions, and then raise other questions that follow from them, providing some brief discussion of potential answers to the questions in order to clarify the problems. The first question is:

1) What kinds of reasons do authorities give us that help to explain their putative normative bindingness?

Do authorities give us merely one especially weighty reason added into the balance of reasons for action? Or, do authorities give us some content-independent categorical reason for action? The notion of content independence deserves further elucidation. Most of the time when someone is weighing reasons for or against some action, she considers the action in relation to the relevant reasons she has for or against the action. If I am considering whether or not to murder Smith, I will consider the relevant reasons for or against the action: perhaps Smith is very annoying, or stole my lover, etc. Content independent reasons, however, are different from those reasons that we simply "weigh up" in the balance of reasons as a reason for or against committing some action. A reason is content independent if we have reason to do or forbear from some action X primarily because of the source of that reason.[20] It also seems that the source of that reason must be specified in a certain way. For instance, if some rule is part of a set of rules issued from, say, the Hobbesian sovereign, then merely in virtue of the source of that rule it counts as a content independent reason. To return to my example, if I ask why I ought or ought

[19] From here on out, any use of the term "authority," unless otherwise specified, refers to "political authority."
[20] It is entirely plausible, I think, that one could have a "contentful" reason for forbearing from some actions, say, murder, because of a substantive moral commitment. But one could also have a content independent reason to forbear from the same action if one recognizes that they also have a reason to forbear from the action because of the source of a directive that states not to do that action.

not to kill Smith, and you reply "because the law says so" then the "law" is providing me a reason to forbear from that action *simply in virtue of its being the law*—regardless of whether the law is just or efficacious. Hart's account of content independent reasons states that they are "intended to function as a reason independently of the nature of the character of the actions to be done."[21] There are also further problems with the reasons that authorities give for action, insofar as there are problems with unjust authorities. It seems wrong on the face of things to say that Nazi political authorities were giving valid reasons for action when issuing directives in regards to the Holocaust. The question is whether or not we ought to take authoritative reasons to be absolute or not.

The second question is:

2) What justification is there for legitimate authority?

Is the categorical, and sometimes but not necessarily, coercive nature of authority justified by appeal to fair-play? Or is authority only justified only by direct consent? Answers from both sides are problematic. By making the move to appeal to fair-play, one opens up one's position to Nozickian influenced counter arguments about the obligations we may or may not have contingent upon our benefitting from some cooperative scheme.[22] Consent theories are also notoriously problematic. The largest problem with consent driven theories is that the body politic of any state never actually directly consents to each and every law or rule that is enacted by that state.

The third question is:

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[21] Hart, H.L.A. (Essays on Bentham—254). Hart also thought that authorities provided people with "peremptory" reasons. Essentially, peremptory reasons are reasons that "cut off" deliberation on the part of the person being commanded. I will discuss peremptory reasons more when I discuss Raz's view on authority, and his use of "preemptive" reasons.

[22] See *Anarchy, State, and Utopia* by Nozick for more detail on these kinds of objections to fair-play arguments.

3) What duties are imposed on us by authorities (absolute? *pro tanto*?)?

This is going to matter when we think about the *scope* of authoritative power. If authorities provide us with content-independent reasons for action, then it seems like legitimate authoritative directives are akin to "absolute" ("absolute" in a Kantian sense) directives in that it would be morally wrong to not follow them. But if authoritative directives are just *partly* or not at all categorical, then this has significant ramifications for the duty to obey the law debate, insofar as it becomes contestable as to what duties to obey, if any, are generated by authorities. The fourth question is:

4) How do we explain the normative force ("the gap") between authoritative directives and the duties that authorities claim to put us under?

It is one thing to claim that we are given binding reasons to act by authorities, and quite another to explain whether and *why it is* that these directives are binding. This is a problem that goes back at least to Plato in political philosophy. When it is claimed that one ought to obey an authority in virtue of that authority's greater expertise, problems of blind obedience to unjust authorities arise. It seems as though authorities both need to provide conclusive reasons for action and also stop consideration of other reasons for action that the norm-subject has. I take these to be four fundamental problems that any theory on authority must deal with, and this is why I have taken the time to briefly rehearse them.

Besides these general problems, there are two more fundamental problems that any account of authority must deal with in order to get off the ground. These problems are the supposed "paradoxes" of authority in relation to *autonomy* and *reason*.

1.4. Reason and Autonomy in Relation to Authority (Paradoxes)

There has been a long-standing tradition in modern political theory that denies the legitimacy of the state. In current terms, those who hold that the legitimate authority of the state is either a) impossible or b) highly improbable are called *philosophical anarchists*.[23] While many philosophical anarchists, especially Simmons, focus on every kind of argument for state legitimacy (and then proceed to show why each fails), many think that authority *by its very nature* (i.e. the very concept of authority) conflicts with reason, autonomy, or both. Authority can be thought to conflict with reason because authority, as discussed above, is commonly thought to provide some kind of very weighty or categorical reason to act that replaces one's own consideration of how to act.[24] But it is also thought that a requirement of rationality is to never act on reasons you have not weighed for yourself. This, however, seems to be precisely what authorities require of us. I will refer to this paradox as the *irrationality of abiding authority* paradox.

Authorities seem to require that people take authoritative commands and directives as absolute[25], and therefore authorities disallow engaging in a substantive deliberation over and about the reasons for or against some action. But this "absolute" aspect of how one should treat the authoritative utterances of an authority seems to be an irrational way of treating the authoritative utterance. The order to "kill all of the redheads" just seems wrong. Even if one objects that no one takes this view seriously, there can still be a paradox generated by the claim that one ought not to consider the reasons for action when an authority issues a directive

[23] A. John Simmons and R.P. Wolff are probably the two most well known philosophical anarchists, but there are many others who could fall under this label (Green, Raz, etc.).
[24] In Hart's terms, authorities are providing us with peremptory, content-independent reasons for action.
[25] There are, of course, limits on what kinds of reasons can count as "absolute." For instance, in the military, there are codified rules of engagement that supposedly defeat certain orders, e.g., "mow down those innocent villagers."

(assuming, of course, that the premise "one ought to always act on one's own consideration of the balance of reasons" is correct). The claim is a very strong one, and it rests on a very specific concept of authority—one in which authorities always issue absolute commands or directives. Furthermore, the paradoxes rest on very strong conceptions of what acting rationally and being autonomous are. Those who hold this view about the nature of authority and rationality assert that there is a) that rationality always requires an individual to weigh up all of the reasons that apply to her, and b) that one ought always to act on what one takes to be the balance of reasons. In short, it may seem that authorities can never alter how rational agents assess the balance of reasons. Shapiro frames the problem by claiming that "when authorities are wrong, they cannot have the power to obligate others—when they are right, their power to obligate is meaningless."[26]

R.P. Wolff argues that *autonomy* is incompatible with authority. He makes this claim for similar reasons to the paradox of reason and authority. Many neo-Kantians argue that the goal of humanity is maximal and equal autonomy for each individual. Autonomy is understood here as each person acting on his or her own moral judgments.[27] In Kantian terms, authority appears to require *heteronomous* action, i.e. action that is a product of external control, and thus, authority vitiates the personal moral judgments that are necessary for our autonomy. Wolff puts it bluntly when he asserts that "[t]he defining mark of the state is authority, the right to rule. The primary obligation of man is autonomy, the refusal to be ruled."[28] We can see that there seem to be serious problems for the role and nature of authority. If these paradoxes are real, then it seems as

[26] Shapiro, Scott (2002). "Authority." In *The Oxford Handbook of Jurisprudence and Legal Philosophy*. Oxford University Press, NY. 383.

[27] Of course, the term "maximal" has consequentialist overtones that many Kantians would reject. I simply mean here that some form of the "kingdom of ends" is sought (and in the kingdom of ends people are all free because they are appropriately respecting one another and acting on self-willed universal moral laws).

[28] Wolff, R.P. (1990) "The Conflict between Authority and Autonomy." From *Authority*. Joseph Raz, ed. New York University Press, NY. 29.

though by following the directives of an authority we are violating the primacy of reason and autonomy. Thus, there is a paradox, some claim, between reason and authority. Therefore, anyone seeking to give an account of the conceptual nature of political authority must deal with the paradoxes of reason and autonomy.

To recap, we have dealt in some detail with the question of "what is authority?" I explained that there are several conceptual distinctions relevant to determining exactly what authorities *do*. Having set out some conceptual distinctions, and having made clear the problems involved in understanding the concept of authority, I will now turn to the focus of the essay—the concept of authority put forth by Joseph Raz.

CHAPTER TWO

RAZ ON AUTHORITY

§2.1. Raz's System of Practical Reasoning: First-Order and Second-Order Reasons[29]

In order to understand why Raz develops the concept of authority the way he does, one must first understand the system of practical reasoning that he developed in *Practical Reason and Norms*. In that work, Raz provides an ambitious and complex account of what reasons are and how reasons relate to norms. He states that "[o]nly reasons understood as facts are normatively significant; only they determine what ought to be done. To decide what we should do we must find what the world is like, and not what our thoughts are like."[30] The essential relation of normative significance is between facts and persons. We have reason to act when there is a certain fact of the matter that relates to us.[31] Raz goes into detail about the logical structure of reason statements, the ways in which reasons conflict and override one another, and so on. The important point for my purposes is that, traditionally, many philosophers focusing on practical reasoning claim that when we act on reasons, we must "weigh up" the "balance of reasons" before deciding on what action to take.[32] Raz does not deny that we often employ this kind of reasoning, but, he thinks that this is not the only way in which we deliberate.

One of the most pervasive problems in any philosophy of practical reasoning is how we are to weigh certain reasons in the balance of reasons. The traditional understanding of practical reasoning has it that there are reasons for or against some action, and that, contingent upon

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[29] Much of what follows is a more advanced version of ideas in two of my papers, one for Dr. Edmundson's directed reading on authority and legal positivism entitled *Razian Authority*, and the other from a directed reading I took with Dr. A.J. Cohen on Henry Richardson entitled *Authority, Domination, and Public Reason*.
[30] Raz, Joseph (1999). *Practical Reason and Norms*. Oxford University Press, NY. 18. Hereafter *PRN*.
[31] *Ibid*, 19.
[32] Raz (2000) attributes the classical view (which is the view he himself endorses) to figures such as Plato and Aristotle. Raz, Joseph (2000). "The Central Conflict: Morality and Self-Interest." From *Well-Being and Morality: Essays in Honour of James Griffin*. Oxford University Press, NY. 209-238.

whether or not some, none, or all of those reasons are "cancelled" (i.e. no longer germane to the balance of reasons) or "outweighed" (i.e. "defeated" by weightier, overriding reasons), then one ought to act according to the balance of reasons (or, as Raz puts it, one should act on the "conclusive reasons" one has).[33] For instance, say I am deciding whether or not to eat a doughnut. There are certain facts of the matter: I am hungry, humans need food to live, and I am not going to have a chance to eat again for awhile, and so on. But there are also reasons that override some of these reasons: I have diabetes, it is not a flavor of doughnut that I enjoy, and so on. Here I am merely weighing the strength of reasons against one another, and what is the rational choice will be contingent upon the weightiest reasons.

But Raz sees this commitment to always weighing the strength of reasons on the balance of reasons as too narrow a view on what is going on between kinds of conflicts between reasons: "My claim is that a useful explanation of the notions of strength, weight and overriding is possible but only at the cost of restricting the scope of application and that if we embark on such an explication the theory of conflict must allow for the existence of other logical types of conflict and conflict resolution."[34] Thus, Raz distinguishes two sorts of reasons: "first-order," or normal reasons for action that have conflicts of strength, etc., and "second-order" reasons, which are reasons to act on first-order reasons, or reasons to exclude first-order reasons from the balance of reasons.

To show why it is that we should not always act just on consideration of the first-order balance of reasons, Raz introduces the notion of second-order reasons. Second-order reasons are

[33] A conclusive reason Raz defines as: "p is a conclusive reason for x to ϕ if, and only if, p is a reason for x to ϕ (which has not been cancelled) and there is no q such that q overrides p" (*PRN*, 27).
[34] *Ibid*, 36.

reasons "to act for a reason or to refrain from acting for a reason."[35] First-order reasons, as we saw, are reasons for action. Second-order reasons are a reason to act on a reason.[36] Promising to do something is a second-order reason of this nature. The fact that you promised is a reason to act on the other relevant first-order reasons for following through on the promise. Raz calls second-order reasons that are reasons to *refrain* from acting for a reason "exclusionary reasons."[37] For instance, if you are a police officer, and you are commanded by a superior to arrest a certain kind of law breaker, that command excludes consideration of the balance of reasons from your reasons for action (even if, all things considered, you think you ought not arrest that kind of law breaker). Edmundson writes about the distinction between conflicts of first-order and second-order reasons by stating that

> [i]n a conflict between competing first-order reasons, the reasoner weighs up the balance of reasons and acts thereon. In a conflict between a first-order and exclusionary reason, however, the reasoner may very well be acting against the balance of first-order reasons, and the action of the exclusionary reason is better described not as outweighing the first-order reason, but as taking it out of the balance of first-order reasons altogether, yet without diminishing its weight as a reason.[38]

By developing the idea of orders of reasons, Raz was able to show that some reasons stand in a special relation to the balance of reasons. For example, let's say that Joe likes to take walks every evening. On this particular day, however, it is raining outside. Normally, this first order reason might outweigh other reasons for taking the walk. Now, imagine that Joe promised that he would take a walk with his girlfriend. By promising, he has given himself a second-order reason, the promise, which excludes action on some of the first-order reasons for not taking the walk. Absent the promise, the balance of reasons favored not taking the walk. For Raz, second-order,

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[35] *Ibid*, 39.
[36] Which Raz refers to as *positive* second-order reasons.
[37] *Ibid*, 39.
[38] Edmundson, William (1993). "Rethinking Exclusionary Reasons: A Second Edition of Joseph Raz's *Practical Reason and Norms*." *Law and Philosophy*. 12:3. P. 330.

and especially exclusionary reasons, resolve many philosophical questions. For instance, decisions, rules, permissions, and systems of normativity such as legal systems, can all be explained, in part, by the relation between first and second-order reasons. One problem that Raz attempts to resolve by using the conceptual tools he develops in *PRN* is the problem of authority.

In chapter two of *PRN*, Raz develops the various applications of exclusionary reasons. For instance, rules exemplify exclusionary reasons, decisions are exclusionary, etc. But perhaps the most important feature of this discussion is the idea of the "mandatory norm." A mandatory norm is "either an exclusionary reason or, more commonly, both a first-order reason to perform the norm act and an exclusionary reason not to act for certain conflicting reasons."[39] For Raz, then, to take someone as an authority is to take the reasons that he or she is giving you as "authoritative," where "authoritative" means minimally to take their directive as an exclusionary reason, but more often than not as a mandatory norm.[40] Why should this be the case? Because authorities fulfill a special function (e.g., social coordination) that requires their commands and directives—even if wrong on the balance of reasons—to be reasons for action and reasons not to consider the balance of reasons on one's own. This is not to claim that authorities always provide absolute norms that disallow us from acting differently, or from critiquing them. As Raz notes, "[t]here may be scope-affecting considerations, etc. but it must be admitted that for the most part the presence of a norm is decisive….Since a norm is an exclusionary reason it does not have to

[39] *PRN*, 58.

[40] This is because there are different kinds of authorities. For instance, the political authority is different from the advice of someone with greater knowledge: "[r]espect for someone's views and advice does not necessarily mean that he is regarded as having authority or as being in authority. Perhaps more often than not the point of seeking advice is simply to acquire information which may bear on the practical problems one faces. In such cases the adviser is perhaps being regards as an authority on facts, but not as an authority on what is to be done" (*PRN*, 63).

compete with most of the other reasons which are likely to apply to situations governed by the norm, for it excludes them." [41]

To sum up, Raz developed a system of practical reasoning that places normative primacy on reasons, specifically reasons for action. Norms are reasons for action that come in different types. Reasons are of two distinct orders, first and second, through which we can better understand what happens when reasons conflict. In a conflict between first-order reasons, we simply weigh up the reasons and act on the weightier side of the scale. But sometimes we are confronted by second-order reasons which provide us with a reason to act on a reason, or a reason to exclude consideration of other germane first-order reasons. Certain actions, such as authoritative utterances, issue "mandatory norms"—a combination of first-order and exclusionary reason. Thus, the foundation of Razian authority is the relation between first-order and second-order reasons. I will now turn to how Raz resolves the supposed paradoxes of authority in regard to reason and autonomy.

§2.2.Using Practical Reason to Dissolve the Paradoxes

As mentioned above, one of the long-standing problems in social, political, and legal philosophy is what the exact nature of authority is. While there has been a long history of questioning the legitimacy of political authority, in the 20th century a branch of thought labeled *philosophical anarchism* questioned the claim that there is such a thing as *legitimate authority*—leading proponents of this view are scholars such as A. John Simmons and R.P. Wolff.[42] Legitimate authority is typically understood as having the moral right to rule with a correlative

[41] *Ibid,* 79.

[42] I should note, once more, that it is not necessarily the case that anarchists think that it is *conceptually impossible* for there to be legitimate authorities, rather, it may just be the case that it is really, really, hard to ever actually have a legitimate authority. Simmons takes this line of argument. See Wolff's *In Defense of Anarchism* and Simmons' *Moral Principles and Political Obligations* for more detail.

duty to obey on the part of the subjects being commanded.[43] The anarchist attack, as characterized by Raz, hangs on developing two main "paradoxes of authority." One paradox is that authority is supposedly incompatible with reason—because authoritative directives demand *not* taking account of all of the relevant reasons for action on one's own. Raz writes that "[t]o be subjected to authority…is incompatible with reason, for reason requires that one should always act on the balance of reasons of which one is aware."[44] In obeying an authoritative directive, on the other hand, one is *not* acting on the balance of reasons of which one is aware. And therefore, many have concluded that acting on authoritative directives entails not acting according to reason. The other paradox, the paradox of autonomy, hinges on the idea that we should always act on our own moral judgments of all moral questions.[45] In obeying an authoritative directive, however, one has given up one's own considered judgment about what to do. And so, many philosophers have concluded that one cannot act on authoritative directives and act autonomously.

Following the conceptual framework he constructed in *PRN*, Raz argues that these paradoxes are not really paradoxes at all if one understands the concept of authority correctly. Specifically, Raz argues that authorities, when they issue authoritative directives, are actually issuing what he calls "protected reasons." Protected reasons are "both a reason for an action and an (exclusionary) reason for disregarding reasons against it."[46] Raz defines a person as having authority "either if he is regarded by others as having authority or if he should be so regarded. To regard a person as having authority is to regard at least some of his orders or other expressions of

[43] See Christopher Wellman's essay in *Is There a Duty to Obey the Law?* for an example of an argument that attempts to generate a duty to obey from legitimate authority.
[44] Raz, Joseph (1979). *The Authority of Law*. Oxford University Press, NY. (p. 3). Notice that Raz's terminology shifted from *PRN*. In that work, which precedes *The Authority of Law,* he referred to these kinds of reasons—reasons that are *both* first-order and second-order— as "mandatory norms."
[45] *Ibid*, 3.
[46] *Ibid*, 18.

views as to what is to be done (e.g., his advice) as authoritative instructions, and therefore as exclusionary reasons."[47] So, for Raz, the supposed paradoxes of authority dissolve because the premise that the first branch of the paradox rests on is false: one does not always—nor, indeed, ought one always—attempt to act on one's considered judgment of the balance of reasons. This is because there are protected reasons for action.

This claim warrants further discussion. One might still coherently object that something seems amiss. How is it that we can just accept someone else's directive in a content-independent manner? Surely, at some level, we are always weighing the reasons for action that we are aware of any given situation. This is true, but the crucial difference is in recognizing the validity of second-order reasons on our decisions to act. If indeed there are exclusionary reasons, then one is *not acting contrary to reason* when one acts on an exclusionary reason, and this is because of the simple fact that such reasons would be essential parts of the reasoning process. In short, any appropriate action must take into consideration the existence of second-order reasons. Furthermore, Raz does not think that one must always blindly accept authority. He does leave room for what he calls "clear mistakes," which are instances of clear violations of reason by the authority.[48] A judge being intoxicated while on the bench and issuing arbitrary rulings would be an example.[49] Raz also endorses acting on the balance of reasons according to one's own judgment when and if one is in a better epistemic position to judge the balance of reasons. This view will have implications for Raz's take on the duty to obey the law discussed below. Thus, Raz has dissolved the *irrationality of abiding authority* paradox by arguing that the directives of

[47] *PRN*, 62.
[48] See chapter three of *The Morality of Freedom* for more detail.
[49] In fact, either issuing arbitrary rulings or being drunk are probably sufficient on their own to count as "clear mistakes."

authorities are not necessarily content-independent and universal (authorities can be mistaken); that the paradox rests on the false premise that to be rational persons must always weigh the balance of reasons for themselves, and that second-order reasons, especially exclusionary reasons, are an essential part of the reasons authorities give us as well as an essential part of practical reasoning.

Raz argues that the second paradox, the paradox of autonomy, dissolves because by acting on an exclusionary reason agents are not giving up their autonomy—at least insofar as their judgment is concerned. Raz claims that "[o]nly action on that judgment is excluded."[50] As Raz notes in *MF*, one does not surrender one's judgment when one acts on an authoritative utterance. For instance, a private could be ordered by a colonel to "charge that machine gun nest." The private should accept that the colonel's order as a protected reason for action, but could still disagree with the order while still acting on it. Thus, one does not necessarily surrender one's judgment when acting on authoritative directives.[51]

I think there are two things worth mentioning here. One is that Wolff's notion of "autonomy" may just be wrong. Even Kant, in his political writings, thought that conformity to civil law and the state were necessary aspects of gaining freedom—of being able to exercise autonomy qua willing universal laws. Shapiro argues something like this when writes "[t]he idea that a person must weigh the balance of reasons every time a moral decision arises is not only dangerous in cases of informational asymmetries or cognitive disabilities but is also terribly

[50] *Ibid*, 26.

[51] *MF*, 40-41. I think this is still a controversial claim, because, even though one still can judge the action, one must, in order to conform to right reason, refrain from acting otherwise. Some people would still take this as surrendering autonomy. Others, who claim that acting in accordance with right reason is instantiating one's autonomy, might take the view that one of the best ways to be autonomous is to act on legitimate authoritative directives. Raz writes that "Whenever one acts for a valid reason which is a reason for not acting for some other reason, one is acting in accordance with reason and not at all in an arbitrary or unjustifiable way" (*PRN*, 62).

wasteful….The world is simply too complex for anyone to live one's life completely unaided by experts of one kind or another."[52] Wolff's idea seems to be that we always have to act on our own judgment otherwise we are denying some necessary principle of freedom. Raz's point hangs on the viability of secondary-reasons, and he confronts Wolff directly on this when he states that:

> If all valid reasons are first-order reasons then it is a necessary truth that the principle of autonomy entails the denial of authority, for then what ought to be done all things considered is identical to what ought to be done on the balance of first-order reasons. But since there could, in principle be valid second-order reasons, there is nothing in the principle of autonomy that requires the rejection of authority.[53]

Raz is claiming that Wolff is mistakenly equating autonomy with acting on first-order reasons. Wolff is, of course, correct to see that in authority relations there is *some kind* of "surrender" of one's "autonomy." This is because when one decides to act on an authoritative utterance one is acting on exclusionary reason. One ought not to, any longer, *act* on the excluded first-order reasons. But this does not mean that this surrendering of the right to act goes *against* autonomy. Rather, if the exclusionary reason is valid, we are acting on our autonomy by rightly choosing to act on the reasons that bind us. This is similar to Kant's point: we are not "slaves" to the categorical imperative. We are, by acting on a universalizable self-generated law acting in accordance with *freedom* even while we are constrained by the *duties* generated by the universal moral law. Similarly, it does not count against one's autonomy if one surrenders the right to action based on the existence of a valid second-order reason.

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[52] Shapiro, 388.
[53] *The Authority of Law*, 27.

§2.3. The Service Conception of Authority

In *MF*, Raz presents his fullest explanation of his views on authority[54]. He labels his view "the service conception." The service conception of authority has three criteria that must be met for an authority to count as an authority:

1. *The Dependence Thesis*: "all authoritative directives should be based on reasons which already independently apply to the subjects of the directives and are relevant to their action in the circumstances covered by the directive."[55]
2. *The Preemption Thesis*: "the fact that an authority requires performance of action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them."[56]
3. *The Normal Justification Thesis*: "the normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly."[57]

The combination of these three theses is supposed to show how it is that authorities provide their subjects with reasons for action. Some people might object to this view, claiming that what authorities do has nothing at all to do with action on the balance of reasons, but rather, that authorities provide verification of valid reasons for action. By endorsing some action, authorities are not, on this view, providing reasons for action, they are, however, providing support to

[54] By "authority," Raz means "legitimate authority."
[55] *Ibid*, 47.
[56] *Ibid*, 46.
[57] *Ibid*, 53. This is, however, not the *only* way to justify authority generally (it is the main way to justify political authority). For instance, one may accept advice out of kindness, or some other situation, in which case exclusionary reasons could be generated. (*Ibid*, 53).

certain reasons for action by endorsing them. Raz calls this view on authority the "no-difference thesis," and writes that "[t]here is nothing which those subject to authority ought to do as a result of the exercise of authority which they did not have to do independently of that exercise, they merely have new reasons for believing that certain acts were prohibited or obligatory all along."[58] The service conception differs from those who hold the no-difference thesis because if these three conditions are met, then the authority is providing reasons for action that make a practical difference in how we act even though the directives are based on reasons that already independently apply to the subjects.

The classic example that Raz gives of these criteria is his "arbitrator" example. Imagine that there are two people who have reached an impasse over some issue. Perhaps they cannot decide on where their respective property lines are. They go to an arbitrator to reach some kind of conclusion about the situation. Now, when one goes to an arbitrator, the arbitrator, to be considered legitimate, must make a decision based on the reasons that apply to the people involved.[59] If there is a property dispute, and the arbitrator hands down a ruling of "kill all redheaded children," this is a clear mistake. If the arbitrator is drunk while making the decision, his judgment is also devoid of authority.

In short, the arbitrator must be making decisions based on *dependent reasons*. Of course, the decision reached by the arbitrator may not be the one that the parties involved hoped for, but

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[58] *Ibid*, 30.

[59] Raz states that "a dependent reason is not one which does in fact reflect the balance of reasons on which it depends: it is one which is meant to do so" (*MF*, 41). This statement weakens the formulation quoted above. Of course, this weaker version makes sense, because it is often the case that authorities make mistakes when issuing directives. Of course, we would want that person's authority to survive minor mistakes (and perhaps even some substantively large ones), because if we made it a necessary condition that all dependent reason *must accurately reflect* the reasons, then we would be left with philosophical anarchism. I am not taking a stance on this here, as my goal is merely to state in an abbreviated fashion Raz's conception of authority. But this caveat does seem problematic in several ways. The main problem is that there is no clear indicator, or "bright line" of when a mistake vitiates the authority of the directive.

just as when a soldier thinks that an order is bad, the authority is in a unique position to gauge the reasons that bind that person, and so, those directives should be treated as protected reasons. The arbitrator also falls within the parameters of the normal justification thesis. This is because of the arbitrator's *expertise* when it comes to the law. The arbitrator is in a unique position to know the reasons, in this case legal reasons, that apply to those involved. And so, those involved would be better able to comply with the reasons that apply to them by following the judgment of the arbitrator than by trying to settle the issue themselves. Lastly, according to Raz, because the dependence and normal justification thesis are met, it follows that the preemption thesis applies. So, when the arbitrator hands down the decision, that decision should be taken as a protected reason: it is a first-order reason to act, and it is also an exclusionary reason that precludes considering the balance of reasons for action—those have been ruled out of consideration for action by the judgment.[60]

To recap, Raz's service conception of authority focuses on the special relation between reasons and action. Specifically, authorities are authorities insofar as they are providing protected reasons for action that meet the dependence, preemption, and normal justification thesis. The bottom line is that if someone is an authority, their directives, permissions, and the like offer special reasons for action that exclude one's personal consideration of one's first-order reasons for action. This does not mean that one cannot think about first-order reasons and judge them, but it does mean that one ought not to act on the excluded reasons. Once again, when the judge issues a judgment, this is not simply one reason added into the balance of other reasons. The judge's decree is a protected reason and is therefore exclusionary of other reasons for action. Thus, from Raz's system of practical reasoning he developed a normative, reason-based account

[60] *MF*, 41-43.

of authority that he thinks can dissolve the paradoxes of authority, answer many of the questions surrounding the bindingness of the directives authorities give, and also provide us with a clear account of why we ought to, in most cases, take authoritative utterances as protected reasons. This account of authority has important implications for the debate over the nature and extent of one's duty to obey the law.

CHAPTER THREE

THE DUTY TO OBEY THE LAW

§3.1. Raz's View on Authority and its Implications for the Duty to Obey

As discussed above, one of the classic problems in understanding what political authorities do is that, if they are legitimate, they supposedly place their subjects under some kind of duty to obey the law. For instance, in the *Crito*, Socrates gives an argument that essentially endorses a kind of absolute duty to obey the law if certain criteria are met (e.g. you had the chance to leave the state but chose to stay, etc.). The debate surrounding whether or not a duty to obey the law exists, and, if it does, whether it is a general duty to obey, or a prima facie duty to obey, has been the subject of much debate. I cannot go into every nuance of that debate here. Rather, for our purposes, I need only focus on how Raz's concept of authority bears upon the duty to obey debate.[61]

One implication—*the main implication*—of Raz's concept of authority is that he does not endorse a universal, content-independent duty to obey the law. This is because, as Perry notes, "[h]e does not think that there is any legal system in which the normal justification thesis can be shown to hold for every person and for every law which the system has in fact generated."[62] If, for instance, the legislature passes a law concerning the regulation of pharmaceuticals, for most people this law would be a protected reason that meets the service conception criteria. Raz points out that "if I am the greatest living expert on pharmaceuticals, then the law has no authority over me regarding the safety of pharmaceuticals."[63] This might seem curious. We just saw how Raz's system of practical reasoning allows for authoritative reasons to be of a special kind; namely, of

[61] For a very good overview that has great depth as well, see Edmundson (1998) *Three Anarchical Fallacies: An Essay on Political Authority*.
[62] Perry, Stephen (2005). "Law and Obligation." *The American Journal of Jurisprudence*. 276.
[63] Raz, Joseph. (2001) *Ethics in the Public Domain*. Oxford University Press, NY. (p. 348). Hereafter *EPD*.

a second-order which either reinforces or excludes other reasons for action. The upshot of that discussion was that it is often the case, perhaps mostly the case, that when an authority gives a directive that that directive should be taken as a protected reason. This is because of the special function that political authorities have.[64] Of course, whether or not we ought to take authoritative directives as protected reasons is going to be, for the most part, a matter of the contingent empirical circumstances of the place, time, and culture we are a part of. It is obvious that many people who claim authority (of any kind) are mistaken in their directives, theories, or the like. Aristotle was one of the leading scientific experts of his day, but he was dead wrong about many things. I should think that we would still want to say that, for the majority of people, they were better off taking Aristotle's ideas as authoritative. The issue gets thornier, of course, when it comes to political authority. I think Raz would say that the contingent empirical facts about whether or not individuals or a whole body politic ought or ought not to take some set of laws or directives of politicians as authoritative does not damage his conceptual argument. It might end up being the case, however, that most of us, in a very well-educated and virtuous society, would have no need for robust authority (other than perhaps in a minimal core of cases, such as social coordination).

According to Raz, so long as the authorities follow the criteria of the service conception—namely, that they are acting on reasons that bind their subjects, and that people would, on the whole be better off complying with their directives to conform to the balance of reasons—it should follow that their directives are preemptory (exclusionary). This, one would

[64] Remember that this relationship of protected reasons does not necessarily hold with all kinds of authorities. Authoritative advice might be a case where it is better to take it as one reason in the balance of reasons. For instance, we might seek a second-opinion from a doctor, even if he or she is one of the world's best experts in a given field of medicine.

think, is pretty close to a content-independent duty to obey the law. But it is not endorsing that view. It is *often* the case that we are unaware of the reasons that bind to us, and, therefore we should take a directive as protected. But this leaves open the conceptual space for particular individuals to know the balance of reasons better than the authorities issuing directives. Raz holds that it is *conceptually* possible for there to be a universal, content-independent duty to obey the law. But in order for this to be the case, *everyone* would have to be better off, in the sense that everyone would be better complying with the reasons that apply to them, whatever those reasons may be, by complying with the directives of authorities than just by using their considered judgment of the balance of reasons. This just does not seem likely to hold in all cases. Raz writes that:

> Human judgment errs. It falls prey to temptation and bias distorts it. This fact must affect one's considerations. But which way should it incline one? The only general answer which I find persuasive is that it depends on the circumstances. In some areas and regarding some people, caution requires submission to authority. In others it leads to denial of authority. There are risks, moral and other, in uncritical acceptance of authority. Too often in the past, the fallibility of human judgment has led to submission to authority from a misguided sense of duty where this was a morally reprehensible attitude.[65]

Many people are going to object to this view because it seems like a slippery slope to justifying *disobedience* to the law, and a theory of the authority of the law should not encourage that kind of disobedience.

In short, the objector claims that this view would ruin the efficacy of the law if Raz's view were true. Raz rejects this claim. Essentially, Raz argues that minor occurrences of law-breaking will not have this large negative impact on society.[66] Keep in mind that Raz is not claiming that we ought not to follow the law, but rather, that in some cases the law is *not*

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[65] Raz, *EPD*. 351.
[66] See chapter 12 of *The Authority of Law* for more detail.

authoritative (though the always *claims* to be authoritative), and therefore we cannot speak of some universal, content-independent duty to obey the law. Raz underlines this when he writes that "the law is good if it provides prudential reasons for action where and when this is advisable and if it marks out certain standards as socially required where it is appropriate to do so….It makes sense to judge the law as a useful and important social institution and to judge a legal system good or even perfect while denying that there is an obligation to obey its laws."[67] Raz does not think, as we have seen, that there is any necessary duty to obey the law that stems from authoritative directives.

In summary, Raz's concept of authority, that authorities provide us with special reasons for action that exclude action on otherwise relevant reasons, entails what many take to be an odd position on the question of the duty to obey the law. Raz is forced to claim that because it just is not the case that the law maker, or the political authority, is always the one who knows all of the relevant reasons for any action that it cannot be the case that there is a universal, content-independent, duty to obey the law. Raz does think that the law necessarily claims this kind of authority—that it generates content-independent reasons for action—and he does argue that people often, if not always, have good prudential or even moral reasons for obeying the law.[68] He just thinks that the idea of a universal, content-independent duty to obey the law is outdated and unnecessary for the efficacy of any political and legal system.

[67] Raz, *The Authority of Law*, 249.
[68] Especially for those people who are morally deficient.

CHAPTER FOUR

CRITICISMS OF RAZ

§4.1. Ladenson

One major challenge to Raz's view comes from those philosophers who argue that we can understand the legitimate exercise of authority without having to appeal to the idea that political authorities impose a duty to obey the law on their subjects. Robert Ladenson proposes that we take such a view in his essay "In Defense of a Hobbesian Conception of Law."[69] Ladenson begins by distinguishing governmental *power* from governmental *authority*. Power, as he understands it, is just the sheer capacity to make someone do what you want. Governmental power, then, is the concept writ large. The government has the *power* through its monopoly on force, to make a large group of people do what it wants. Governmental authority, on the other hand, is distinct from the mere exercise of power because it includes the idea of a *right to rule*. Ladenson claims that "[t]he possession of such a right by persons acting under governmental authority presumably differentiates coercive actions on their part from such actions by private individuals."[70]

The crux of Ladenson's argument rests on the difference between what he calls[71] "justification-rights" as opposed to "claim-rights." A claim-right, simply put, is one that imposes a duty. Claim-rights *require* certain actions to be taken or not-taken. Justification-rights, on the other hand, do not claim to impose any duty. Rather, a justification-right is a justification of the action that is being taken. Ladenson thinks that self-defense is an example of a commonly used

[69] Ladenson, Robert (1990). "In Defense of a Hobbesian Conception of Law." From *Authority*. Joseph Raz, ed. New York University Press, NY. 32-55.
[70] *Ibid*, 35.
[71] The original distinction Ladenson credits to Joel Feinberg. *Ibid*, 35.

justification-right.[72] In short, one is can justify the use of coercive force on another when being attacked. A more relevant, and difficult, example might be in the use of force against an innocent threat. A possible example of this would be a scenario in which you have to make some decision, say, to quickly move your car out of the way of some dangerous obstruction on the road, and that by so doing, you kill an innocent bystander. One would, I think, attempt to offer a justification claim about the action. This justification, however, might still not be enough for many people to accept the action as justified (especially the family and friends of the person who died). In other situations than this, one might think that there are certain claim-rights that exist between persons that already impose a duty on them not to attack (or harm) another in the first place. But in the situation where one is being attacked one can do more than just say: "you are violating my rights," one can attack the attacker and then invoke a justification-right after the fact.

The important move that Ladenson makes is to understand governmental authority in terms of *justification-rights* as opposed to *claim-rights*.[73] By doing this, he shifts the burden of justifying authority from showing that duties are imposed through authoritative directives to justifying the monopoly of power that any government exercises within its contingent geophysical boundaries. Ladenson's justification revolves around the Hobbesian view of a state whose monopoly on force was necessary to keep life from becoming nasty, poor, brutish, and so on. No argument needs to be made that there is a duty to obey the laws, because political authority does not involve a claim-right to rule. One should also note that he rejects Hobbes'

[72] *Ibid*, 35.

[73] Part of the justification for this move comes from a contractualist argument on pages 36-37. Ladenson claims that we would assent to such a justified monopoly of power in order to avoid the mutually destructive tendencies of humankind.

view that there is no right to fight back against governmental power.[74] He states that "[g]overnmental authority, like other justificatory considerations, has its limitations and exceptions."[75] It can be admitted that if this view were correct, then much of the hand-wringing over the problematic connection between authorities and duties to obey them would be nullified. This is simply because there would be no such connection. [76]

§4.2. Response

Raz critiques Ladenson's position by appealing to what he takes to be conceptual flaws in Ladenson's argument. First, Raz claims that the justified use of power that is the hallmark of Ladensonian authority is substantively different from what we mean by "authority." Raz argues that "I do not exercise authority over people afflicted with dangerous diseases if I knock them out and lock them up to protect the public, even though I am, in the assumed circumstances, justified in doing so. I have no more authority over them than I have over mad dogs."[77] On Ladenson's view, all authoritative actions are either direct or elliptical appeals to the justified use of coercive force. The onus is shifted onto the subject to realize, prudentially speaking, that conforming to the law is, for the most part, a good thing to do. Why? Well, the government has a monopoly on tanks and other destructive things. But Raz quickly, and rightly, points out that authorities do other things than provide threats. The actual exercise of authority tends to come in

[74] I should qualify this by saying that this tends to be a point of much dispute. Hobbes does make exceptions for certain actions against the sovereign. See *Leviathan* chapters 14 and 21. It is also the case for Hobbes that one never gives up one's "natural right" to fight for survival. So, in some sense, one can legitimately resist the government if, say, one is being dragged to the gallows.
[75] *Ibid*, 37.
[76] Ladenson also thinks that making this move will solve other problems in the philosophy of law. For instance, there are questions about the status of the law in a substantively unjust regime, like the Nazis. If one holds that legitimate authorities impose duties, then there is some question about the weird status of Nazi laws. This is because of the fact that despite the obviously morally abhorrent laws, there continued to be quite mundane laws regulating marriage wills, etc. which we want to say still were legitimate. Under Ladenson's view, it is entirely coherent to say that the citizens in Nazi Germany had a right to resist the enforcement of some laws, and at the same time that the Nazis had the right to enforce, coercively, other laws. *Ibid*, 39.
[77] *MF*, 25.

requests for compliance (claiming that there is a correlative duty to obey some directive), the granting of permissions, and the conferring of rights, all of which do not seem to have any necessarily coercive overtone. Of course, it is often the case that governmental "requests" have coercive overtones, but the request for compliance is still being made, and, Raz points out, is being made in a way that "is an invocation of the duty to obey."[78]

Raz then proceeds to reduce the Ladensonian position to absurdity. He claims that, if we were to imagine the world in which this system of authority existed, we would be forced to imagine "courts imprisoning people without finding them guilty of any offence; damages are ordered, but no one has a duty to pay them. The legislature never claims to impose duties of care or of contribution to common services. It merely pronounces that people who behave in certain ways will be made to suffer."[79] To Raz's mind, the fatal mistake is thinking that a mere *de facto* power, even if it is justified in using its monopoly on force, would suffice to provide a realistic conceptual framework of the complex normative systems we live in. For Raz, even if a government is justified by Ladensonian authority, which is to say, a government has a monopoly on power but is not legitimate—legitimate in terms of imposing claim-rights—the government will *claim that it is legitimate in terms of imposing a duty to obey*. To reiterate, even an unjust, mere de facto government, according to Raz, will claim that it is legitimate, which is to say that all people claiming authority trade in claim-right talk and *not* mere justification-right talk.

In a certain sense, it sometimes seems like Raz and Ladenson are talking past each other. Ladenson seems more concerned with justifying the monopoly of force that seems a necessary condition for the claim that an entity is a government. He thinks that if a story can be given that justifies this monopoly of power, then no further claim, for instance, that citizens have a duty to

[78] *Ibid*, 26.
[79] *Ibid*, 27.

obey that power, is necessary. Thus, what we have here are two fundamentally different conceptual stories about what "authority" is. I think that Raz may have dismissed the Ladensonian line of thought too quickly, and so I am going to offer a defense of Ladenson's position by way of Buchanan's article "Political Legitimacy and Democracy," in which he argues that the emphasis on justifying political authority, and thus the emphasis on finding a justification for a content-independent duty to obey the law, is misguided.

Buchanan distinguishes between *political authority, authoritativeness, and political legitimacy*. He defines political legitimacy as the moral right to wield political power, "where to wield political power is to attempt to exercise a monopoly, within a jurisdiction, in the making, application, and enforcement of laws."[80] Buchanan defines political authority as someone who has political legitimacy *and* has "the right to be obeyed by those who are within the scope of its rules."[81] So, political authorities are tied up both with legitimacy and with imposing claim-rights. Authoritativeness, as Buchanan defines it, deals with the issuance of rules that then give an especially weighty reason for action.[82] Buchanan argues that the concept of legitimacy should have primacy over full-blown political authority. This is because it is quite conceivable for some government to have the moral right to create laws and rules (say, for coordination purposes) without its citizens owing it some robust duty to obey. Legitimacy only concerns the normative power to justify the use of force, the creation of rules, and the like. It has nothing to do with the concept of obedience, nor does the fact that a government may be legitimate then entail that it

[80] Buchanan, 690. Similarly to Ladenson, Buchanan is quick to reject the objection that this would allow for unlimited state power. To be "supreme" for Buchanan means merely that there is no other competing group or entity for the right to make laws, etc.
[81] *Ibid*, 691.
[82] He does not dispute Raz's view on authoritativeness, where authorities give us compelling reasons for action, that we might be obligated to obey, but that do not generate a duty to obey. This generally fits with Raz's view that we often have reason to conform to authoritative directives even if we do not have a duty to obey them. (Buchanan, 692).

must be obeyed. As Buchanan notes, we often have very good reasons to comply with laws; e.g. I should stop at the stop sign because I do not want to die in an auto accident, "[y]et none of these reasons need imply that we owe compliance to the government."[83]

Buchanan's argument is simple but powerful. It seems that we can coherently talk about the legitimacy of governments, their efficacy, our reasons to follow them that stem from the authoritativeness of their rules and directives, without appealing to the duty to obey—which means that we can coherently talk about the functions and normativity of governments without appealing to political authority.[84] The question is whether or not this more subtle account answers Raz's challenge to shifting the focus from justifying political authority to legitimacy. Recall that Raz rejects the Ladensonian view because he thinks that even de facto governments *always* claim to impose duties on their subjects (even if those governments do not, in fact, impose such duties). Furthermore, Raz thinks that, supposing a government were legitimate, the idea that it would not impose duties runs completely counter to what we take political authority to be doing. In short, legitimacy might be important when considering an authority's authoritativeness, but the world in which an authority is legitimate and authoritative but does not impose duties on its subjects is a nonsensical one.[85]

I think the disagreement here might be largely an abstract, or formal, one. I think that Raz is willing to concede that you could have a society in which governments are authoritative but do

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[83] *Ibid,* 695.

[84] Another way of looking at Buchanan's view on authority is that we have a duty to "obey" (say, our natural duties of justice), but that this is not owed *to the government*.

[85] It might be argued that the duty is not nonsensical insofar as we can coherently talk about a government imposing obligations that are not owed to it, but to other citizens. While I think this is a reasonable idea, I still think that Raz would reject it. He would reject it because the concept of authority he puts forth has as a conceptual necessity the idea that authorities are claiming that duties are owed to *them*. The law that says "do not murder" imposes an obligation to act in a non-homicidal manner because the state is saying to not do it. It is another question for Raz, what kinds of moral duties exist independently of authoritative laws and directives.

not impose obligations. After all, he does not think there necessarily is a duty to obey the law that stems from authoritative directives.[86] But Raz thinks that even if this duty to obey is not generated, that the government will still claim, *must claim*, to impose it (assuming that it claims to be the supreme legitimate authority in the state, and not just dictatorship that cares nothing about conferring rights or creating a rule of law). This point is important. Raz thinks that it is a necessary component of the concept of political authority that authorities claim to impose the duty to obey, even if their directives are not taken to generate such a duty. Their directives might, perhaps, be *conformed* to, but not *obeyed*. I think so long as this point is conceded, that the government must take the internal point of view[87] towards their directives, namely, that their directives generate obligations, then the Razian picture of authority, the service conception, could co-exist with a view that claims that legitimacy is of more importance than generating a duty to obey the law. Buchanan might still insist that we could conceptualize authority as not requiring the claim to generate a duty to obey; but at this point Raz would point out that political authorities do, in fact, take themselves to be imposing such duties. Here we might run into an empirical question—whether or not authorities make the claim that they impose duties. But this is why I think Raz can account for Buchanan's view. It might be the case that the moral right to coerce, the legitimacy of the state, can be understood without reference to the imposition of a duty to obey, but Raz will insist that it is a conceptual truth that it is in the nature of political

[86] There is, for Raz, only a duty to obey if the norm subject ought to take that authoritative directive as a protected reason.

[87] The term "internal point of view" comes from Hart. Essentially, it means that those people in the government, or in some normative system, take a certain point of view towards the norms generated by that system. For these people, the norms generated create a duty to obey. This is the internal point of view. It could very well be the case, however, that those external to the norm-creating or norm-applying institution don't take the norms to generate a duty to obey. These people, the norm subjects, have an external point of view. See Hart's discussion of the external and internal points of view in *The Concept of Law*, 2nd edition, chapter V, pages 89-91.

authority to claim that authorities are, in fact, imposing such duties, even if these duties are not generated.[88]

§4.3. Perry

In "Law and Obligation," Perry focuses on Raz's normal justification thesis as the key component of Raz's service conception of authority. His objection to the service conception is that, "the service conception of authority may not be the law's conception of authority."[89] The reason why this is the case rests on the validity of the normal justification thesis. The law claims complete authority over its subjects. Raz states that "legal systems *claim* such an authority whereas other systems do not claim it. Furthermore, legal systems do not necessarily *regulate* all forms of behavior…[but] they *claim authority* to regulate all forms of behavior."[90] Importantly for Raz's view, and this is a point I will return to later, the legal system must be the kind of thing *capable* of possessing authority. Only things that can possess authority can command (or grant permissions, confer rights, etc.). While Raz does not think that there is any universal, content-independent duty to obey the law, he does think, as I mentioned above, that this is a conceptual

[88] Matthew Kramer attacks Raz's claim that authorities always claim to impose moral duties in his essay "Legal and Moral Obligations." Here I just want to point out one potential problem with his argument against Raz. Kramer argues that it is often the case, especially in mildly to substantively unjust legal regimes, that organs of the government "make statements of legal obligations without committing themselves implicitly or explicitly to the notion that those obligations are morally binding….Because such an actual or professed outlook on the part of the officials is by no means inevitable, Raz's argument is of limited applicability" (Kramer, 2005. 185). I think that Kramer's point is a good one, but it might be overstating Raz's claim. Not all acts on the part of authorities within a system purport to be morally binding. For instance, permissions don't seem to involve those claims. Secondly, if it were the case that a substantively unjust government stopped couching their claims in terms of moral obligations, then I think that Raz would say that they were no longer claiming authority. Third, Raz is driven to make the claim that authorities are claiming to impose moral obligations because he thinks that organs of the legal system take the internal point of view on the laws. The internal point of view requires a substantive endorsement of those laws *even if the officials in their own considered judgment do not think that the laws are just*. Despite the fact that legal officials might not seem to, individually, endorse their laws or directives as morally binding, they are in fact doing so by taking the internal point of view about the rule or law *qua* part of the normative legal system.

[89] Perry, Stephen. (2005). "Law and Obligation." *The American Journal of Jurisprudence*. Volume 50. P. 278.
[90] *PRN*, 151.

possibility. The normal justification thesis is the glue that binds the authority law claims with the conceptual possibility that authority can make a binding moral difference in our lives.

As Perry puts it, "Even though it [the normal justification thesis] never justifies *in practice* all the obligations that the law claims to impose, it shows that, in principle, those obligations are at least capable of being justified."[91] In order to critique the normal justification thesis, Perry gives a thought experiment, which deserves to be quoted at length:

> Suppose that we all have moral reason not to engage in action that would endanger the survival of a certain species of fish, for example cod. It doesn't matter for present purposes what the basis of the underlying moral reason is, but suppose it is the preservation of the food supply for future generations. Cod fisherman therefore have an underlying moral reason not to overfish. Suppose the government, following appropriate consultation, correctly determines that cod stocks can be sustained indefinitely if cod fisherman follow certain rules. These rules might impose quotas, or they might require that cod only be taken in certain months or if they are of a certain size. Raz's idea is that, if the government issues directives giving effect to these rules, the directives *replace*, for the fisherman, their underlying moral reason not to endanger the survival of cod. Raz maintains that the directives are, for the fisherman, new moral reasons. They have these reasons because they are more likely to do what they ought to do if they act on the directives than if they try to figure out for themselves how to avoid endangering cod….The directives are justified because they reflect the underlying moral reasons of conservation that we assumed apply independently to the fisherman.[92]

Perry argues that, while it is obvious that the normal justification thesis can give rise to new reasons for action, that it is "far from clear that those reasons are, as the law insists, obligations."[93] The full argument Perry presents is as follows: Assuming that the reasons given to the cod fisherman are indeed new reasons for action, protected reasons, what is it about those reasons that makes them obligatory?

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[91] "Law and Obligation." 277-278.
[92] Ibid. 278-279.
[93] Ibid. 279.

Perry claims that Raz's only way of grounding them as obligations is by claiming that exclusionary reasons are obligatory reasons.[94] Importantly, however, Perry thinks that merely tying exclusionary reasons to obligations does not work (in all cases). He argues that there is a fundamental difference between the obligations that can arise from the normal justification thesis and the obligations that the law is claiming to put us under.[95] According to Gideon Rosen, the problem that Perry is pointing out is that there is ambiguity in what we mean when we say that the law imposes an obligation on us. He writes, "[w]hen the law claims obligation-imposing authority for its commands, which sort of obligation does it have in mind? Undirected moral obligations? Moral obligations owed to others—e.g., to the state? Or generic practical obligations?"[96] Perry seems to think that, on Raz's view, the ability of the law to impose moral obligations is minimized by the restrictions of the normal justification thesis, and that this minimized ability of the law to actually impose obligations is contrary to the robust view of its obligation imposing power that the law itself holds. If there is a large disconnect between Razian authority and the concept that the law has of "itself" than the risk of conceptual confusion about what the authority of the law is—one of the things Raz seeks to clear up—reemerges.

Furthermore, there is an issue with who the obligation generated by the authoritative directed is owed to. Perry thinks that the moral obligations that the law claims to impose are owed to it, the state. This is what Rosen calls a "directed moral obligation." If I promise to pick you up from the airport, I have generated a directed moral obligation to you. Similarly, if there is a content independent, universal duty to obey the law, then one would be obligated to the state. But it is not at all clear that this is what Raz has in mind when he is talking about "obligations."

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[94] Ibid, 280.
[95] Ibid, 280.
[96] Rosen, Gideon (2005). "Perry on Law and Obligation." *The American Journal of Jurisprudence*. Vol. 50. 298.

We must recall that the foundational normative structure for Raz is reason based. While there are reasons of different kinds, e.g., moral reasons, prudential reasons, and others, the source of their normativity is the same: they are facts of the matter that apply to specific persons. Therefore, as Rosen notes, Perry might be misconstruing Raz when it comes to "obligations." Raz, at the end of the day, cares about the reasons that bind to specific persons, and thus, there is no reason to think that Raz is concerned with directed moral obligation; rather, he might be "mainly concerned with generic practical authority, i.e. with claims about what people should do all things considered."[97]

As Perry notes, "[o]n the service conception of authority, we do not seem to have any ground for regarding the government as anything other than a moral resource that is, so to speak, just there for me."[98] The upshot of this is that the obligations generated via the normal justification thesis seem to be too weak. For instance, if all that is necessary to generate an obligation is an exclusionary reason, then Perry rightfully points out that binding moral obligations can be generated between friends giving each other advice. The obligations generated by advice between friends, according to Perry's version of Raz, are the same kind of obligations that are generated by political authorities when they give protected reasons.[99] But Perry points out that if this is correct, then "it would seem that the normal justification thesis does not fully capture the sense of the law's claim to obligate by commanding."[100] Or, to put the point another way, there seems to be something qualitatively and normatively different between the advice shared by friends and the commands of authority. If they both generate the same kind of obligations, then

[97] Ibid, 299.
[98] Ibid, 280.
[99] Ibid, 280-281.
[100] Ibid, 281.

we should be wary of any claims that this is the concept of law which the law views itself as having.[101]

Perry further elaborates on the normative problems with the normal justification thesis by explaining that:

> [I]t is worth pointing out that the normal justification thesis…can give rise to reasons for action whose source is not even a person, let alone a person asserting normative propositions. If, for some reason, I will do better in complying with the reasons that apply to me by reading the entrails of birds than by trying to exercise my unaided judgment, then it would seem that I have an obligation, of the same general kind that the normal justification thesis involves, to do whatever it is that the entrails "tell" me to do. Obviously the entrails could not be said to be exercising a normative power, but the important point here is that the reasons for action to which the normal justification thesis gives rise are really just a special case of a much broader category of epistemically-oriented reasons that has nothing in particular to do with the concept of authority.[102]

This is another point that I think is correct, at least in part. What Perry is pointing out is that it is "possible" on Raz's view that some inanimate object could generate exclusionary reasons if it just so happens to consistently predict or "tell" people what they ought to do in that they would be better off conforming to the "directives" of that object than by attempting to make their own all things considered judgment of the balance of reasons. This point is supposed to underline the problem I mentioned above: that there is a difference between the obligations that the normal justification thesis generates and the kind of obligations that the law is claiming. It would seem that the normal justification thesis turns into an absurd grounding for authoritative obligations if it would produce *equal* obligations either from an inanimate object or a person, so long as they are both providing protected reasons.

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[101] Perry also points out that while the law can sometimes be correct in telling one what to do, this is not the same thing as the law having *normative power* to change my moral situation. In other words, he remains skeptical about the "gap" between commands and the normative power.

[102] Ibid, 281, N. 34.

One of the final points that Perry makes is that, following from the above problems, if the protected reasons that result from the normal justification thesis are in fact obligations, then this clashes with the obligations that the law claims to place us under. Perry writes that the law "not only [regards] me as being under an obligation, it regards me as owing that obligation to the government or community or state….legal authorities regard themselves as having a right to demand compliance with the law."[103] The point is that political obligation is supposed to generate obligations towards others. It is a "directed" obligation, towards persons, corporate entities, and the like; it is a duty to someone to do something. The question, then, is how Raz's account can generate these kinds of "other directed" duties. Perry rejects the normative and moral weight that Raz attempts to shift onto the normal justification thesis. In the end, while Perry agrees that the normal justification thesis can give rise to reasons for action that would otherwise not exist, he does not think that Raz's conception captures the correct relationship between reasons, authorities, and their subjects.[104]

§4.4. Response

I now turn to some criticisms of Perry's arguments against Raz. My first problem is with Perry's cod fisherman example. In that thought experiment he claims that Raz's view would entail that, when the government issues new directives regarding how to best maximize the cod stocks, that the underlying moral reasons that the fisherman had to preserve their stock have been *replaced* by the directives. This is a misreading of Raz because Raz never claims that all protected reasons necessarily replace *all* the moral reasons in the balance of reasons. Rather, as Raz writes, "Exclusionary reasons…are simply reasons for acting in ways the full specification of which essentially refers to other reasons. They are reasons for not being motivated in one's

[103] Ibid, 282-283.
[104] Ibid, 278.

action by certain (valid) considerations. They are not reasons for not conforming with the reasons. They exclude reasons from being one's motivation for action, but the excluded reasons may be conformed to, if they are conformed to through compliance with other non-excluded reasons."[105] In the case of the cod fishermen, while the authoritative directive is meant to replace their independent judgment on the subject with the authority's judgment, this does not mean that they cannot *think* about the reasons, but only that they should not act on them. So, the new directive does *not* replace all of the previously existing moral reasons for action; in fact, according to Raz, the excluded reasons are still *conformed* to insofar as they were valid reasons for action that pointed to a conclusion, and that conclusion is attained by the exclusionary reasons, then they are still being *met*.

But Perry will still object that the kind of duty that is supposedly generated—a duty to obey the laws of the state because the fishermen would be in better conformity with right reason—cannot be accounted for on Raz's view. Return to the example of promise giving. By giving a promise, one generates a protected reason for action, which in turn entails a duty to act on that promise because one should conform to the reasons that apply to oneself. In the case of the state issuing laws, we might reasonably claim that we have duties (reasons that apply to us) to the community at large prior to the issuance of the law. As Rosen puts it, we might have "antecedent obligations" prior to the law, and thus, it is possible that by obeying the laws we do not have an obligation "owed to the lawgiver *qua lawgiver*" but rather to the community at large.[106] Thus, Rosen concludes that one can conform to Razian authority and still be acting, or duty bound to act, towards others, even though the main point of Razian authority is to put oneself into conformity to right reason. In short, it is this very conformity to right reason that will, contingent

[105] *PRN*, 185.
[106] Rosen, 301.

upon the situation, generate a duty to *others*, even if this "duty" is not a unique moral obligation distinct from conformity to right reason.

I also think that Perry somewhat misreads Raz when it comes to the kinds of obligations between friends as opposed to the obligations that arise from legitimate authorities. Raz distinguishes between two kinds of advice. On the one hand is the advice that one receives from someone one regards as an authority on facts, and this is opposed to the advice someone receives from a person *in authority*.[107] The first kind of advice consists of suggestions that are in the normal balance of reasons. The second kind of advice can be considered authoritative "only if it is to be regarded as a view which ought to be followed despite one's inability to assess its soundness. This is the case when the advice is based on information or experience which the adviser cannot or will not share with us."[108] This kind of advice generates protected reasons. We can see from the above passage that it is only when advice is given from an authority that it generates protected reasons. Now, Perry takes the idea that advice between friends can generate exclusionary reasons and claims that the friend, by giving the exclusionary reason has "obligated" the other friend. It is sometimes the case that we receive authoritative advice from friends over and above advice about facts, but when this occurs it is, I think, a different mode of communication than friendship. When we are seeking authoritative advice it is not the same kind of experience as a normal conversation between friends. Just like a person can "switch" personas between work and home, so to can our interpersonal relationships shift gears when certain modes of conversation are being engaged in. The difference between the two modes is that, in one, one is seeking and accepting authoritative advice, which one must act on to conform to right reason. In the other, one is perhaps just seeking some first-order reasons to consider on one's own.

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[107] *PRN*, 63.
[108] *Ibid*, 63.

Perry also claimed that one flaw in the normal justification thesis is that obligations can be generated by inanimate objects (assuming the inanimate object accurately picks out the reasons that bind to people). Perry's larger point is not about the normative power of inanimate objects but rather the fact that the reasons generated by the normal justification thesis "are really just a special case of a much broader category of epistemically-oriented reasons that has nothing in particular to do with the concept of authority."[109] I think this is wrong. I agree with Perry that nothing Raz has said refutes the idea that something inanimate could theoretically give exclusionary reasons, but I still think that this possibility is not one that Raz's would endorse. Authority, for Raz, is necessary to facilitate right reason. The "epistemic problem" that authorities solve is that they give us reasons for action that accurately reflect (or attempt to accurately reflect) the reasons that apply to us. It is a fact that many of us are simply not in a position to weigh the all-things-considered balance of reasons at any given point in time. In short, most of us simply could not, rationally speaking, reach a proper conclusion about, say, how to best approach the problem of nuclear waste disposal.

It might still be objected that while this epistemic element of the role of authority in decision making is quite clear, that this does not account for the normative force of the authority. Once again, Raz would claim that conformity to reason is inherently normative. By providing people with protected reasons, authorities are placing people in conformity with right reason (assuming there is no clear mistake), and thus, while there is an epistemic element involved, the fact that one is acting on those reasons is inherently normative. This does not, of course, necessarily entail that one is obligated to the authority, but one will be *conforming* to the authoritative directive in a way that is inherently normative.

[109] Ibid, 281.

Furthermore, I do not think that, in the end, the "entrails objection" stands because the very concept of authority for Raz must be from something *capable* of *claiming authority*. Raz states that, "[the law] must be capable of being authoritative. In particular it must be, or be presented as, someone's view on what the subjects ought to do, and it must be identifiable by means *which are independent of the considerations the authority should decide upon*."[110] Furthermore, he writes that "what cannot communicate with people cannot have authority over them. Trees cannot have authority over people. But someone whose awareness of what trees are is incomplete, a young child, for example, can claim that they do have authority. He is simply wrong….Notice, however, that one cannot sincerely claim that someone who is conceptually incapable of having authority has authority if one understands the nature of one's claim and of the person of whom it is made."[111] Entrails, trees, the stars, and my Ouija board all may have some consistent and purely coincidental correlation between my "polling" them for what I ought to do, and what actions turn out to be the best all-things-considered. But this does not, it *cannot*, make these things "authorities." It is not merely a matter of a thing "giving" reasons, but of a person giving reasons which are dependent and protected.

Of course, one might still object that there is something wrong in claiming that only persons (or the normative systems set up and directed by persons) can have authority. It is my claim that, in part, what Raz is claiming is that to be an authority, conceptually speaking, one must be a person, who has certain intentions—and that this is something entrails cannot have. But if the entrails facilitate right reason, then why is this not sufficient for the entrails being an authority under the service conception? I think, in the end, it comes down to the fact that there

[110] *Ethics in the Public Domain*, 221.
[111] *Ibid*, 217.

must be a *person* doing the interpretation of what the entrails are "saying." This is why no inanimate objects could be an authority. For any inanimate object, there will be some person who interprets the message, and then issues some directive. This really amounts to some person being an authority, not the inanimate object.

But it might still be objected that the problem is that the *law* isn't a person. The law, this objection would claim, is an abstract collection of norms issued by persons and interpreted by persons. And because of this fact about the law, there might be room for the entrails having authority in either or both of two ways: (1) perhaps the *law* needs to claim authority, but other things, in having authority, needn't be in a position to *claim* it. This objection would work against Raz if in fact Raz held the view that the authority of law and the authority of persons are fundamentally distinct. He doesn't hold this view. The conceptual framework for the authority of persons is the same conceptual framework for the authority of the law.[112] Raz thinks that both persons and the law must be capable of possessing and claiming authority if they are to be legitimate authorities. Another objection might be that God is speaking through the bird entrails, and thus, the entrails are "authoritative" because they are the voice of god. I still think this rests on a person doing an interpretation of the message from the guts, and that, therefore, the scenario is best understood as a person claiming authority (after all, the person doing the interpreting would then be "the messenger" of God, and would therefore be claiming some kind of authority. A third objection is that, at the end of the day, any authority's authoritativeness is a function of

[112] Raz writes, "I will assume that necessarily law, every legal system which is in force anywhere, has *de facto* authority. That entails that the law either claims that it possesses legitimate authority or is held to posses it, or both. I shall argue that, although a legal system may not have legitimate authority, or though its legitimate authority may not be as extensive as it claims, every legal system claims that it possess legitimate authority. If the claim to authority is part of the nature of law, then whatever else the law is it must be capable of possessing authority…it must possess all the other features of authority, or else it would be odd to say that it claims authority" (Raz, *Ethics in the Public Domain*, 215).

how and whether or not those norm subjects supposedly bound by it do better by treating it *as* an authority. That doesn't require that they regard it as a source of claims for obedience. Or, more sharply, they can take whatever they'd like as an authority provided in doing so they better satisfy the reasons that bind to them. So if reading the entrails as having a certain authoritative meaning has the appropriate effect then it would see that those entrails have authority. I think what this example highlights is that doing this would still entail that person's independent judgment on the balance of reasons, and would thus not count as an authority relation. People who claim that their shirt puts them into conformity with the balance of reasons are a) delusional, insofar as the shirt cannot "tell" them what to do—they are "telling" themselves what to do and then claiming that it is coming from some outside source, and b) not really engaged in an authority relation because authority relations are inherent, according to Raz, to persons making certain kinds of claims that are aimed at eliciting a certain behavioral response on the part of other persons.[113]

The question then becomes, assuming the prior point is sound, "what is it about persons (and institutions) that makes their protected reasons authoritative?" My suggestion is that the *intentions* of the authority are what make the difference between persons giving commands and inanimate objects that are "putting people" in conformity with right reason. Simply put, authorities are there in order to, at least in part, facilitate right reason (authorities, of course, are also often concerned with more base pursuits, such as getting more power), and this intent to create directives aimed at the betterment of a state, or the production of a more just legal system, are aimed at by a sentient being. Raz writes, "a directive can be authoritatively binding only if it

[113] Thanks to A.I. Cohen for bringing up these objections.

is, or is at least presented as, someone's view of how its subjects ought to behave."[114] This means that the "directives" issuing from the entrails would not be of the same kind as properly authoritative directives.

Finally, I would like to quickly address the "clash" between the normal justification thesis and the concept of authority which the law possesses. It is difficult to attribute to Raz any definitive view here. He does seem to think that his concept of authority is the concept that the law holds, but Perry rightfully points out that this clashes with the authority the law claims—at least insofar as the law is claiming a far greater scope of normative power than Raz's view grants it. Simply put, if Raz is correct about how legitimate authority works, then it does not really matter what conception the law has of itself. If, after all, the law can be wrong when it comes to the relevant reasons that bind to their subjects, then why can it not be similarly wrong about the scope of its power? Raz's view will be, in that case, the "correct" view, and it will just so happen to be that the world does not match up to that view.[115] It is one thing to make the claim that the law presents itself as categorically authoritative, and quite another to say that just because the law presents itself this way that the normal justification thesis is the incorrect view to hold. In final analysis, I think that Perry levels some serious criticisms at Raz, but he fails to deal a fatal blow to his service conception. If the main problem comes down to the fact that there is vagueness in explaining the "gap" between commands and obligations, insofar as there appears to be a problem with "other directedness" on Raz's view, then it seems that this is the same problem that *every* view on authority (exempting those like Ladenson who do not argue for

[114] *Ibid*, 218.

[115] For interesting discussion about the potential for there to be multiple concepts of authority within a society, and how Raz might handle this, see Bix (2005), "Raz, Authority, and Conceptual Analysis." Raz also briefly discusses this point in his (2006) article "The Problem of Authority: Revisiting the Service Conception."

correlative duties to obey) has to deal with. But I also think that the problems I have pointed to in Perry's account are enough to cast some doubt on the strength of the criticisms Perry puts forth against Raz.

CHAPTER FIVE

CONCLUSION

§5.1. Recap

In this essay, I framed the debate over authority as one that has attempted to answer several important questions regarding the concept of authority. Among those questions were ones involving the relationship between authorities and the people subject to their directives, the duties that might follow from authoritative directives, what, other than giving commands, authorities do, and the supposed conflicts among reason, autonomy, and authority. I showed that there are different kinds of authority that stem from an "in" and "an" distinction (although one can be both "in" and "an" authority). I narrowed the discussion of the debate over authority to one prominent philosopher's attempt to resolve these questions, namely, Joseph Raz and his service conception of authority.

Raz bases authority on his system of practical reasoning, which holds that the reasons that bind to you have a normative force (similar to how we think about moral "oughts"). Furthermore, the reasons that bind to you are of two kinds: first and second-order. First order reasons are the reasons that normally apply to you in the balance of reasons for or against any action or decision. Second-order reasons are reasons to either act on first-order reasons or to *exclude* consideration (for action) of certain reasons. Based on this discussion, we saw that Raz conceives of authorities and their authoritative utterances as having a certain special combination of both first and second-order reasons. Thus, when one recognizes someone as in authority, and if that authority is issuing directives that put that one in a better position to comply with the reasons that bind them, then it follows that a duty to obey that directive is generated. The duty to obey the directives of authorities only follows if, in fact, the directives are reasons that apply to

you *and* you would, all things considered, do better in conforming to the balance of reasons by taking the directive as protected. But sometimes individuals are better off not acting on authoritative directives, and this is because sometimes people are situated to know the balance of reasons better than the authority issuing the directive. Consequently, Raz does not think that there is such a thing as a universal duty to obey the law (although he admits of the conceptual possibility that this could be the case).

I then presented several challenges to this view of authority. The first challenge came from Robert Ladenson. Ladenson paints a portrait of authority that derives from the unique monopoly on power that any government must have. The main worry, for Ladenson, is how we are to understand why it is that this kind of monopoly on power can be justified. Taking a Hobbesian approach, Ladenson claims that people would assent to such a dominant power to avoid the negative aspects of the state of nature. Thus, Ladenson concludes that we need not concern ourselves with the question of a duty to obey the law because we can coherently talk about the government that is legitimate in terms of justification and not claim-rights. Raz rejects this as a naïve position. He thinks that the world in which judges issue decrees without the claim of a presumptive duty to obey is incoherent. I then put forth an argument by Buchanan in which he claims, similarly to Ladenson, that legitimacy and authoritativeness, rather than authority, should be the main concerns of political theory. Buchanan thinks that the normative powers of a legitimate and authoritative government can be understood without foisting a duty to obey on the discussion. I responded to this view, for Raz, by claiming that the conceptual point still stands: regardless of whether there is *in fact* a duty to obey being generated, the nature of authorities (and the same goes for the "authority of law") is in *claiming* that they are generating a duty to obey; authorities and the law both take the internal point of view. However, I think that these

views can coexist. Raz is willing to concede that there might be no duty to obey, and furthermore, it seems plausible that he would agree that the authoritativeness of the law and authority matter more than getting to some absolute duty to obey. Thus, I think so long as Buchanan would concede that it is part of the *concept* of authority that their directives are meant to generate a duty to obey—even if in fact they do not—then the two views could coexist.

The second critic whom I dealt with was Stephen Perry, who specifically attacked the normal justification thesis of Raz's service conception. Specifically, he critiques the ability of the normal justification thesis to generate binding reasons for action. One objection to Raz that Perry voices is that the normal justification thesis could, theoretically, entail people having to take as a binding authoritative directive a "command" from inanimate objects. After all, if the inanimate object has reliably produced results that put one in to conformity with the balance of reasons, then we should take its "reasons" as authoritative. But this objection does not stand because Raz claims that only entities capable of *claiming* authority can give us exclusionary reasons. Perry also thinks that Raz's view does not explain the normative "gap" between commands or directives and action, insofar as we normally think of obligations as being "other-directed." This, I concede, is a problem, but it is really a problem bigger than Raz's theory. It is, for instance, a problem in *any* account of moral or normative force coming from outside of oneself. Raz would answer, however, that in acting on right reason, one is acting on the reasons that bind to oneself, and that by doing this, one will generate a duty towards others. He would admit, I think, that there is no other, more robust, sense of obligation necessary for his concept of authority.

§5.2. Remaining Problems for Raz

I have provided what I take to be Razian responses to some of Raz's critics. I would now like to voice some larger concerns if Raz's view of authority is to remain a viable explanatory

option for the concept of authority. First, I would like to address some of the concerns about the "gap" between commands and actions. In his book *Democratic Authority* David Estlund argues against what he calls "the expert/boss fallacy."This objection holds that "one person's having the truth does not, by itself, warrant their political authority over those who do not."[116] This line of critique further implies that merely in virtue of being an expert, someone's authoritative utterances do not necessarily entail any kind of normative bindingness on the subject of the directive. I take this to be a similar charge to the one that Perry is making. Namely, Raz's view seems to place too much power in the hands of experts. What is it about expertise that should generate these binding duties?

I think Raz might answer this objection something like this: 1) while expertise is important, it is not the whole story. Much of the normative force of any command or directive is going to involve the individual who is being directed by the authority engaging in some kind of assessment of the directive in order to see if it, in fact, matches up with the balance of reasons. If the person takes the directive as authoritative, then it will be a protected reason for action. But merely in virtue of being an authority, it is not implied that the person being directed surrenders their own judgment of the reasons for action. 2) Worries about autonomy because of expert rule seem unfounded because the *scope* of any particular authority is going to be limited. The legislature might set the rules by which you can engage or seek certain services, but people have a wide range of discretion in choosing which actions or activities to engage in. 3) why is it so mysterious that someone who knows better than you, *and is in a position of political authority* should be able to issue binding directives? Raz isn't even saying that this is an absolute—there is

[116] Estlund, David (2008). *Democratic Authority: A Philosophical Framework*. Princeton University Press, Princeton, N.J. 22.

not necessarily a duty to obey the directives. My worry with the expert/boss fallacy is that it could end up going more toward a Wolffian conception of authority and action that places far too much primacy on individual choice. Raz would just say that sometimes, perhaps even often, perhaps even *always*, one will be in better conformity with the reasons that apply to oneself by acting on protected reasons issued from experts or those in authority. I don't know the salient facts about the economic crises. I can be engaged in the debate, I can be informed, but there is no way I will know what to do *better than* the secretary of the treasury. I should take the economic plan issued by the government as a protected reason for action *even if* I judge it, with my limited knowledge of the relevant reasons, as wrong.

Professor Edmundson objected to this claim in an e-mail exchange. He wrote, "I think you do know the salient facts (i.e., the facts that stick out), but never mind that. What I don't know about is the inference from Secretary Geithner's expertise to taking the administration plan as a protected reason for action (never mind what action that might be...surely not giving back a bonus!). Paul Krugman, Nobel-winning economist at Princeton and columnist for the New York Times is an expert, too, and he compares the administration plan to rearranging the deck chairs on the Titanic. We can't take both Geithner's say-so and Krugman's say-so as protected reasons, can we? Maybe we can, and the Geithner reason excludes acting on the Krugman reasons and the Krugman reasons exclude acting on the Geithner reasons. But this presumably means we can't act on either set of reasons—a harmless position for me, but not good for the President to be in. What ought he to do? Be expert enough to choose which expert to follow? Or is he left free to break the tie (and avoid becoming a Buridan's ass) by acting on any reason whatever to decide which expert's exclusionary reasons to let register? But, surely, an expert's exclusionary reasons exclude acting on impertinent reasons...and they already exclude acting on pertinent

reasons...so...what does that leave? Experts and practical authorities, on the Razian account, seem to suck all the rational air out of the room."[117]

I agree that this situation is problematic at best, and I think that conflicts in exclusionary reasons are, as I address below, one of the fundamental problems in Raz's theory. I do think, however, that Raz can attempt to answer this. Here is how the response would go: while many of us know the salient facts, the "facts that stick out," for instance, banks were harboring large amounts of "toxic assets," and that our debt levels are at the highest point since world war two, not many of us *understand* what is going on. It is one thing to read the *New York Times* and opine about the stupidity of Wall St. bankers, and quite another to fully understand the import of those salient facts. Furthermore, the economic situation (especially the international banking system) is so complex that I would venture to say that even many of us who have had economic training (say, taking a few economics courses) are in no position to actually form a legitimate judgment about what we ought to do. This means that the say-so of experts is going to have to play some fundamental role in the solution to the problems we face, and that most people ought to take those expert statements as protected reasons. Edmundson rightly pushes on this notion by creating something of a *reductio* argument. The claim is that there are *too many* experts with conflicting claims to know which ones we ought to take as the "absolute" authoritative stance on the subject, and that Raz's view then is pushed into an absurd, or perhaps arbitrary, position of either not being able to choose which expert statements to take as authoritative or to make some arbitrary decision.

I think part of the solution would come in weeding out obviously false views, unreasonably ideologically or politically biased solutions and the like as clear mistakes. Glenn

[117] E-mail exchange dated Tuesday, March 31st, 2009.

Beck's opinion simply does not count. The important thing, I think, is that Obama recognizes his hand-picked people as *the* experts to consult. This instantly narrows the scope of the expert opinions he would have to consider. At the end of the day, the choice about which plan to follow is Obama's, and here I think is the real meat of the Razian solution: from Obama's point of view, he is receiving expert advice that is merely adding reasons into the balance of reasons. If this is the case then there would not necessarily be conflicts in exclusionary reasons because the advice he is receiving is not excluding consideration of all of the relevant reasons Obama has for action. Of course, Obama might favor the counsel of one economic advisor to another, and would therefore be taking an exclusionary stance to the statements coming from that person—but this would mean that there isn't a deep conflict for Obama between exclusionary reasons because he is not forced to take into account every expert statement. Of course, those of us looking in from the outside might judge the decisions made by Obama as bad, but this does not mean that we would not be bound to act on them.

Another, perhaps more fundamental, problem for Raz is the status of second-order, and, specifically, exclusionary reasons. Raz develops exclusionary reasons to provide an explanation for why it is that acting on authoritative directives does not violate reason or autonomy. And yet, exclusionary reasons remain rather mysterious. For instance, there seems to be a tension in the explanation of the relation between competing second-order reasons. It is easy to imagine a scenario in which *competing* exclusionary reasons arise. What if I have been commanded to X by a superior officer, but there is a standing order by another officer, of equal rank, to not X? What if I promise to Y, thereby generating a positive second order reason to Y, but there is a rule in place by the government to not Y? The problem is that exclusionary reasons are supposed to be *weightless*. Exclusionary reasons are *not* one more reason in the balance of first-order reasons,

they are supposed to support or exclude acting on certain otherwise germane reasons. But what about when exclusionary reasons conflict? And don't these conflicts occur very frequently (say, between social norms, laws, and promises)? How are we supposed to resolve these conflicts without appealing to weight?

Another problem comes with Raz's refusal to concede that there is a universal duty to obey. Raz thinks that, for the most part, we have reason to take political authorities directives as protected. But, he also thinks that, *if* you know better, then there is no duty to obey that directive. This seems to require us to not only assess all of the reasons given to us, but also to *act* on that judgment regardless of the authoritative directive. If, after weighing up the reasons involved for any action, one then decides that the authority knows better, *then* one is obligated to obey.[118] But this introduces a problematic voluntarism into the account. Authorities are supposed to be able to bind you regardless of your consent, otherwise certain social coordination problems couldn't be solved (minimally). Raz rejects the primacy of consent theories, and this is partly why he does not think there is a universal duty to obey.[119] If, however, his theory collapses back into a consent account, then he is in trouble. Raz, of course, thinks that by acting on authoritative directives then one will be acting in conformity with right reason. Acting in accordance with right reason is the goal for Raz, and this is a large part of why authorities are justified. My point is that there are still steps that one takes independently of the authority to judge the balance of reasons, and that this might entail that individuals must, in some sense, "consent" to the

[118] Part of the authority relation, for Raz, is the recognition of someone as an authority. So, at least in some minimal sense, one is "deciding" to take someone else as an authority (and this might entail that the authoritative utterances then issues result in duties to obey).

[119] Raz does not think that one cannot be bound by consent. He thinks that it is just highly implausible that everyone in a particular society gives direct consent to all the laws and rules of that society. See Chapter sixteen of *Ethics in the Public Domain*, entitled "Government by Consent" for more detail.

protected reasons of the authority in order to act on them (even if the individuals involved would be better off blindly accepting them). This seems, I think, to be problematically voluntarist.

I think the only viable way to respond to this is to provide a full logical account of the relation between second and first-order reasons. Without this, Raz's theory seems to run into the same problems that are familiar from the act/rule utilitarianism debate. Essentially, rule utilitarianism collapses back into act utilitarianism, and, similarly, second-order reasons collapse back into merely one other (perhaps weightier) reason in the overall balance of reasons. Unless Raz can provide a response for this, then his theory is in danger of losing its explanatory force.

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