

*University of Southern California Law
School*

Legal Studies Working Paper Series

Year 2010

Paper 66

The Dilemma of Authority

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The Dilemma of Authority

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Abstract

The normal way to establish that a person has authority over another requires a rule-governed institutional setting. To have authority is to have power, in the juridical sense of the term, and power can only be conferred by norms constituting it. Power conferring norms are essentially institutional, and the obligation to comply with a legitimate authority's decree is, first and foremost, institutional in nature. Thus, the main argument presented in this essay is that an explanation of practical authorities is a two-stage affair: the special, practical import of an authority can only be explained on the background of an institutional setting which constitutes the authority's power and the corresponding obligation to comply. However, this obligation is not an all things considered obligation, it is conditioned on reasons to participate in the relevant institution or practice. A complete account of the reasons to regard authoritative decisions as binding must also rely on the reasons for having the institution or practice in question and the kind of authoritative structure that it has. This argument is presented here on the background of a critique of two alternative accounts, Joseph Raz's service conception of authority and Stephen Darwall's second personal standpoint account.

The Dilemma of Authority

Andrei Marmor

The main argument of this essay is that explaining the reasons for complying with a practical authority's directives is a two-stage affair: the special, practical import of a practical authority's directive can only be explained on the background of a social or institutional setting that constitutes the authority's power and the corresponding obligation of its subjects to comply. However, this obligation is conditioned on the subjects' reasons to cooperatively participate in the relevant institution or social practice. A complete account of the reasons to regard authoritative decisions as binding must also rely on the reasons for having the institution or practice in question and the kind of authoritative structure that it has. My main point, however, is to show that there must be some social/institutional setting that mediates between the general reasons for having the relevant kind of authority, and the practical difference that the authority makes on particular occasions.

The Initial Dilemma

Consider the kind of claims legal authorities typically make: when the law requires you to do (or refrain from doing) something, it conveys a twofold message: you *ought* to do it, and you ought to do it *because the law says so*. This type of message demonstrates the intuitive features that we tend to associate with practical authorities in general. First, a practical authority is there to make a difference to the reasons for action its subjects have. Second, this difference typically consists of a duty or an obligation, in some relevant sense, to do whatever it is that the authority prescribes. Finally, this obligation is supposed to follow from the "say so" of the authority; you ought to do it (at least in part) *because* the authority says so.

The age old question that arises here is, why would one ever have an obligation to do something on the say so of another? However, even if we bracket, for now, the obligatory nature of the reasons to comply with a practical authority, a dilemma presents itself: Suppose that A is a putative authority *vis a vis* B and directs B to φ in context C. Now, either there are valid reasons for B to φ in C, that is, *independently* of A's instruction, or there are no

such reasons.¹ If there are independent reasons for B to φ in context C, A's instruction would seem to make no practical difference. Perhaps A's instruction would have an epistemic value, pointing out to B the reasons to φ that apply. But then the reasons to φ would not depend on the say so of A. On the other hand, if B has no reasons to φ (in C) independently of A's instruction, how can A's say so *create* such a reason?

In other words, either an authoritative directive identifies reasons for action its subjects have anyway, regardless of the authority's directive, or else the directive purports to constitute such reasons. The former option makes it difficult to explain what practical difference authorities make, and why their say so matters. The latter option makes it difficult to explain how an authoritative directive can constitute a reason for action without assuming in advance, as it were, that one ought comply with the authority's directives.

Admittedly, there must be something questionable about this dilemma. After all, there are familiar cases in which instructions, requests, or demands, make perfect sense; we often have reasons to do something on the say so of another. Let me mention three of such cases, to see if they can point to the direction in which the dilemma of authority can be solved.

First, it is sometimes the case that our reasons for action are incomplete or underdetermined, and the say so of another may provide the requisite completion or concretization of the reasons for action that apply. A clear example is the case of a coordination problem: a number of agents may have a reason to act in concert with each other in a given context; this may be achieved by, say, either doing φ or Ψ , depending on which option the others follow. In such cases, before a particular option is picked, the relevant agents would have an incomplete reason for action, that is, a reason to do either φ or Ψ , depending on the choice to be made. By having somebody make the choice between φ and Ψ , the reason for action is completed. Thus, if somebody is in a position to communicate a credible decision to the parties concerned say, to do Ψ , then the relevant agents would now have a complete reason to Ψ . So there is a sense here in which people would have a perfectly sensible reason to do something on the say so of another. And it is quite relevant to one important role that practical authorities have. Often practical authorities are there to solve a collective action problem for their subjects. Consider, for instance, the reasons to pay taxes. In a well ordered society, we may all have a reason to pay taxes, that is, regardless of any authoritative requirement to do so; however,

¹ I will, actually, qualify this statement in a moment.

before it is authoritatively determined who has to pay and how much, etc., our reasons for action are incomplete. The role of the political authorities here can be seen as one of completing, or determining, the reason, by specifying how much each of us has to pay, under what conditions, etc.

Undoubtedly, the role of specifying or concretizing incomplete or underdetermined reasons for action, is *one* of the main roles practical authorities are there to fulfill, and when they do so, in an appropriate way, the reasons to comply are fairly obvious. The question is how much can we generalize from these cases; and the answer is that not enough. Practical authorities, in the political domain and elsewhere, certainly purport to guide the conduct of their putative subjects in many areas, and numerous contexts, in which the relevant reasons for action that apply to the subjects are not incomplete or underdetermined. Now of course it is possible to argue that regardless of the scope of power practical authorities claim to have, their *legitimacy* is confined to those cases in which their role is to complete or concretize reasons for action in the way described here. But such a conclusion would be premature, at best. Perhaps, at the end of the day, we will have to agree with that. But for now, I will assume (together with most of those who write on the subject) that authorities can be legitimate even if the relevant reasons for action are not incomplete or underdetermined.

Thus, consider another familiar type of cases in which we seem to have a reason for action on the say so of another, namely, those where we follow expert advice. Consider, for example, the case of a financial expert advising you on how to invest your money. There is a sense here in which you have a reason to do something because the expert tells you to do it. Undoubtedly, however, the reasons you may have for following the expert advice are both conditional and epistemic in nature: You regard the expert's advice as a reason for action, but only because following it serves certain goals you have, and to the extent that the expert's advice is guidance for truth. That is, the truth about the reasons that apply to you anyway, given your goals, regardless of the role of the expert.

Finally, consider the case of a request of a friend. Suppose, for example, that you ask a friend to help you out with a certain task, say, move a heavy piece of furniture to another room. You would rightly expect the friend to realize that he has a reason to help, and this reason crucially depends on the fact that it stems from your request. You are not suggesting to your friend that he has a reason to move the furniture independently of your request, whether

you ask him to do it or not.² On the contrary, the fact that *you* ask him to do it, is something that should figure in his reasons for action; it is part of what we take the appropriate response to such cases to be.

Now, one might suspect that neither of these last two examples of acting on the say so of another (namely, expert advice and request) holds the key to the solution of the dilemma of authority. I will come to agree with that. But the fact is that both ideas have influential proponents in the literature, and it is worth seeing in some detail the difficulties that these models face. One model or, rather, something close to it, is Raz's famous service conception of authority, which basically endorses the first, epistemic, horn of the dilemma of authority. (I suspect that Raz would resist the characterization of his service conception of authority as an epistemic model. Part of my argument here is, however, that it is difficult to resist this characterization.) The second model is Darwall's second-personal conception of authoritative reasons for action. I will take up these two conceptions in turn. I should say, however, that there is a third conception, widely discussed in the literature, that purports to ground the legitimacy of authorities in the idea of consent or, rather, some notion hypothetical consent. My discussion in this essay will not include consent based theories of authority. At least not directly; at the end of the article I will say something about the relevance of voluntarism in the context of the argument suggested here, and I will try to show that in *some cases*, consent does play a significant role in explaining the legitimacy of practical authorities.

The Service Conception of Authority

Raz's main insight is that it is rational to act on the say so of another when doing so would make it more likely that one complies with the reasons that apply under the relevant circumstances. In this insight Raz sees the main rationale of complying with authoritative decrees, which he calls the *Normal Justification Thesis* (henceforth NJT): Authorities are there to provide a service, in making it more likely that its subjects act on the right reasons that apply to them under the circumstances by following the authoritative directives than by trying to figure out those reasons, or act on them, by themselves.³ Furthermore,

² Two caveats may be in place here: First, requests do not always have to be communicated, of course. In fact, sometimes the need to communicate a request is a sign of failure, the other party should have realized the need for help without being asked to. Nor am I suggesting that requests always create a reason for action.

³ *The Morality of Freedom*, at 53. Over the years Raz added many clarifications and some conditions to his account of the NJT. (See, for example, *Ethics in the Public Domain*, ch 9,

Raz takes the rationale of the *NJT* to entail that reasons for complying with an authority's directive (assuming it meets the requirement of the *NJT*) are both of a *pre-emptive* nature and constitute *protected reasons*:

“The fact that an authority requires performance of an 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 replace some of them.”⁴

Therefore, an authoritative directive constitutes what Raz calls *protected reasons*: a protected reason to φ is a “*first order reason to φ and an exclusionary reason not to fail to φ for a certain range of excluded reasons.*”⁵

The idea is that a legitimate authority is expected to consider the relevant reasons that apply to its subjects; its legitimacy depends on adequately weighing those underlying reasons (or “dependent reasons”, as Raz calls them) and concluding for the subjects what reasons for action they ought to follow.⁶ If this general condition is met, the authoritative directive *preempts* the reasons the authority ought to have relied upon: If the whole point of complying with an authority's directive consists in the fact that the subject is more likely to act correctly by following the authoritative directive than by trying to figure it out for himself, then it would make no sense to regard the authoritative directive as providing the subject with *an additional* reason for action to be balanced against other reasons. The authoritative directive is there to replace the subjects' decision how to act – up to a point, of course -- precisely because it is more likely that the subjects would act on the right reasons if they follow the authority's decree than if they try to act on their own. Thus, an authoritative directive constitutes both preemptive and protected reasons: the directive is there to replace reasons for action subjects would have had, and the reason for action constituted by an authoritative directive is both a first order reason for

Between Authority and Interpretation, ch 5) The essential thesis, however, and the basic idea of the service conception, has not changed.

⁴ Raz, *Ethics in the Public Domain*, at 198.

⁵ “On Respect, Authority and Neutrality: A Response”, at 298. As far as I can tell, Raz has not been entirely consistent over the years about the use of the terms preemptive and protective reasons; I use here the terminology he employs in this most recent article. Thus, the way I understand these terms, preemptive refers to the idea that an authoritative directive is there to replace the subjects reasons for action, which *entails* that the reasons constituted by the directive are protected reasons. For a detailed account of Raz's concept of exclusionary reasons see his *Practical Reasons and Norms*.

⁶ In fact, I am not sure that Raz requires authorities to consider the underlying reasons, perhaps it is enough that their decision conforms to those reasons. Nothing in what follows depends on the correct answer to this.

action and exclusionary reasons not to fail to act as prescribed for a certain range or category of potentially conflicting reasons. (From now on, I will call both of these related features the *preemption thesis*.)

I have no doubt that Raz's service conception of authority is very important, and that it may provide some general framework for the legitimacy conditions of practical authorities. In fact, the generality of the service conception is one of its main strengths. But, as I will try to show here, the service conception, by itself, does not quite solve the dilemma of authority. Let us consider some of the difficulties, step by step.

Consider again the case of the financial expert. Presumably, one has a reason to invest one's money prudently. Clearly, the whole point of following the advice of a trusted expert is to make it more likely that one complies with this reason. And this seems to be the rationale of the *NJT*: you are more likely to invest your money prudently by complying with the advice of the financial expert than by trying to figure out the best investment strategy by yourself. But that, of course, does not make the financial expert's advice authoritative in any meaningful sense.

Furthermore, the preemption thesis, which clearly applies here, does not make the recommendation of the financial expert obligatory. Perhaps there is a sense in which you ought to invest your money as the expert suggests (assuming that you ought to invest your money prudently), but this ought does not quite capture the kind of obligation we normally associate with reasons to comply with a legitimate authoritative directive. Here's another example: suppose you are lost in a foreign city, and ask for directions how to get to a certain place from a local person (or consult your GPS device, for that matter). It is perfectly sensible to treat the directions you get as preemptive reasons for action, not as reasons to be added to the balance of reasons you may have; after all, you don't know how to get to where you want, and the local person is likely to know. Therefore, as long as you have no reasons to suspect that the local person is leading you astray, her directions also constitute protected reasons: a first order reason to do as she suggests, and exclusionary reasons not to fail to act on her suggestion for a certain range of possible conflicting reasons. However, the fact that the directions you get should to be treated as preemptive & protective reasons does not make it obligatory for you to follow the instructions. There is no obligation to comply with the advice of the local person, even if it is perfectly rational to do as they advise.

In short, the preemption thesis does not entail, by itself, that the relevant reasons are obligatory. Raz does not deny this. In fact, Raz explicitly

concedes that protective reasons amount to an obligation only when they are based on “categorical reasons, that is, ones whose application is not conditional on the agent’s inclinations or preferences, and so on...”⁷ In other words, the distinction between cases in which one would have protected reasons for action, namely, a combination of first order reasons and exclusionary reasons, and those cases in which such protected reasons amount to an obligation, is one that pertains to the type of reasons in play. Obligations are based on reasons that do not depend on the subjective goals or preferences of the agent. And this would explain why following expert advice, or getting directions from a local person, etc., would not constitute an obligation to do as advised. It is not an obligation because the underlying reason to seek the advice is one that crucially depends on your own goals. There are no categorical reasons in play here (or so we assume).

As an explanation of what obligations are, I find this idea very appealing. Obligations, according to Raz, are constituted both by a structural element and by a substantive one; the structure of obligations consists in the idea that obligations are protected reasons: an obligation to φ is a first order reason to φ and an exclusionary reason not to fail to φ for a certain range of potentially conflicting reasons. The substantive element pertains to the nature of the reason to φ ; a set of protective reasons to φ amounts to an obligation to φ if and only if the reasons are categorical, namely, do not depend on the agent’s subjective goals or preferences. Or, as I would rather put it, the reasons are such that they concern the legitimate interests of others. But now the question is whether these tools allow us to explain what makes authoritative directives obligatory in the relevant sense, and I doubt that they do. The reason is simple: the rationale of the service conception of authority is sufficient to explain why authoritative directives that meet the conditions of the NJT are protected reasons; whether they are also obligations or not, would depend on the question of whether the reasons in play are categorical or not. But there is nothing in the service conception to suggest that an authoritative directive is legitimate if and only if it is based on categorical reasons.

Or perhaps there is; at one point, in his reply to Darwall, Raz suggests that the example of following the advice of a financial expert is not a counterexample to his thesis because the rationale of the “directive” is entirely conditional: if you want to achieve a certain goal.... then you ought to invest

⁷ “On Respect, Authority and Neutrality”, at p 291. This connection between duties and categorical reasons can be traced back to Raz’s much earlier writings, see his.... [from the Hacker collection]

your money in..... In other words, a financial expert is not an authority, Raz seems to suggest, precisely because the reasons the expert is there to decide upon are not categorical reasons, they are entirely conditional upon the subjective goals of the person seeking the advice.⁸

This would seem to suggest an important modification of the service conception of authorities. It suggests that we need to constrain the NJT by an additional condition: that it is based on categorical reasons. The result is that an authority is legitimate *iff* it makes it more likely that its subjects comply with *obligations* (*viz.*, not just reasons, generally) that apply to them by following the authoritative directive than by trying to figure out, or act, on those obligations by themselves. In other words, we get an obligation to comply at the conclusion because we input obligation in the premises; we can call it the “obligation in – obligation out” model.⁹

Indeed, this would explain why expert advice is not authoritative. There is nothing in the nature of expertise to suggest that the role of experts, as such, is to figure out the obligations that apply to those who seek their advice. On the other hand, it would make sense to suggest that it is the role of practical authorities to facilitate their subjects’ compliance with the obligations that apply to them. Which is to say that the NJT is further constrained by the requirement that it is based on categorical reasons. Admittedly, this modified version of the NJT does seem to make sense. But it still faces some difficulties.

First, consider, for example, a context in which X is under an obligation, let us assume a moral obligation, say, to his family, to invest his savings in a prudent and responsible way. That would still not make it the case that the financial expert who advises X on how to comply with his obligations becomes an authority *vis a vis* X.¹⁰ Perhaps this counterexample can be answered by pointing out that the role of the expert here is not to figure out whether the subject has an obligation, but only to guide the subject on how to comply with an obligation that is already established. But then, one might wonder, isn’t that the case with many authoritative directives as well?

More importantly, however, the “obligation in – obligation out” modification of the NJT doesn’t quite answer the dilemma of authority. It tilts

⁸ See “On Respect, Authority and Neutrality”, at 300-301. This is not the only reason Raz mentions for rejecting the idea that an expert is an authority.

⁹ A term I borrow from Scott Hershovitz, “The Role of Authorities”, forthcoming in *Philosophers Imprint*.

¹⁰ This example is not mine. As far as I know, it was presented in some draft or other circulated by Stephen Darwall some time ago, but I failed to find it in print.

the answer heavily towards the first horn of the dilemma, namely, towards the idea that the role of authorities is to figure out reasons that apply to its subjects anyway, albeit only a subset of such reasons, namely, those that amount to an obligation of some sort. But the puzzle about this horn of dilemma remains: if the obligations that apply to the subject are there anyway, regardless of the authority, what practical difference authoritative decisions make? In other words, the modified version of the *NJT* still retains an epistemic conception of the role of authorities, which makes it difficult to explain why the say so of an authority matters.

Furthermore, the more you tie the rationale of complying with an authority's directives to epistemic considerations, the more difficult it becomes to explain those cases in which the subjects would have an obligation to comply even if the authority's decision is mistaken on the merits. It is widely assumed, and I think rightly so, that within certain limits, subjects have an obligation to comply with a legitimate authoritative directive even if the directive is not the correct one under the circumstances. An erroneous authoritative decree might still be binding on its subjects. According to the epistemic horn of the dilemma, however, a mistaken authoritative decision cannot be a legitimate one. And this does not seem quite right.

This problem has not escaped Raz's attention. In the *Morality of Freedom*, Raz offered the following response: "If every time a directive is mistaken, it were open to challenge as mistaken, the advantage gained by accepting the authority as a more reliable and successful guide to right reason would disappear."¹¹ That may be right, but it does not quite explain why mistaken decisions should be regarded as binding, at least when the subject happens *to know* that the decision is erroneous. In response, perhaps anticipating this objection, Raz draws on a distinction between "a great" mistake and a "clear" one. Not all mistakes, great as they may be, are necessarily clear ones, Raz claims, and only clear mistakes are compatible with undercutting the legitimacy of an authority.¹² But again, this seems to be somewhat beside the point. If, for whatever reasons, a subject happens to know that the authority is wrong on the merits -- and it really does not matter how the subject came to acquire this knowledge -- then the service conception has no tools at its disposal to explain why would the subject have reasons to comply.¹³

¹¹ Raz, *The Morality of Freedom*, at p 61.

¹² *ibid*, at p 62.

¹³ Raz might be willing to bite the bullet here; perhaps he thinks that in such cases, the subject does not have an obligation to comply, and this is as it should be. If so, I beg to

Let me try to sum this up by considering the following example. The dean of our college has issued a directive, applying to each member of the faculty, to submit a report of their research activities for the last five years, by a certain date. The dean's instruction contained a detailed list of criteria about what counts as "research activity" and what doesn't count. Now let us make several assumptions about this case: first, I will assume that the dean's requirement is not just well within his official authority as dean, but that it is also *legitimate*; it is the kind of requirement that the dean may legitimately impose. Second, we will assume that some of the criteria that the dean listed for what counts as "research activity" are not warranted by reason; substantively, they are wrong (and, let us assume, we *know* that they are wrong). Finally, I will assume that there is a clear sense in which we, as faculty members subject to the dean's authority, are obliged to comply. (*Pro tanto* obligation, of course, and not all things considered.)

Now, suppose that one of my colleagues asks what reasons she has to comply with the dean's requirement. Would the *NJT* be an appropriate answer? At least with respect to this particular directive, it seems very unlikely that the *NJT* gives my colleague the rationale that she is after. What would be the reasons that apply to her, independently of the dean's directive, that she would comply better with by following the dean's requirement than by trying to figure it out for herself? She might rightly claim that but for the dean's requirement, we would have no reason to do such a thing. So what is it in the actual say so of the dean that turns it obligatory to comply?

To the extent that the *NJT* is of any help here, it can only pertain to the long term, overall, reasons to have the kind of authority in question. Perhaps overall, in the long term, given the aims of the institution and all, we are more likely to comply with the relevant reasons that apply to us by having a dean and following his or her instructions on certain matters than by trying to figure it out, or act on, the relevant reasons by ourselves. Thus perhaps the *NJT* might be a good answer to the question of why have that kind of authority at all, and why it is good, in the long term, to have such an authority make certain kinds of decisions for us (though I am not claiming that this is necessarily the case).

differ on this point. I think that subjects are sometimes bound to comply even when they know that the directive is mistaken. Of course the obligation is *pro tanto*, not all things considered, and it may be defeated by countervailing reasons not to comply. But this is always the case.

But, even so, the *NJT* does not answer the local question of why comply with this particular instruction on this particular occasion.¹⁴

It is possible to reply that the reasons to comply with a particular authoritative directive are always derivative; they derive from the reasons to have the relevant kind of authority in the first place. In some sense this is true. It is true, or so I shall argue here, that the *complete* reasons for following an authoritative decree must include the reasons for having the relevant kind of authority to begin with. However, as I will try to show in the next section, between the general reasons for having a certain type of authority, and the reasons for complying with its particular instructions on particular occasions, there must be some normative setting, already in place, that constitutes the authority's power. There must be some rules or conventions that mediate between the general reasons for having the relevant authority and the practical difference that the putative authority can make on particular occasions. Let me try to explain why this is the case.

The Missing Link in the Chain: Institutional Norms.

The essential feature of any practical authority is that to have authority is to have *power*, in the normative sense of the term. A normative power is the ability to introduce a change in the normative relations (*viz.*, rights, obligations, etc.) that obtain between those who are subject to the power under the relevant circumstances.¹⁵ The existence of power, however, is essentially an institutional matter, or so I shall argue here. Only rules or conventions of an institution, or a well structured social practice, can confer power.¹⁶ And this is why authorities are essentially institutional in nature, and the obligation to comply with their directives are institutional obligations.

¹⁴ There is another general objection to the service conception recently mentioned in the literature, arguing that Raz's theory cannot explain a legitimate authority's *right* to rule. I did not mention this objection because I don't think that authorities have a right to rule, if by right one means anything like a claim right, that is, some interest that justifies the imposition of duties on others. Raz himself seems to differ on this point. I dealt with this issue in my *Philosophy of Law*, ch 4.

¹⁵ I use the term 'power' here as originally defined by W. Hohfeld in *Fundamental Legal Conceptions*, and H.L.A. Hart, *The Concept of Law*, ch 3.

¹⁶ In this paper I will not elaborate in any detail on the nature of social practices, institutions, and the differences between them. I have done that elsewhere. See my *Social Conventions*, mainly ch 2.

Consider, for example, the role of a referee in a football game. Evidently this role is established by the rules and conventions which constitute football as a fairly structured activity of a certain type. The rules that constitute the game also constitute the role of a referee and the powers which are granted to this role. The rules determine, for example, that when the referee declares “touchdown” the declaration is constitutive and touchdown is officially scored. Or that the referee has the power to remove a player from the game (on certain specified grounds), but not, say, ban the player from future games. And so on and so forth. My point is that we cannot understand the role of the referee as a practical authority, and the ways in which his instructions obligate the relevant parties, without this rule-based institutional background. And the thesis I want to defend here is that the main features of this example can be generalized to all cases. Now of course, not all practices or institutions are like football, where reasons to engage in the practice are entirely subjective and depend on voluntary undertaking. We’ll get back to this point later on. It is the need for institutional norms that constitute the authority’s power that I want to focus on first.

So here is the outline of how this works. For A to have authority over B in matters C, is for A to have the normative power to alter the rights and obligations that B has in matters C. To have authority, in other words, is to have normative power. Power, in the relevant sense, is essentially an institutional construct: its existence and scope is constituted by rules or conventions. That is so, because power is a *normative ability* to alter the normative status quo that is in place when the power is exercised. It makes no sense to speak of power without some normative background already in place, which includes a set of norms enabling certain agents to introduce changes in this normative framework. Note the emphasis on *normative ability*. There are many ways in which an agent can create a situation that obliges another agent to act in a certain way. If I put somebody in harms way and you are the only person available to help, you may be obliged to do so. However, this would not be an exercise of normative power on my part. What is missing in this case is a norm that grants me the power to impose an obligation on you. Power, in other words, can only be assigned by norms constituting it. Furthermore, power conferring norms must assign the power *ex ante*, designating certain individuals or a body of individuals the right to alter the obligations or rights of others. Such norms typically come in systems of interlocking norms, determining who gets the power, the scope of it, various ways in which the power can be exercised, etc.

What kind of norms can confer power? This is, admittedly, the crucial question. My answer is that the norms in question must be anchored in some social or institutional reality, they have to be, or follow from, social norms, actually practiced (*viz.*, by and large followed) by a certain population or community. The alternative would be to think that power conferring norms can be norms required or determined by reasons, that is, regardless of practice. (Call it the Abstract View of power). The abstract view is not a plausible option, however. Reasons, whether in the realm of morality or elsewhere, can only determine that one *ought to have* a certain power, not that one actually has it. Reasons, I take it, are facts that count in favor (or against) doing (or refraining from doing) something. There might be facts, of course, counting in favor of granting a power to someone under certain circumstances. It might be good, for example, (or better, given the alternatives) that A has a power to impose an obligation on B in matters C; but this would not necessarily entail that A has the power, only that A ought to have it.

In other words, the Abstract View would entail that someone can *have* authority only because one *ought to have* that authority under the circumstances, and that is just never the case. In order to have authority, the relevant agent must be an authority, *de facto*, at least to some extent.¹⁷ The proposition that “A *ought to have* authority over B in matters C” simply does not entail that “A *has an authority* over B in matters C”, whether legitimate or not. Perhaps, all things considered, I ought to have the authority to make certain decisions for the faculty instead of the dean. But the fact is that I do not have that authority, even if I ought to have had it. Which is to say that the norms that are actually practiced in the relevant community (my university, in this case) do not grant that power to me, they grant the power to the dean. This is, basically, a matter of social-institutional facts, not a matter of morality or reason. First there has to be an authority, then the question of its legitimacy arises. And whether there is an authority or not, depends on the norms that grant the relevant agent or body the power it has, that is to say, the norms that are actually practiced in the relevant community.

¹⁷ See Raz, “Revisiting...” p. 158 It might be tempting to think that the Abstract View is more plausible with respect to *theoretical* authorities. Unlike a practical authority, which must be an authority *de facto*, it might seem plausible to assume that theoretical authorities can be recognized as such without being an authority *de facto*. I have some doubts about this. I think that some social recognition of the authority, as such, is necessary. Imagine someone saying “A is an authority in particle physics, though the truth is that nobody is aware of that”; it would be a rather awkward locution. Some general, public recognition of the authority is, I think, necessary for someone to count as a theoretical authority in a given field.

But still, you might wonder, aren't there cases in which norms granting a power are essentially moral norms, regardless of any practice or social reality? Don't people have moral powers, say, to obligate another? Suppose, for example, that you mention the fact that you need to get to the airport by 7PM tonight, and I offer to drive you there. Have I not thereby granted you the power to oblige me to do so? By accepting my offer (or by otherwise indicating that you rely on it), you exercised a power to put me under an obligation to do as I suggested, namely, drive you to the airport. (Notice that you have a choice here because you can, in various ways, decline my offer and relieve me of any obligation to do as I offered.)

It is certainly true that people may be in a position that gives them the ability to impose an obligation (or confer a right) on another based on the circumstances of the situation and the relevant moral considerations, and in ways which have nothing to do with an institutional background or a social practice. But, as I mentioned earlier, not every instance in which one can impose an obligation on another is necessarily an exercise of a pre-existing normative power. By crying for help when I am about to fall off the cliff, I can certainly impose an obligation on you to help; but again, it would be rather misguided to suggest that I thereby exercise a normative power to impose an obligation on you. There is no such norm in the background here. So what can we say about the example of a promissory undertaking, like the example mentioned above? I am not entirely sure. Promises are a rather special case. I tend to think that they are not essentially different from any other case in which the relevant set of reasons that apply constitute a moral obligation, that is, regardless of any power conferring norms in the background. But of course, this is a contentious issue, and those who defend something like a practice theory of promising deny this point.¹⁸ So perhaps promising is *sui-generis*, I am not sure. Otherwise, however, it is difficult to think of power conferring norms which simply derive from reasons or general moral principles, or such. Only the desirability of granting power to someone can follow from reason alone, not the existence of the power as a norm.

There are several conclusions that follows from this: First, to maintain that B is subject to A's legitimate authority in matters C, is to accept the

¹⁸ Notice, however, that the practice theory of promising (e.g. Kolodny & Wallace, "Promises and Practices Revisited") would actually support the account I suggest here. It assumes that the special significance of a promise depends on some social rules or conventions grounding people's ability to grant normative powers to another. Unfortunately, I have some doubts about the cogency of the practice theory and, convenient as it might be for me to endorse it, I am not quite happy to do so.

normative assumption that A's authoritative directive (in matters C) requiring B to φ imposes an obligation on B to φ (*pro tanto* obligation, of course, and not all things considered, etc.) This simply follows from the idea of normative power: to have power is to have the ability to impose obligations.¹⁹ Second, that the normative structure which gives an authority the power to impose obligations only makes sense in the context of some rules or conventions which constitute, *inter alia*, the authoritative role in question and the powers granted to it. Finally, it follows that the immediate or operative obligation to comply with an authority's directive is institutional in nature; subjection to the authority of another is something that an agent incurs, as it were, only as an institutional player, as someone who participates in the practice constituted by the rules or conventions which establish the relevant authority and the roles of those who are subject to it.

Notice that this last point should also explain why practical authorities' power is always limited in scope: their decision only binds those who are subject to their jurisdiction. If you live in the US, for example, then the rules of Canadian law have no binding authority over you, even if they meet the conditions of the *NJT* or any other such general conditions of legitimacy. Authorities only obligate those who belong to the practice or institution that grants them the power they have.²⁰

Another important conclusion follows from this argument. If, as I argue here, the immediate obligation to comply with an authority's directive is essentially institutional in nature, it follows that such obligations are always conditional: They presuppose that there are valid reasons to participate in the relevant institutional practice and comply with its rules. The institutional

¹⁹ There are various kinds of changes authorities can introduce in the normative relations of those who are subject to their power: an authority may directly impose an obligation, grant or withhold a right, grant or withhold a power, etc. All these normative changes, however, are reducible to obligations. When an authority grants X the right to φ , for instance, it thus imposes an obligation on some other party, Y, to enable X to φ (in some relevant sense of enabling). When an authority grants X the power to make decisions on certain issues, it thus imposes an obligation on others to comply with X's decisions. And so on and so forth. In short, to have power is, fundamentally, to have the normative ability to impose obligations. As Raz notes, this is widely recognized in the literature. ("Revisiting..." at 134, note 13).

²⁰ Political authorities often *claim* the power to obligate non-participants as well; some legal systems, for example, claim a great deal of extra-territorial authority, purporting to impose obligations on a variety of subjects who are not members of the relevant legal system. It follows from the argument here that these kind of claims are rarely, if ever, legitimate.

obligation to comply with an authority's directives is always conditioned by reasons to participate (cooperatively, that is) in the practice that confers the relevant power on the authority. The immediate, obligatory reasons, however, are institutional in nature, and depend on the power conferring norms which are determined by the rules or conventions of the institution in question.

The institutional nature of practical authorities should also help us to see why, typically, considerations of *fairness* are also involved in the factors that determine the legitimacy of authorities. The *NJT* does not involve any considerations of fairness. According to the service conception of authority, procedural aspects of an authoritative decision do not form an essential part of the conditions for its legitimacy. It does not matter how an authority reached its decision or, in fact, how one became an authority to begin with, as long as the conditions of the *NJT* are met. In some obvious sense, however, this is a rather counter intuitive result. There are many cases in which we tend to assume that an authority's decision is not legitimate if it was reached by procedures that are not fair. That is, even if the decision is sound on its merits. We often care about process as much as we care about results.²¹

Realizing that authoritative power is, essentially, an institutional construct, makes it much easier to explain the role that fairness plays in the conditions for the legitimacy of a practical authority's decisions. The fairness of rule governed institutions and social practices is something that we would normally have good reasons to care about. There are, of course, many purposes that social practices and institutions serve, and many of these objectives and underlying aims have nothing to do with fairness or justice. However, it is quite plausible to assume that fairness is a necessary moral condition for the legitimacy of institutions and practices. An institution that is good in all sorts of respects, but fails some minimal threshold of fairness, might be illegitimate.²² Since authorities are constituted by rules and conventions of institutions, determining the power relations between people who are engaged in the institution, it follows quite straightforwardly that the rules which establish

²¹ I have presented an argument to this effect, though on somewhat different grounds in my *Law in the Age of Pluralism*, ch 3. A very similar critique of the service conception was also presented by Scott Hershovitz "Legitimacy, Democracy, and Razian Authority" ; notice that the service conception can accommodate considerations of fairness as part of the *NJT*, but only if the relevant reasons for action that the authority ought to rely upon are such that they concern some matters of fairness. The *NJT*, however, is agnostic about procedural fairness, that is, fairness concerning the authoritative decision-making process.

²² This is a Rawlsian idea, of course. However, if you doubt Rawls's thesis about the importance of fairness in this context, you can may conclude that this is not an additional advantage of the argument I present here.

authoritative powers must conform to some requirements of fairness. Thus, at least in this general form, fairness may well be regarded as a condition for the legitimacy of practical authorities.

The Second-Personal Standpoint

Before I try to respond to some possible objections to the ideas presented here, it might be helpful to examine a radically different solution to the dilemma of authority, recently suggested by Stephen Darwall. Let us recall the example of a request of a friend. It is one of those cases where one's reasons for action crucially depend on the identity of the person who requests the action; I have a reason to comply with the request of a friend because he is my friend. Our relationship matters here, and it matters precisely in the right sort of way; it explains why the reasons for action depend on the say so of another. Friendship is the kind of relationship in which we value, among other things, friends' ability to make certain requests, or sometimes even demands, of each other, that are not necessarily warranted between strangers; it is part of what we value about friendship as a special kind of relationship between persons.

Darwall suggests that this second-personal standpoint, whereby some persons are in such relations to other persons that warrants their special role in making certain demands of the other, is the key to understanding the concept of authority.²³ Darwall's conception of this second-personal standpoint is much wider, however, than the example of friendship might imply. His own example should give us a good sense of how general his account of second-personal reasons is: suppose somebody's foot ended up on top of yours and it causes you some pain. There are two ways, Darwall suggests, in which you might give the person a reason to stop causing you pain: an agent-neutral reason and a second-personal one. The agent-neutral reason would simply appeal to your desire to be free of pain. It is an appeal to reasons that would equally apply to anyone who happens to be in a position to stop the pain, whether he is the fellow whose foot rests on top of yours, or not. An appeal to second-personal reasons, on the other hand, is agent-relative; it is the kind of reason you appeal to from the position, or standpoint, of someone who can make demands of the other in virtue of the relationship between you: "The reason would be addressed to him as someone who is himself *causing* gratuitous pain to another

²³ S. Darwall, "Authority and second-personal reasons for acting".

person, something we persons normally assume we have the authority to demand that we do not do to one another.”²⁴

Now, this second-personal standpoint, Darwall claims, is precisely what we call authoritative. In appealing to a second-personal reason “[y]ou might say something that asserts or implies your authority to claim or demand that he move his foot...” In other words, second-personal demands are expressions of authoritative relations between persons, and to have authority with respect to another simply consists in the validity of such second-personal demands. As Darwall puts it:

“A second-personal reason is thus one whose validity depends upon presupposed authority and accountability relations between persons and, therefore, on the possibility of the reason’s being addressed person-to-person within these relations.”²⁵

There are many complicated issues involved in this idea of second-personal reasons and the question of how general they are.²⁶ I will not try to deal with any of them. My only concern here is with the relevance of this second-personal standpoint to an elucidation of the idea of a practical authority. In particular, the question is whether Darwall’s use of the notion of authority as an expression of a second-personal demand, is close enough to our everyday concept of a practical authority, such as a political authorities and other similar cases.

Darwall’s crucial assumption is that whenever B is accountable, or answerable, to A’s demands, A is thus, *ipso facto*, in an authoritative relation to B. But if we understand “authority” along the lines we have been discussing here all along, this assumption is rather questionable. For one thing, the example of friendship we used might prove the point: friends are in a special relation to each other, among other things, in ways in which a friend might be accountable to the other and answerable to her demands. Would we want to say that friends are thus authorities *vis a vis* each other? (Consider a good friend of yours saying: “I am your friend, and therefore I have the authority to demand that you not φ ”; my guess is that the main effect of such a statement would be to cause you to doubt that your friend understands what friendship is all about.) Perhaps Darwall wants to confine the idea of second-personal

²⁴ *ibid*, at 136.

²⁵ *ibid*, at 137.

²⁶ Darwall’s overall thesis, that moral reasons are, essentially, second-personal and not agent-neutral, is a very ambitious and overarching project that goes well beyond the kind of issues we discuss here. See Darwall, *The Second-Person Standpoint*.

reasons to obligations; still, it is doubtful that an obligation to comply with a friend's request, which is something we often have, puts the friend in an authoritative position or that it renders one friend an authority *vis a vis* the other.

More problematically, however, would it make sense to suggest that authoritative relations between A and B can be mutual and symmetrical? On Darwall's account, there is nothing to prevent us from concluding that A is an authority *vis a vis* B just as B is an authority *vis a vis* A about the same kind of issues. In short, second-personal demands can be (or, in fact, perhaps they typically are) mutual and symmetrical. Authority relations are not. If A is an authority *vis a vis* B in matters C, it just cannot be the case that B is also an authority *vis a vis* A in those same matters.

The only way around this difficulty, as far as I can see, is to suggest that we need a much more fine-grained account of what constitutes an authoritative position *vis a vis* another, so that each and every individual/particular demand constitutes an authoritative relation in and of itself. So perhaps you have the authority to require that I not step on your toe, and I have authority to demand that you don't step on mine, and so on and so forth. Perhaps there is something here, second-personal for sure, and we may call it authority if we want, but it just cannot be our ordinary notion of a practical authority. To have practical authority over another, in the ordinary sense, is to get to determine for the other – within a certain range of issues -- how they may behave or conduct themselves, and this is essentially a non-symmetrical power relation. The dean gets to determine what is my teaching assignment, and not *vice versa*; a legal authority determines for drivers what is the permitted speed-limit on highways, and not *vice versa*; and so on and so forth. In other words, the typical case of a practical authority is one in which the normative powers are essentially asymmetrical.

Finally, the second-personal conception of authoritative reasons for action would seem to entail that an obligation to comply with an authority's directive is directional, owed by the subject *to the authority*, as one would owe, for instance, an obligation to keep one's promise *to the promisee*, or an obligation to help a friend *to the friend*. Now perhaps in some special circumstances this might be true, but in general, the idea that obligations to comply with an authority's directive are of this directional kind, owed to the authority, does not seem right. Consider the legal case, for example. It would be plainly wrong to suggest that the subjects' obligation to comply with the law are obligations they owe to the relevant legal authorities. For example, a refinery which is under legal obligation to comply with EPA regulations about permitted pollution

levels, does not owe this obligation, either morally or legally, *to the EPA* (or to Congress, for that matter). And more generally, it seems to me rather odd to suggest that to the extent that we have an obligation to obey the law, it is an obligation we owe to the legal authorities who issue the laws. And even in the example of the dean's instruction to submit a research report, it is rather questionable to assume that our obligation to comply with this demand is one we owe *to the dean*. Perhaps there is a sense in which, if we fail to comply, we are answerable to the dean. But this does not mean that one would somehow wrong the dean by not complying. Nor is it necessarily the case that one is, actually, answerable to the dean; it partly depends on the relevant institutional structure and the ways in which compliance with its rules and directives is administered. In any case, answerability (in some institutional sense or other) does not necessarily entail that the obligation to comply is one that is owed to the authority. In most cases, obligations to comply with an authoritative directive are not second-personal or, generally, agent-relative.

Perhaps it is not entirely clear that Darwall is committed to this view; at points he suggests that obligations, at least moral ones, can be owed to the community of moral agents as a whole, albeit second-personally (by which, I presume, he means to each member of the community one by one. At times Darwall talks about "representatives of the moral community", but this is a puzzling concept that I do not quite understand).²⁷ So perhaps there is some sense in which Darwall might be able to resist the conclusion that if A has authority over B then B owes the duty to comply to A. I'm not sure, because the way in which Darwall formulates the concept of an authoritative demand (see quotations above) clearly suggests that when A expresses a legitimate authoritative demand to B, B owes A an obligation to comply. Now perhaps B may owe this duty to everybody else as well. Still, my point remains: I don't think that it is generally true that an obligation to comply with a legitimate authoritative directive is an obligation owed to the authority. Let me reiterate, however, that none of this was meant to challenge Darwall's account of second-personal reasons for action and their general moral significance. The doubts I expressed here pertain only to the question whether Darwall's use of the concept of "authority" is one that captures the kind of practical authorities we discussed here. I don't think that it does.



²⁷ I am grateful to Kory DeClark for pushing me on this point.

Reply to Objections

Two main worries remain. First, one might think that if the obligation to comply with an authority's directive is essentially institutional, as I argue here, then it might follow that authorities can obligate only those subjects who voluntarily participate in the relevant institution. Such a condition of voluntary participation, however, would be a very problematic result. We tend to think, and rightly so, I presume, that authorities can be legitimate, and obligate subjects, even in contexts in which participation in the relevant social institution is not voluntary in any meaningful sense. Second, one might think that the account I gave here generalizes from some cases to all. Some authorities are essentially institutional, as I claimed, but others might not be. In other words, there is a worry that my account applies only to a subset of practical authorities but fails as a general account.

The first objection relies on a mistaken assumption. It assumes that reasons to participate cooperatively in any given social practice or institution must involve a voluntary undertaking by the relevant agent. That is correct in some cases but certainly false in others. There are, indeed, many kinds of activities one would have reason to engage in, and practices one would have reason to participate in, only on the condition that one actually happens to appreciate the kind of values the practice supports, and freely chooses to engage in the practice. In other words, reasons to participate in some structured activities, like a playing a game, or engaging in a form of art, or undertaking a particular role in a university, are such that they depend on one's personal aims, desires, evaluative preferences, etc. In these cases, it would make sense to assume that participation in the relevant activity or practice must be voluntary. Furthermore, in such cases, when the authoritative structure is part of an institution or practice that one needs to opt in to, and reasons to participate depend on voluntary undertaking, the underlying grounds for acknowledging the legitimacy of the relevant authorities is, at least to some extent, consent-based. Some notion of consent or even contractual obligation plays a crucial role in these cases.²⁸

However, it is equally clear that not all social practices and institutions are of this nature. Some of the institutions and social practices we have are

²⁸ Generally speaking, the practical authority of employers and agents who exercise authority on their behalf is based on consent, that is, the agreement to join the workplace in question and abide by its rules, etc. However, I would not go too far with this; in many cases, unfortunately, people have very little choice on matters of employment, and consent may lose a great deal of its moral force when viable alternatives are pretty dire.

such that their value applies to everyone (or everyone within a given objective category, or with certain features, etc.) and thus everybody ought to recognize their value, whether they happen to do so or not. The obvious example is a legal system. We have reasons to have law and a well functioning legal system regardless of whether any given subject happens to value this or that. To the extent that we have reasons to participate in the legal system we belong to, and abide by its rules, such reasons are not generally of the kind that depend on subjective goals or preferences. The law, however, is not the only example of a practice one has reason to participate in regardless of subjective aims or preferences. Many conventional practices of civility, for example, are similarly non-voluntary in nature. In a civilized culture, people follow certain conventional practices which are there to make interpersonal relations relatively smooth and agreeable, manifesting respect for persons, and similar important social and moral functions. Once these social practices are in place and conventionally practiced, voluntary participation is not a precondition of the reasons to participate in them. Those reasons apply to everyone, whether they happen to value the practice or not.²⁹

Notice that my point here is about reasons for participation, not about the question of whether, as a matter of fact, participation is voluntary or not. Some institutions and social practices are such that we need to opt in to (such as playing a game, or undertaking a professional career) while others are such that we find ourselves to be participants by default, as it were, and, at best, we can try to opt out of them (such as being subjects of a legal system or of some conventional practices of civility). Now there is some correlation here, but far from perfect. It is typically the case that the kind of institutions or practices one needs to opt in to are those in which there are reasons to value participation only if it is voluntary. And *vice versa*, those practices and institutions one participates in by default, as it were, tend to be those where reasons for participation do not require a voluntary undertaking. Ideally, these should be correlated, but of course, in practice they might not be. In any case, what we are interested in here is the reasons for participation, and my point is that such reasons may apply whether participation is voluntary or not. It all depends on the kind of institution or practice in question and the reasons for having it.

Seeing that voluntary participation is not a necessary condition for institutional obligations to apply (though in some cases it may be a sufficient one) may help us in dealing with the second objection as well. Simply put, the objection is that not all practical authorities actually have the institutional background that I claim here. I presume that there are two main counter-

²⁹ I have elaborated on this point in greater detail in my *Social Conventions*, chs 2 & 6.

examples to consider, the case of an *ad hoc* authority, and the case of parental authority. Let me consider them in turn since they raise somewhat different issues.

Consider an example of a resourceful flight attendant who, in an effort to coordinate help for the injured after a crash, starts issuing instructions to surviving passengers to do this or that. So she tells Joe, “You! I need you to do as I say,....”³⁰ Now let us assume that under the circumstances, Joe (and others) are obliged to comply. Let us even assume that the obligation to comply with the flight attendant’s instructions is not confined to instructions that are sound on the merits. Even if she is wrong in some cases, to some extent, it is better and perhaps obligatory if everybody does as she says. Would this not be a case in which authority is established without any institutional background? After all, there are no rules here at the background that grant the flight attendant authoritative power. Her power is assumed, as it were, *ad hoc*, on the basis of needs, that is, the urgency of the situation and her ability to coordinate the rescue efforts.

My response is that this case, though perhaps a noble example of leadership, is not quite an example of a practical authority. At best, it is a borderline case. There are many situations in which a person, say X, is in position to solve a coordination problem for a number of others involved, and it may well happen that the relevant moral features of the situation make it obligatory to solve the practical coordination problem, and thus obligatory to comply with X’s instructions. But these are not necessarily examples of a practical authority. Consider, for example, a very similar case: suppose there is fire in the theater, and panic all around, until one person, X, shouts “Everybody calm down, go to the exit on the right!”. Let us assume that it would be the right thing to do, follow X’s instruction, that is, perhaps even obligatory. But this would not make X an authority. Generally speaking, not every solution to a collective action problem – even if it is a collective action problem that the relevant parties are morally obliged to solve – amounts to an authoritative relation between the agent who happens to be in a position to offer a solution and those who are obliged to comply. In fact, this is the same problem we encountered about the example of a trusted expert. It is just not the case that whenever B has a valid reason to follow A’s instruction, A thus becomes an authority *vis a vis* B.

Admittedly, I should not put too much weight on this conceptual point. Every concept may have borderline cases, and the concept of a practical

³⁰ I borrow the example from David Estlund, *Democratic Authority*, 124.

authority is no exception. Perhaps there are some borderline cases of authority that emerge spontaneously without prior normative background that grants them any power. At best, however, an *ad hoc* authority is just that, *ad hoc*. Not only would these be exceptional cases, they would not be lasting either. Unless, of course, some normative setting emerges over time and provides the institutional background that sustains the relevant authoritative power.

Parental authority would be the second kind of counter-example one might have in mind. Parents, we assume, have a certain authority, practical authority, over their young children. And of course, they have this authority in virtue of their parenthood. The objection is that parenthood, and the practical authority that comes with it, is not a form of an institution, or a social practice, constituted by rules or conventions, such as a university or a legal system. Parenthood is a natural relation between persons, typically (though not necessarily) biologically determined. Isn't parental authority, then, a kind of natural (*viz.*, non-institutional) practical authority?

The simple answer is that it is not. Undoubtedly, parenthood has some natural features which do not depend on rules and conventions. But in the relevant sense, the one that grounds the idea of legitimate parental authority, parenthood is socially (and legally) constructed all the way down. The scope, limits, and generally, the kind of practical authority that parents have over their children is determined by the social conventions and legal rules of the society in which they live. These rules and conventions vary quite substantially between different cultures and legal system. Like the dean of the college or the referee in a football game, the norms that grant parents the power to make binding decisions for their children is constituted by the rules and social conventions. If there is a potential confusion here, it might stem from the fact that parents typically have not just power, in the normative sense I have been using here, but also in the brute sense of power, namely, as the actual ability to overcome resistance. Parents, as such, normally have an ability to compel their wishes on their children by force or, one would hope more often, by withholding benefits like praise, or manifestation of love etc. However, we should not confuse *might* with *right*. Brute power, whether in the case of parents or in the case of political authorities, is not what grounds the reasons to acknowledge the practical authority of one person over another. Reasons to comply with an authority depend on power in the normative sense of it, and such power is necessarily institutional.

Conclusion

We started this discussion with the dilemma of authority, and saw that both horns of the dilemma raise some serious difficulties in answering the question of what reasons people have for regarding authoritative directives as binding in the appropriate sense. The epistemic horn of the dilemma makes it difficult to explain what practical difference authorities make, and why reasons to comply with a legitimate authority's directives depend on its the say so; the constitutive horn of the dilemma, whereby authoritative directives constitute reasons for action, on the say so of the authority, is difficult to explain without assuming in advance that subjects are obligated to comply with the authority's directives. The argument presented here suggests that the answer to the dilemma of authority is a two-stage affair: the special, practical import of an authoritative directive can only be explained on the background of an institutional setting which constitutes the authority's power and the corresponding obligation to comply. However, this obligation is conditioned on reasons to participate cooperatively in the relevant institution or practice. A complete account of the reasons to regard authoritative decisions as binding must also rely on the reasons for having the institution or practice in question and the reasons to participate in it. Perhaps in some cases, though I did not offer arguments to support this, such a complete account of reasons to have an authoritative institution can be based on something like the service conception of authority. In any case, my main point was to show that there must be some institutional setting that mediates between the general reasons for having the relevant kind of authority, and the practical difference that the authority makes on particular occasions. Thus, in general, reasons to comply with an authority's directive partly depend on the subject's stand-point *vis a vis* the institution or practice in question and the reasons to participate in it.

I believe that the view defended here has the additional advantage of harmonizing a long standing divide in the literature about political obligation, that I think many have found unsatisfactory, between the question of the conditions for the legitimacy of practical authorities, and the question of the general obligation to obey the law. I am not suggesting that these two questions are identical, of course. But there is something curious about how separately these two issues have been dealt with in the literature of the last few decades. Though I cannot work out the details of the argument here, I hope that recognizing the essential institutional nature of authorities, in general, would help us to see that these two issues are much more intimately linked. The reasons to comply with any practical authority, whether it is a legal authority or not, are closely tied to reasons for having the social institution or practice that

constitutes the authority in question, and reasons to participate in it. No complete picture of the legitimacy of any given practical authority can be given without regard to the special features of the institutional structure that grants the authority the power it has. This, of course, is true about the law as well. The conditions which render a legal-political authority legitimate cannot be detached from the kind of considerations that determine our moral stand-point *vis a vis* the legal regime we find ourselves in, and the moral considerations that determine the level of support that such legal institutions deserve.³¹

³¹ I am indebted to Joseph Raz, Gary Watson, David Enoch, Chaim Gans, Aaron James, John Deigh, Richard Arneson, and participants of the workshop on Authority at USC and the Law and Philosophy workshop at the University of Texas, for their very helpful comments on earlier drafts of this paper.

References:

- Darwall, S., “Authority and second-personal reasons for acting”, in D. Sobel and S. Wall eds, *Reasons for Action*, (Cambridge 2009), 134.
- *The Second-Person Standpoint* (Harvard, 2006)
- Estlund, D., *Democratic Authority* (Princeton, 2008)
- Hershovitz, S., “Legitimacy, Democracy, and Razian Authority”, *Legal Theory* 9 (2003), 201.
- Hohfeld, W. N., *Fundamental Legal Conceptions*, (W.W. Cook ed.) (Yale University Press, 1919)
- Hart, H.L.A, *The Concept of Law* (Oxford, 1961)
- Kolodny, N. & Wallace, J., “Promises and Practices Revisited”, *Philosophy and Public Affairs* 31 (2003), 119.
- Marmor, A. *Philosophy of Law*, (Princeton Foundations in Contemporary Philosophy Series, S. Soames ed.,) (Princeton 2011)
- *Social Conventions: from language to law*, (Princeton, 2009)
- *Law in The Age of Pluralism*, (Oxford 2007)
- Raz, J., “The Problem of Authority: Revisiting the Service Conception”, in his *Between Authority and Interpretation*, (Oxford 2009), ch 5.
- *Ethics in the Public Domain*, (Oxford 1994), ch 9.
- “On Respect, Authority and Neutrality: A Response”, *120 Ethics* (2010), 279
- [from the Hacker collection]
- *Practical Reasons and Norms*, (2nd ed, Princeton, 1990)
- *The Morality of Freedom*, (Oxford 1986)