

Raz's Normative Theory of Authority: An Internal Critique¹

1. Introduction

Joseph Raz's normative theory of authority² is the most influential account in current political and legal philosophy. The theory's scope is wide, but it is typically used to account for the putative legitimacy of political authorities to impose morally binding requirements upon subjects and so affect their normative situation by mere say-so.³

Raz's normative theory possesses several virtues, which contribute to explain its prominence in the contemporary analytic legal-political philosophical landscape. One characteristic trait of his account is its close relationship to Raz's own analysis of the way authoritative requirements affect practical reasoning. According to this analysis, the requirements introduced by authorities *pre-empt* other reasons which would have been sufficient to justify one course of action in the absence of authoritative commands. In this sense, Raz provides a unified theory of authority, which articulates in a single account conceptual and normative elements. Another virtue of Raz's normative theory of authority is its use of central normative concepts, including reasons, duties, 'oughts,' etc. For instance, the account developed by Raz states that authoritative directives take into account the reasons subjects already have to act one way or another and transforms these reasons

¹ I have delivered an earlier version of this paper at the Humboldt University of Berlin in November 2012. I thank the participants, especially Anne Burkard, Benjamin Kiesewetter and Thomas Schmidt. I also thank Alejandro Chehtman, William A. Edmundson, Luc Foisneau, Iñigo González Ricoy, Johan Olsthoorn, Daniel Viehoff, Sheldon Wein and Jiafeng Zhu for their remarks, comments and suggestions on previous drafts. I am the only one responsible for the remaining mistakes.

² Throughout the paper I will use "authority" as shorthand for "practical authority."

³ It should be borne in mind that for Raz political legitimacy entails an obligation to obey and also that Raz argues that there is no general obligation to obey the law as a matter of empirical fact. See Raz 1986, pp. 99-104 and Raz 2009a, pp. 233-249.

into morally binding requirements. Finally, a characteristic feature of Raz's normative theory of authority is its instrumental character, which distinguishes it from alternative theories traditionally used to account for the legitimacy of political authorities, such as different forms of consent theories.⁴ According to Raz, the crucial feature that justifies the imposition of authoritative requirements is its capacity to help subjects to conform to the reasons that already apply to them. In this sense, Raz's normative theory avoids altogether the standard critique that only a very limited number of subjects have consented to the authority of the state.

Despite its merits, Raz's normative theory of authority has been subjected to important criticism. For instance, Thomas Christiano argues that Raz's account "ignores the moral significance of disagreement among equal citizens about the proper organization of their political communities."⁵ However, Christiano says that democratic politics is all about making decisions "when there are serious disagreements regarding the matters to be decided."⁶ Thus, Raz's normative theory (at least when used to morally justify⁷ political authorities) would be insufficiently attuned to proper procedures and would therefore be

⁴ I only mention consent theories for their historical prominence.

⁵ Christiano 2008, p. 234.

⁶ Christiano 2008, p. 235; see also p. 240.

⁷ Following most of the literature, I will use 'legitimacy' and 'justification' (and their cognates) interchangeably. Simmons 2001, pp. 125-126 distinguishes between these two concepts, but Perry 2012, p. 8 n. 11 notes that his account of justification is stipulative and idiosyncratic.

flawed.⁸ However, Raz seems ready to bite the bullet at this point, granting the non-democratic character of his theory but denying that it is really a problem.⁹

In this paper, I will follow a different way to criticize Raz's normative theory of authority.¹⁰ Instead of arguing that it is incompatible with widely shared intuitions (such as the intrinsic value of democratic decision-making when serious disagreements occur),¹¹ I will develop an internal critique of Raz's account. I will argue that his normative theory of authority, when properly understood, includes an inconsistent set of normative theses. To accomplish this, I will show that there is more to Raz's normative theory than the 'service conception' of authority, i.e., the theory that states that the characteristic feature of morally justified authorities is that they allow subjects to conform to the reasons that apply to them more efficiently than if they act on their own evaluation of the merits of the case. For Raz's view also includes further remarks on when subjects are duty-bound to comply with mistaken authoritative directives, which introduce additional normative considerations into the whole normative theory. In turn, I will argue that the service conception is at odds with Raz's further remarks on mistakes. The whole theory is thus inconsistent: it entails that, in some circumstances, subjects both have and do not have a duty to obey mistaken requirements. I will conclude that this puts serious pressure on the service conception because, as far as I can see, Raz's analysis of mistakes is fundamentally sound.

⁸ See also Besson 2005, p. 98, Herschovitz 2003, pp. 216-219, Herschovitz 2011, pp. 3-4, Himma 2007, pp. 142-144, Shapiro 2002, pp. 431-434 and Waldron 1999, pp. 85, 101 for other versions of the democratic critique.

⁹ Raz 2009b, p. 153 n. 21. Raz 2009b, p. 153 also makes some remarks on how his account accommodates democratic procedures. However, Herschovitz 2011, pp. 4-5 shows that, in fact, these remarks introduce a different normative theory.

¹⁰ Needless to say, this is not the only objection Raz's account has received. See Ehrenberg 2011 for a description of the critical reception of Raz's theory.

¹¹ For the record, Christiano does not talk of the "intrinsic value of democratic decision-making," but I think that this is the intuition that drives his account. See also Perry 2012, p. 86 n. 123.

The paper is organized as follows. In section 2, I will describe the service conception of authority. In section 3, I will introduce Raz's further remarks on mistakes. In section 4, I will argue that Raz's whole normative theory is inconsistent. In section 5, I will deal with a possible counter-argument from Raz's published work. In section 6, I will provide a rationale for granting Raz's account of mistakes. In section 7, I will bring the paper to a close by introducing some final remarks.

2. The Service Conception of Authority

Raz styles his normative theory the 'service conception' of authority. According to the service conception, the characteristic feature of morally justified authorities is that they mediate between subjects and the reasons that apply to them and are relevant to their actions in the circumstances, i.e., what Raz dubs "dependent reasons."¹² Legitimate authorities help subjects to act on the dependent reasons more efficiently than if they act on their own evaluation of the merits of the case, thus helping them to conform to reason. This instrumental feature justifies the imposition of authoritative requirements on subjects, i.e., it turns reasons into duties.¹³

The service conception of authority is articulated in two theses: the 'dependence thesis' and the 'normal justification thesis.'¹⁴ The dependence thesis states that authoritative

¹² Raz 1986, p. 41. According to Raz, these reasons are objective normative moral and non-moral requirements that apply to the subjects independently of whether they recognize that they so apply to them.

¹³ Cf. Raz 1986, p. 60. This way, Raz's account introduces a *duty-out, reason-in* principle of sorts. Cf. Williams 2011, p. 201.

¹⁴ This version corresponds to the early formulation of the service conception, i.e., the one developed in Raz 1986. Raz 2009b, p. 137 does not mention the dependence thesis and instead introduces the 'independence condition' which states that, with respect to the matters covered by the normal justification thesis, it is better to decide correctly than to decide for ourselves. Given the shape of my argument in the paper, I will mainly rely on the

directives should be based on the dependent reasons.¹⁵ The normal justification thesis states that a person or institution has authority over a subject if the latter better conforms to reason if she follows the authoritative directives than she would be acting on the results her own deliberation.¹⁶

The dependence and normal justification theses together ground Raz's normative theory of authority. Although independent of each other, the two theses are closely related. Raz thus states that

The dependence and the normal justification theses are mutually reinforcing. If the normal and primary way of justifying the legitimacy of an authority is that it is more likely to act successfully on the reasons which apply to its subjects then it is hard to resist the dependence thesis. It merely claims that authorities should do that which they were appointed to do. Conversely, if the dependence thesis is accepted then the case for the normal justification thesis becomes very strong. It merely states that the normal and primary justification of any authority has to establish that it is qualified to follow with some degree of success the principles which should govern the decisions of all authorities.¹⁷

Although schematic, this picture would suffice to describe Raz's normative theory of authority. In turn, Raz's normative theory is related to his conceptual analysis of the way authoritative requirements affect practical reasoning. In fact, in Raz's conception of

early version of the theory, although I will also refer to the corresponding ideas of the late version when possible.

¹⁵ Raz 1986, p. 47.

¹⁶ Raz 1986, p. 53 and Raz 2009b, pp. 137-138. Raz mentions several reasons why authorities would in fact provide this service, but they are not of my concern here.

¹⁷ Raz 1986, p. 55.

authority, the normative level and the analytic level form an integrated account. In this sense, Raz claims that “there is an interdependence between conceptual and normative argument.”¹⁸

Raz argues that authoritative requirements *replace* first-order reasons that in absence of the requirement would have been sufficient to justify some course of action.¹⁹ Authoritative directives *exclude* and *take the place* of both reasons that would have been defeated and reasons that would have shifted the balance of reasons. Raz thus writes that authoritative requirements are ‘pre-emptive’: “the fact that an authority requires the 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 exclude and take the place of some of them.”²⁰

3. Raz’s Further Remarks on Mistakes

In addition to developing the service conception of authority, Raz makes further remarks regarding whether subjects are morally bound by mistaken authoritative requirements. For Raz

[it] is not that authoritative determinations are binding only if they correctly reflect the reasons on which they depend. On the contrary, there is no point

¹⁸ Raz 1986, p. 63. Such interdependence is limited, though. Although Raz’s normative theory of authority pushes one to adopt his own analysis of the way authoritative requirements affect practical reasoning, the converse does not hold. For one can accept Raz’s conceptual analysis of authority without accepting his normative theory of authority. For example, I have argued elsewhere that Hobbes’s analysis of the normativity of law involves a pretty much Razian account, but Hobbes’s contractarian justification of political authority is crucially different from Raz’s instrumental theory. See Venezia 2012.

¹⁹ However, authoritative directives do not replace all first-order reasons but rather only those within their ‘scope.’

²⁰ Raz 1986, p. 46, italics removed.

in having authorities unless their determinations are binding even if mistaken (although some mistakes may disqualify them). The whole point and purpose of authorities [...] is to pre-empt individual judgment on the merits of the case, and this will not be achieved if, in order to establish whether the authoritative determination is binding, individuals have to rely on their own judgment of the merits.²¹

Raz claims that some mistaken requirements may still be binding. He argues that authoritative directives may not be binding if they are “clearly wrong,” although he grants that authoritative requirements are binding when other kind of mistakes are involved.²² He establishes this point with an analogy that introduces a difference between ‘clear mistakes’ and ‘great mistakes’:

Consider a long addition of, say, some thirty numbers. One can make a very small mistake which is a very clear one, as when the sum is an integer whereas one and only one of the added numbers is a decimal fraction. On the other hand, the sum may be out by several thousands without the mistake being detectable except by laboriously going over the addition step by step. Even if legitimate authority is limited by the condition that its directives are not binding if clearly wrong, and I wish to express no opinion on whether it is so limited, it can play its mediating role. Establishing that something is clearly wrong does not require going through the underlying reasoning. It is

²¹ Raz 1986, pp. 47-48. See also Raz 1986, pp. 44, 78-79 and Raz 2009b, p. 145.

²² Raz 1986, p. 62.

not the case that the legitimate power of authorities is generally limited by the condition that it is defeated by significant mistakes which are not clear.²³

Raz does not elaborate on the difference between clear and great mistakes beyond the analogy. Even so, the analogy is very suggestive, and allows characterizing regulations as ‘clear mistakes’ that, as such, may not be morally binding on subjects.²⁴

The analogy strongly suggests that the difference between clear mistakes and great mistakes is based on the content of the directives, although there is also an epistemic trait to them. Clear mistakes are easily detectable, while great mistakes are of significant magnitude.²⁵ Be that as it may, the issue is not that mistaken authorities issue directives that are based on an irresponsible evaluation of the merits of the case.²⁶ Instead, mistaken authorities issue directives that, as such, prescribe actions that are incorrect both when they commit clear and great mistakes.

Although Raz says that clear mistakes may or may not be binding, in what follows I will assume that his final position on this matter is that clear mistakes are not morally binding. This gives the distinction real relevance, and also seems to be Raz’s position on the matter. The question to analyze now is whether this distinction has normative consequences in the normative theory of authority.

4. Raz’s Normative Theory of Authority: An Inconsistent Account

²³ Raz 1986, p. 62.

²⁴ See Noemí López Trujillo, “Las 10 leyes más insólitas del mundo” at <http://www.abc.es/20121021/sociedad/abci-leyes-absurdas-201210191809.html> [last visited 24 October 2012] for several examples of clear mistakes in current legislation in different jurisdictions.

²⁵ Perry 1988-1989, pp. 934-935.

²⁶ Talisse and Habour 2009, p. 50 introduce the difference between incorrect and unjustified mistaken directives.

Raz's remarks on mistakes can be construed in two different ways. Either they merely explain features already present in the service conception, or they add new normative considerations to the normative theory. The standard interpretation of Raz's account seems to be that the remarks on mistakes do not add important considerations. In fact, most writers just equate Raz's normative theory of authority with the normal justification thesis and so dismiss the normative relevance of his further remarks on mistakes.²⁷

However, there is conceptual room for construing Raz's remarks on mistakes as introducing further considerations into the whole normative theory of authority. In fact, this interpretation is to be preferred. Although the first reading seems *prima facie* reasonable, only the second interpretation does full justice to the idea of legitimately disobeying clearly mistaken authorities. All the same, I will start providing the rationale for the first reading.

The service conception does not state that legitimate authorities always help subjects to conform to reason. Rather, it says that subjects better conform to reason following authoritative requirements than acting on their own evaluation of the merits of the case. Taken at face value, this distinction may be construed as implying that Raz's remarks on mistakes do not introduce a new substantive consideration to the normative theory. The service conception already involves the idea that mistaken authorities are still morally legitimate, because subjects nonetheless may better conform to reason following directives from authorities than acting on their own evaluations of the merits of the case.

²⁷ See e.g. Besson 2005, p. 97, Christiano 2009, pp. 232-235, Hershovitz 2003, p. 201, Hershovitz 2011, pp. 1-3, Himma 2007, p. 144, Shapiro 2002, p. 403 and Waldron 1999, pp. 84 n. 44, 99 n. 37. Raz also seems to interpret his own normative theory of authority in this fashion. See below section 5. This view has recently been challenged. For instance, Tucker 2012, pp. 226, 230-233 argues that satisfying the normal justification thesis is neither necessary nor sufficient to justify authorities, although the reasons he gives for this point do not rely on the normative relevance of Raz's remarks on mistakes.

Understood in this fashion, Raz's further remarks would merely make plain considerations already included in the service conception.

Even so, we can also construe Raz's remarks on mistakes as adding a new normative thesis to the theory of authority. The distinction between clear and great mistakes is crucial here. Let me assume that, even when some clear mistakes are made by an authority, following the directives in general may still help subjects to conform to reason. This seems reasonable: there might be more than just one wrong answer, and so both the putative authority as well as the subjects may get things wrong.²⁸ Thus, a clearly mistaken authority may still provide the required service and so according to the service conception it might be morally legitimate.

However, Raz argues that, in such circumstances, subjects are not duty-bound to follow the directives issued by the putative authority. In fact, the mistakes are so important that they show it is merely a *de facto* authority but not a *de jure* authority. Raz argues authorities do not have the normative power to impose fully independent requirements on subjects, but only requirements that are already binding on them in any case.²⁹ Thus, authorities do not have the right to impose directives when seriously mistaken and so subjects do not have a duty to comply with such requirements. In this sense, clear mistakes undermine the legitimacy of the authority independently of whether it still provides the required service.³⁰

²⁸ Raz's 'piecemeal' approach to the obligation to obey the law introduces the opposite idea: some subjects sometimes do better sometimes without following authorities. See Raz 1986, pp. 74, 80, 100. Although this is of course possible, it does not entail that all subjects necessarily do better in all cases when acting on their own evaluation of the merits of the case rather than following mistaken authorities.

²⁹ Raz 1986, p. 59.

³⁰ See also Perry 1988-1989, p. 934.

This consideration suggests that Raz's remarks on mistakes introduce a new normative thesis to the theory of authority. While the service conception alone entails that the authority would be legitimate and so that subjects, in this case, are duty-bound to comply with its directives, Raz's remarks on mistakes entail that the putative authority is not really legitimate and so that subjects do not have the moral duty to comply with its requirements. Eventually, their behavior may conform to the authority's directives, but subjects would not be morally obliged to obey them.³¹

As far as I can see, the latter account is the correct one. The second reading makes Raz's remarks on mistakes a crucial part of his whole normative theory, while the first makes his remarks conceptually superfluous.³² Once we reach this point, however, we see that the whole account is inconsistent. For it entails that, in some circumstances, subjects have and do not have a duty to comply with authoritative requirements. Such circumstances are those situations—admittedly: extremely unlikely, though conceptually possible—in which clearly mistaken authorities still help subjects to conform to reason.

5. A Reply

Raz discusses a possible critical reaction to his account that is worth reflecting on, since it can be taken to imply that my critique of his normative theory of authority is wrong. I will quote him *in extenso*:

The pre-emption thesis will be readily accepted as it concerns successful authoritative directives, i.e. those which correctly reflect the balance of

³¹ Raz 1999, pp. 178-182 introduces an analogous remark between conforming to a reason and complying with it.

³² To be fair, although conceptually superfluous, the remarks (on this reading) help illuminate Raz's normative theory of authority.

reasons on which they depend. But, a common objection goes, the thesis cannot justify pre-empting reasons which the authority was meant to reflect correctly and failed to reflect. Successfully reflected reasons are those which show that the directive is valid. They are the justification for its binding force. Therefore, either they or the directive should be relied upon, but not both, that is not if relying on both means adding the weight of the directive to the force of the reasons justifying it when assessing the weight of the case for the directed action. Reasons that should have determined the authority's directive but failed to do so cannot be thought to belong to the justification of the directive. On the contrary they tell against it. They are reasons for holding that it is not binding. The pre-emption thesis is wrong in claiming that they too are pre-empted.

So much for the objection. It fails because its premiss is false. Reasons which authoritative directives should, but fail to, reflect are none the less among the reasons which justify holding the directives binding. An authority is justified, according to the normal justification thesis, if it is more likely than its subjects to act correctly for the right reasons. That is how the subjects' reasons figure in the justification, both when correctly reflected in a particular directive and when they are not. If every time a directive is mistaken, i.e. every time it fails to reflect reason correctly, 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. In trying to establish whether or not the directive correctly reflects right reason the

subjects will be relying on their own judgments rather than on that of the authority, which, we are assuming, is more reliable.³³

The point analyzed here is slightly different than the one I have pressed in the previous section. The objection Raz discusses in this passage would eventually undermine the pre-emptive thesis, i.e., the conceptual thesis that states how authoritative directives affect practical reasoning, while my objection is not directed against Raz's conceptual analysis of authority but rather against his normative theory of authority. However, since as I have shown in section 2 that for Raz the normative and conceptual levels are strongly related, his reply seems to apply to my critique as well.

Construed as a counter-argument to the objection I have raised in section 4, the critical point of this reply would be the following: Raz's normative theory of authority would not be inconsistent, because it would only introduce the idea that subjects have a duty to obey persons or institutions whose directives generally provide the service of helping to conform to reason both when those persons and institutions are right as well when they are mistaken. For this reason, Raz's account would not entail the thesis that subjects both do and do not have a duty to obey some mistaken requirements. On the contrary, it would imply that they only have the duty to comply; otherwise, the advantage of relying on the authoritative guidance of actions would be lost.

There are a number of things to be said about this counter-argument. The first point is that the very idea that authorities would not be able to provide their services unless obeyed when wrong does not seem to be a conceptual truth but (at most) an empirical truth. But in fact the claim seems false. For we can still benefit from having authorities that in general help us to conform to the reasons that apply to us but that can still be disobeyed

³³ Raz 1986, pp. 60-61.

when deeply wrong. For instance, subjects of a given society can perfectly benefit from the authoritative guidance of their actions by the law—assuming that the government is legitimate—while disobeying the law when seriously mistaken. To be sure, the mere fact of subjects’ disobeying the law when seriously wrong by itself does not undercut the government’s general authority over them. Eventually, the officials can recognize the mistakes, and stop enforcing such laws. But even if they do not, it does not follow that the government loses its general authority over subjects.

In fact, Raz’s piecemeal approach to political obligation seems to depend on this being the case. According to this view, political authorities (i.e., the state and its officials) are *de jure* authorities for some subjects but merely *de facto* authorities for other subjects, and also they are *de jure* authorities sometimes but *de facto* authorities other times. In case this view is plausible—and at this point I do not want to open judgment on the issue—it entails that there can be *de jure* authorities that, as such, benefit some subjects, but that can still be disobeyed or, at least, whose directives are not authoritative on some other subjects on occasions.

Be that as it may, the real problem with Raz’s reply is that it introduces the idea that his further comments on mistakes do not add a new substantive thesis to the whole normative theory. Instead, it states that, once an authority provides the required service, subjects are duty-bound to obey independently of whether its requirements are right or wrong. However, as I have argued in the previous section, this view is not correct. For Raz argues authorities do not have the normative power to impose fully independent requirements on subjects, but only requirements that are already binding on them in any case. Thus, some mistakes disqualify them as legitimate authorities and so subjects do not have the duty to obey such requirements. If we stick to the rationale of Raz’s account, we

cannot accept the idea that seriously mistaken requirements are morally binding nonetheless.

Let me investigate a plausible conceptual distinction to make this point clearer. So far I have said that mistaken authorities issue mistaken directives. More precisely, I have argued that authorities are mistaken for the reason that their directives are wrong. In this analysis, the idea of a ‘mistaken directive’ is the key notion; the one of ‘mistaken authority’ is derivative.

However, it seems that we can also construe both the notions of mistaken authorities and mistaken directives in a way that does not make one notion basic and the other notion non-basic. For instance, we may say that a clearly mistaken directive may make the very directive not morally binding without affecting the legitimacy of the authority as a whole. By contrast, an authority that decides on the basis of a procedure that does not improve subjects’ conformity to reason in general may be considered illegitimate and so its directive would be non-binding even if it occasionally gets things right.³⁴

Although this second way of construing the distinction between mistaken directives and mistaken authorities seems plausible, I do not think Raz’s account can accommodate it, or in fact that Raz would consider it appropriate. For Raz’s normative theory makes the justification of authority depend *only* on the fact that authorities help subjects to act on the reasons that apply to them, independently of the procedures used to achieve this service. Perhaps they use unreliable methods (e.g., they read the astrology column every morning) but are systematically lucky and so issue correct directives; if so, they are legitimate and their directives are binding, because the directives help subjects to conform to reason. Or perhaps they use reliable procedures (e.g., they take advice from experts) but still get things

³⁴ I thank Alejandro Chehtman for suggesting the distinction.

systematically wrong; in this scenario, they are not legitimate and their directives are not binding, because the directives do not have the desired trait. In other words, in Raz's view, the unique issue that matters is whether authoritative directives help subjects to conform to reason. Why they do this is not important, normatively speaking. To be sure, in normal cases a putative authority will be able to help subjects to conform to reason because she knows better, which in turn may imply that she uses reliable procedures. But the latter is an empirical issue rather than a conceptual one.³⁵ For this reason, in Raz's account, an authority is mistaken because it issues mistaken directives.

Now, we see more clearly that Raz cannot say—as he seems to suggest in his reply—that subjects have a duty to obey authorities independently of the quality of their requirements. Thus, the reply does not properly block the objection raised in section 4. The conclusion thus remains: Raz's whole normative theory of authority implies that, when otherwise legitimate authorities issue clearly mistaken requirements, subjects both have and do not have a duty to obey them.

6. Back on Mistakes

So far I have argued that Raz's normative theory of authority is inconsistent. If sound, my critique entails that we should give up one of the two elements that allow for this unhappy result. In this section, I will argue that we must abandon the idea that what justifies authorities is that they help subjects to comply with reason. Moreover, I will show that Raz's own distinction between clear and great mistakes leads us to this conclusion. For, agreeing with Raz, I believe that subjects may have to follow authorities even when

³⁵ This is why Raz's account is subject to the democratic critique: it relies on issues of substance rather on issues of procedure.

mistaken, although of course some mistakes may be so important as to justify disobeying the directives.

Firstly, I think we can grant that the claim that some mistakes disqualify authorities is perfectly reasonable. The point is the opposite of the strongly conservative and melodramatic³⁶ thesis that states that societies fall apart unless authorities are obeyed in each and every circumstance. This view is clearly wrong. Even the most peaceful and successful polities include a number of individuals that disobey the law. To argue that authorities should be obeyed no matter what is thus an unjustifiable position. Raz's claim that clear mistakes disqualify authorities is a perfect way of making the idea fully intelligible.

In turn, it is my view that the thesis that authorities should be obeyed even when making great mistakes is also fully reasonable. At least part of the idea of having authorities is to decide disputes which cannot otherwise be resolved. For instance, authoritative arbitration allows taking coordinated decisions when unanimity is difficult or impossible to obtain.³⁷ Even so, it is perfectly reasonable to grant that, from time to time, even extremely careful arbitrators make great mistakes. Unless such errors are due to facts such that the arbitrators are bribed or drunk or that important new evidence unexpectedly turns up,³⁸ their orders are binding even if mistaken. The mistakes are due to facts that are beyond their control, and so they do not disqualify them as authorities. Insofar as they took into account the dependent reasons, the arbitrator's decisions should be obeyed even if mistaken, i.e., even if their decisions do not reflect those reasons.

³⁶ Raz 1986, pp. 101-102.

³⁷ Finnis 1980, pp. 232-233 and Rosler 2005, pp. 202-203.

³⁸ Raz 1986, p. 42.

Raz's remarks on mistakes are perfectly reasonable. It thus follows that we should give up the service conception, because these remarks are incompatible with the idea that what morally justifies the authoritative imposition of directives is the instrumental feature of such directives of helping subjects to conform to the reasons that already apply to them and are relevant to their actions in the circumstances.

7. Final Remarks

In the paper I have shown that Raz's service conception is at odds with his further remarks on mistakes. The whole account is inconsistent, because it entails that in some circumstances subjects both have and do not have a duty to comply with clearly mistaken authoritative requirements. In turn, I have argued that this fact puts serious pressure on the service conception, because Raz's account of mistakes is fully reasonable. Although not all mistakes undercut the legitimacy of authoritative requirements, some mistakes are so serious that the directives are not morally binding on subjects, even if the authorities otherwise provide the required service.

If valid, my critique of Raz's service conception is more serious than the democratic one, such that Raz will not be able to simply dismiss its relevance. Although Raz might be able to simply dismiss the destructive power of this objection,³⁹ he cannot do the same with the objection I have pressed above, at least if he wants his theory of authority to pass a minimum test of normative consistency.

³⁹ I do not think that Raz's dismissal of the democratic critique is reasonable. In my view, the appropriate strategy for dealing with this objection is to accept it and eventually to show that the account is compatible with democratic procedures. See Tucker 2012, pp. 235-237 and Viehoff 2011, pp. 254-255 for two arguments in this sense. See also Hershovitz 2003, pp. 219-220 and Hershovitz 2011, pp. 3-6 for a critical view on this kind of move.

Luciano Venezia

École des hautes études en sciences sociales / Centre d'études sociologiques et politiques

Raymond Aron (UMR 8036), France.

Universidad Nacional de Quilmes / Consejo Nacional de Investigaciones

Científicas y Técnicas, Argentina

105, Boulevard Raspail

75006 Paris

Courriel : luciano.venezia@ehess.fr; lvenezia@unq.edu.ar

References

- Besson, Samantha (2005), "Democracy, Law and Authority," *Journal of Moral Philosophy*, Vol. 2, No. 1, pp. 89-99.
- Christiano, Thomas (2008), *The Constitution of Equality: Democratic Authority and its Limits* (Oxford: Oxford University Press).
- Ehrenberg, Kenneth (2011), "Critical Reception of Raz's Theory of Authority," *Philosophy Compass*, Vol. 6, No. 11, pp. 777-785.
- Finnis, John (1980), *Natural Law and Natural Rights* (Oxford: Clarendon Press).
- Hershovitz, Scott (2003), "Legitimacy, Democracy, and Razian Authority," *Legal Theory*, Vol. 9, No. 3, pp. 201-220.
- (2011), "The Role of Authority," *Philosophers' Imprint*, Vol. 11, No. 7, pp. 1-19.
- Himma, Kenneth Einar (2007), "Just 'Cause You're Smarter than Me Doesn't Give You a Right to Tell Me What to Do: Legitimate Authority and the Normal Justification Thesis," *Oxford Journal of Legal Studies*, Vol. 27, No. 1, pp. 121-150.
- Perry, Stephen (1988-1989), "Second-Order Reasons, Uncertainty and Legal Theory," *Southern California Law Review*, Vol. 62, No. 3-4, pp. 913-994.
- (2012), "Political Authority and Political Obligation," University of Pennsylvania Law School, *Public Law and Legal Theory Research Paper Series*, Research Paper No. 12-27, pp. 1-90, available at <http://ssrn.com/abstract=2105692> [last visited 3 November 2012].
- Raz, Joseph (1986), *The Morality of Freedom* (Oxford: Clarendon Press).
- (1994), *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (Oxford: Clarendon Press).
- (1999), *Practical Reason and Norms*, Second Edition (New York: Oxford University Press).

——— (2009a), *The Authority of Law: Essays on Law and Morality*, Second Edition (Oxford: Oxford University Press).

——— (2009b), *Between Authority and Interpretation: On the Theory of Law and Practical Reason* (Oxford: Oxford University Press).

Rosler, Andrés (2005), *Political Authority and Obligation in Aristotle* (Oxford: Clarendon Press).

Shapiro, Scott J. (2002), “Authority,” in Jules L. Coleman and Scott Shapiro, eds., *The Oxford Handbook of Jurisprudence and Philosophy of Law* (New York: Oxford University Press), pp. 382-439.

Simmons, A. John (2001), *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge, UK: Cambridge University Press).

Talisse, Robert B. and Michael Habour (2009), “Questions About Normative Consent,” *The Good Society*, Vol. 18, No. 2, pp. 48-53.

Tucker, Adam (2012), “The Limits of Razian Authority,” *Res Publica*, Vol. 18, No. 3, pp. 225-240.

Venezia, Luciano (2012), *Political Authority and Political Obligation in Hobbes’s Leviathan*, Doctoral Dissertation, Universidad de Buenos Aires and École des hautes études en sciences sociales.

Viehoff, Daniel (2011), “Procedure and Outcome in the Justification of Authority,” *The Journal of Political Philosophy*, Vol. 19, No. 2, pp. 248-259.

Waldron, Jeremy (1999), *Law and Disagreement* (Oxford: Clarendon Press).

Williams, Bernard (2011), *Ethics and the Limits of Philosophy* (London and New York: Routledge).