

# AUTHORITY AND NORMATIVITY

Literature:

A. Marmor, *Philosophy of Law*

# AUTHORITY AND NORMATIVITY

- Joseph Raz (1939) - exclusive positivism
- concept of authority
- law *claims* to be a legitimate authority
- tax officer – claim to pay the tax → exercise of the putative legitimate authority
- legal requirements are based on claims of legitimate political authority → obligations  
→ explanation of the normativity of law (*cf.* Hart)
- justification of law's claim to be a legitimate authority → moral-political question

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- law's dual message:
  - a) you *ought* to do it
  - b) you ought to do it *because the law says* so (practical difference)
- difference with respect to moral and social norms
- main challenge about the explanation of the normativity of law: to explain the connection between *reasons for action* and the relevance of the answer to the „*who says so?*” question

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- *identity related* reasons:
  - $A$ 's reason to  $\varphi$  partly depends on the identity of another agent,  $B$ , who suggests, requests, or orders  $A$  to  $\varphi$ .
- various situations in which a reason for action is identity related:
  - acting in accordance with what an expert says (identity + knowledge or expertise)
    - rationale: knowledge or expertise
  - acting in accordance with what a friend says (identity + value of friendship)
    - rationale: the value of friendship

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- how law generates reasons for action?
  - identity-related reasons for action
  - law purports to make a practical difference that *it is the law* that requires it
  - rationale: law is essentially an authoritative institution
  - reasons to comply with an authoritative directive are, by their very nature, I-R reasons
  - differences with respect to the expert and friend examples of I-R reasons:
    - authority
    - reasons for action are of an **obligatory nature**

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- authoritative directive:
  - If  $A$  has legitimate authority over  $B$  in context  $C$ , then  $A$ 's authoritative directive requiring  $B$  to  $\phi$  in  $C$  would normally entail that  $B$  has an obligation to  $\phi$ .
- authority  $\rightarrow$  obligation: justification?
- service conception of authority
  - authority is legitimate when it provides a service
  - service of making it more likely that, in the relevant area of its authority, the subject would act as he or she *ought* to act if he or she follows the authority's instructions rather than trying to act without the authoritative guidance (normal justification thesis)

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- explanation of the rationale of the kinds of normative demands that the law purports to make:
  - a) you ought to do  $X$ 
    - function of authorities is to facilitate our ability to act on the reasons that apply to us anyway (i.e. regardless of authorities)
  - b) you ought to do  $X$  because the law says so
    - service conception of practical authorities: authority is in a position to make it more likely that you will comply with what you ought to do by following its directives than by trying to figure it out for yourself

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- implications about the nature of law:
  - legal norms are basically instructions issued by some persons in order to guide the conduct of others
    - objection: norms can be legally valid even if they do not originate with any particular authority
      - a) legal constraints on lawmaking authorities
        - promise – self-binding?
        - is service conception of authority compatible with an idea of a self-binding authoritative decision?
      - b) we can sometimes deduce the content of the law by way of reasoning or moral justification



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- it is in the nature of law that it claims to be a legitimate authority
  - a) whenever the law makes a certain requirement about the conduct of its putative subjects, it purports to impose the requirement as a matter of obligation to comply
  - b) the only way to make sense of this kind of obligation is by interpreting it as an instance of an authoritative directive

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- implications about the normativity of law:
  - Raz's thesis about the essentially authoritative nature of law gives us the basic structure of the kinds of reasons we may have for regarding the law as binding
    - explains the sense in which a legal obligation can be an obligation to do something because the law says so
    - moral and legal „ought“ are different in their nature (*cf.* Kelsen – difference only in the point of view)
    - law may meaningfully be regarded as binding if we understand its role as an authoritative resolution (*cf.* Hart – reduction to social facts)

Thank you for  
your  
attention!