AUTHORITY AND NORMATIVITY

Literature:

A. Marmor, *Philosophy of Law*
Joseph Raz (1939) - exclusive positivism
- concept of authority
- law *claims* to be a legitimate authority
- tax officer – claim to pay the tax $\rightarrow$ exercise of the putative legitimate authority
- legal requirements are based on claims of legitimate political authority $\rightarrow$ obligations
$\rightarrow$ explanation of the normativity of law (cf. Hart)
- justification of law’s claim to be a legitimate authority $\rightarrow$ 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
identity related reasons:
- A’s reason to φ partly depends on the identity of another agent, B, who suggests, requests, or orders A to φ.

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
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 φ in C would normally entail that B has an obligation to φ.

• authority → 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)
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
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
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
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!