

Joseph Raz's Service Conception and the Limits of Knowability

ADRIANA PLACANI

Abstract. This essay criticizes Joseph Raz's service conception of authority on the basis of its knowability condition. The condition states that for agents to be justified in following authoritative directives, they must be able to know (i.e., form reliable beliefs) that the authority issuing the directives is in fact legitimate. Three grounds for concern are identified. The first is that the satisfaction of the normal justification thesis (NJT), which states that the legitimacy of authorities hinges on whether their directives enable subjects to better conform to reason, only provides agents with reasons to believe that it is justified to act *as if* an authority were legitimate (i.e., on the assumption that it is). Based on the belief/acceptance distinction, the NJT allows for a gap between what is actually the case and what agents are willing to go along with in order to improve the likelihood of conforming to right reason. The independence condition (IC), which states that for those matters where the NJT obtains it must be better for a subject to improve such conformity than to decide for herself, must be satisfied in conjunction with the NJT, but suffers from its own particular problems. Thus, the second problem identified is that of incommensurable values, which appears when agents are not able to decide between the value of improving right reason—NJT—and the value of deciding for themselves—IC. Finally, the third problem is that of vagueness about right reason, where agents attempting to determine whether an authority meets the two conditions are not able to settle whether reason is improved. Together, these three problem areas of knowability serve to challenge Raz's position.

1. Introduction

Even only a cursory glance at the vast literature on authority reveals the merits of Jerome Hall's statement: "It is difficult to know precisely what questions should be asked about authority" (quoted in Braybrooke 1960, 469). The problem he describes, however, is one that Joseph Raz has avoided in his own work. This is not to say that Raz has discovered a cipher for unlocking the secret to asking questions—the ones that matter, at least—but rather that his work addresses authority in such a way as to show that he is not at a loss when it comes to queries about it. This can help explain Raz's prominence in political and legal philosophy, as well as his ongoing pursuit of answers to problems that arise when conceptualizing the inner workings of authority. The following essay focuses attention on Raz's service conception of authority, and one related query that comes from his work.

Raz's account of authority attempts to make sense not only of what authority is, but also of why and how an individual could regard an authority as legitimate. Certain epistemic conditions exist that enable the recognition of an authority. Another way of saying this is that an authority is knowable. As the following will illustrate, knowability

is a crucial piece in Raz's overall account. Even if one accepts at face value that knowability is of great importance in the service conception, the boundaries of the overall account need delimitation. This will be the first major pursuit in the following paper: outlining some core concepts of Raz's service conception of authority. The second task is to show why there are good reasons to doubt the feasibility of satisfying the conception's knowability condition. To substantiate this, three problem areas of knowability are highlighted: (1) the two conditions for legitimate authority entail acceptance rather than belief; (2) the incommensurability of values; (3) the vagueness of "right reason."

As the preceding indicates, investigation of these issues will both focus on and limit itself to Raz's service conception. The aim is not to refute Raz's account (at least not yet). What this essay accomplishes is the analysis and problematization of the service conception, with particular emphasis placed on the knowability condition. In this sense, the following provides both an analytical orientation as well as an opportunity to highlight some of the weaknesses that attend Raz's account of authority.

Before beginning analysis, I want to give an overview of this paper's structure. Section 2 offers a brief account of the main ideas of the service conception of authority. The aim here is to introduce the basic concepts and chief questions that shape the ensuing work. Section 3 relies on the main ideas already introduced, but reconstitutes them in the form of an example. The aim is to clarify and concretize the more formal exposition of the service conception provided in Section 2. This will prepare the ground for the critical analysis to follow. Sections 4 and 5 thus critically examine and scrutinize Raz's account. The main focus is the knowability condition and the deficiencies that attend it. This section aims to cast doubt on the feasibility of the knowability condition. Section 6 concludes this work.

2. Authority in Raz: Core Elements

The service conception of authority first and foremost poses two problems—one moral and the other theoretical. The moral problem can be put in the interrogative; as such it asks, How can an individual have a duty to subject his or her own judgment and will to that of another? Of the theoretical problem, Raz says: "In exercising authority we impose on others duties that they did not have before, and we do so simply by expressing an intention to do so" (Raz 2006, 1013). The theoretical problem, then, concerns how reasons (for action) and obligations can be imposed simply by communicating the intention to impose them (*ibid.*, 1012). Raz provides solutions to both problems.

The service conception seeks to solve the moral problem by means of two conditions, which are called conditions of legitimacy (*ibid.*, 1017–8). The first is the normal justification thesis, or NJT. The condition of legitimacy captured by it stipulates that when the NJT is met, a subject would better conform to reasons that apply to her anyway if she intends to be guided by an authority's directives than by following those reasons directly (*ibid.*, 1014). In other words, NJT holds that "authorities are legitimate only if their directives enable their subjects to better conform to reason" (*ibid.*, 1014–8). The second condition is the independence condition, or IC. It says that matters concerning which the first condition is met are such that with respect to them it is better to conform to reason than to decide for oneself without the aid of the authority (*ibid.*, 1014).

Again, Raz claims that the above two conditions answer the moral problem. Here is a succinct way of formulating his solution: If an individual (subject) who intends

to be guided by an authority's directives would better conform to reasons that apply to her anyway by following those directives, then she may have a duty to do so, and hence to subject her will to that of another (*ibid.*, 1014). The two conditions are not always sufficient to establish legitimacy, and other normative, moral considerations may have to be taken into account (Raz 2010, 298). Nonetheless, the two conditions of legitimacy aim, among other things, to provide a test by which a subject can differentiate between types of authority (i.e., legitimate or otherwise).

In responding to the theoretical problem, Raz claims that a person may be said to have authority over another if and only if there are sufficient reasons for the latter to be subject to duties at the say-so of the former (Raz 2006, 1013). While this assertion seems probable, Raz himself acknowledges that it does not say much about whether it is ever possible for someone to have sufficient reasons. Furthermore, it does not indicate when or if a person may have authority over another (*ibid.*, 1013–4).

With these two problems and connected conditions outlined, the focus can turn to another element of the service conception—the dependence thesis, or DT. Raz formulates it as such: “All authoritative directives should be based on reasons which already independently apply to the subjects of the directives and are relevant to their action in the circumstances covered by the directive” (Raz 1986, 47). Raz qualifies the thesis by suggesting that basing authoritative directives on reasons that apply independently to subjects may take circuitous routes; nonetheless, on the whole authorities should act primarily for dependent reasons (*ibid.*, 47).

Another core element of the service conception lies in the preemption thesis, referred to here as PT. It stipulates that authoritative directives preempt those reasons that are against required conduct, dependent reasons that were meant to be taken into consideration prior to issuing the directive (Raz 2006, 1018). In describing this thesis, Raz employs the legal doctrine of *res judicata* (Raz 1990, 121).¹ In effect, the authority can be said to act as a judge considering opposing reasons from different parties. These opposing reasons will be replaced by the authority's judgment in the form of a verdict, or, as the jargon has it, by an authoritative directive.

Raz's service conception also details exclusionary reasons. These are among the most debated elements of the service conception.² Raz writes that a binding authoritative directive provides “a reason for behaving as it directs, as well as an exclusionary reason” (Raz 2006, 1022). An exclusionary reason is defined as “a second order reason to refrain from acting for some reason” (Raz 1975, 39). Raz conceives of second-order reasons as always prevailing over the balance of first-order reasons—“winning not by weight but by kind” (*ibid.*, 46).

At the core of these claims sits the idea that reasons provided by the directives of authorities should not simply be added to other reasons. These reasons are different from standard ones because they possess exclusionary force. Within their jurisdiction, exclusionary reasons can overrule even the weightiest of reasons of one kind. However, outside their jurisdiction they will not exclude even the most trifling of

¹ *Res judicata* is defined as a matter that has been adjudicated by a competent court and which therefore may not be pursued further by the same parties; the fact that a particular matter falls into this category (*Oxford English Dictionary*, 3rd ed., 2010).

² Various positions on the existence of exclusionary reasons have been taken, ranging from a complete denial of valid exclusionary reasons to claims that the very concept of an exclusionary reason is incoherent (cf. Dworkin 2002; Flathman 1980; Moore 1989).

reasons of a different kind (Raz 1979, 22–4). Raz walks a middle road, conceiving these reasons to be conclusive within their scope, yet *prima facie* outside their jurisdiction. Most importantly, however, exclusionary reasons aim to secure an obligation on the part of subjects by way of exclusion. The conjunction between a first-order reason to act and a second-order reason not to act (on competing reasons) constitutes a protected reason to act (Raz 2009a, 216).

Having enumerated the basic parts of the Razian conception of authority, we can now consider how they operate, that is, how they come together to create a coherent account. Not only can an example more fully explicate the answers to the moral and the theoretical problems already discussed, but they can also help to pinpoint potential problems with the service conception. The core elements above lie at the foundation of Raz's service conception of authority, but they can be applied through example to give a better sense of what and how they function.

3. Authority in Raz: A Reconstructive Account

This section offers a reconstruction of the core elements from above and adds a few other components to the Razian conception, with the aim of explaining its workings. This allows for a re-enactment of some of Raz's main arguments and principal claims by way of an example that can illuminate the complexities and interpretative difficulties of the service conception of authority. The hypothetical is inspired by Raz's Mastergame Chess Club example, and the explanation by and large comes from his book chapter "Reasoning with Rules" (Raz 2009a). The primary justification for focusing on this work is that authoritative directives are often rules, and even in those cases when they are not because they lack the feature of generality, the reasoning that applies to them is the same (Raz 1990, 133).

Let's say there is a putative authority. Let's say a subject wants to know if it is legitimate. In order to determine this, Raz would claim that it must be tested against the two conditions for legitimacy. So, a putative authority is legitimate if the subject is likely to comply better with reasons that apply to her anyway when she accepts the directives of the authority as (authoritatively) binding, and tries to follow them rather than try to follow the reasons that apply to her directly (Raz 1986, 53). However, and this is the second condition, the preceding is valid only in those instances when it is not more important for the subject to act without the aid of authority. These are the conditions presented above. But how do they in fact play out? Let's construct the example.³

Take the board of directors of a yacht club. One of the board's many functions is to issue rules concerning the management of the marina. Note that before testing whether the board of directors of this club meets the legitimacy conditions, it should be regarded as a putative authority only. In order for it to gain legitimacy, the board must satisfy the normal justification and independence conditions.⁴

Consider the first condition. The board of directors of the yacht club should help members of the club achieve better conformity with reasons that apply to them

³ My appreciation goes to an anonymous reviewer who pressed me to use a realistic example.

⁴ Again, the two conditions are not always sufficient to establish legitimacy, and other normative, moral considerations may have to be taken into account (Raz 2010, 298). Nonetheless, they are as close as we come to having conditions of legitimacy.

anyway. We can assume that a member is interested in the club running well and everything that this might entail. In this respect, a member takes the interests of the club as also being, by and large, her own interests. It can be asked: Does Raz's account necessitate an identity of interests between authority and those subject to it? To this, the dependence thesis provides the answer. The authority may pursue interests that are not also its subjects', at least not in a direct way (e.g., considerations arising out of the needs of bureaucracies), but, as DT specifies, it should act primarily for dependent reasons, i.e., reasons which independently apply to the subjects of the directives (Raz 1985, 127).

Let's consider the rules issued by the board of the yacht club. According to Raz, rules such as these state what subjects ought to do; however, they do not state *why* they ought to do it by reference to any kind of good that will come to them if they do so. That is to say, the rules do not state what is good about doing this or that, but only *that* subjects ought to do this or that (Raz 2009a, 207). Thus, we spell out the difference between normative statements and evaluative ones. In order to explain why rules have normative force we must rely on evaluative considerations, but in a way that allows for a normative gap (i.e., a gap between their value and their normative force) (ibid., 209).

The problem appears when some rules themselves become reasons for subjects to do something and not just statements about what they have reason to do (ibid., 207). Raz asks: "How can it be that rules are reasons when they do not point to a good in the action for which they are reasons?" This is captured more succinctly in what he calls "the opaqueness of rules." A reason is opaque if a complete statement of it fails to show what is good about the action for which it is a reason (ibid., 205).

Let's say that one of the rules of the yacht club stipulates that inflatable water toys (e.g., slides) are not permitted in the marina. One can imagine how a member may not care about such things. As above, there needs to be a justification that the rule is a reason for members to act as it prescribes. If the member is indifferent to the use of inflatable water toys, the independence condition is easily met. It is less important for a member to decide for herself about whether inflatable toys ought to be allowed than it is for her to improve the likelihood of her conformity with right reasons by following the authority in question (Raz 2006, 1014). Now, if the member was not indifferent and making a decision with regard to the content of some rule was an important exercise of her autonomy, it is possible that the independence condition is not met.

The normal justification condition would have it that if subjects follow authority, they are more likely to comply with reason. As before, members may be basically uninterested in using water toys, in which case they may have no reasons (at least not directly) "that apply to them anyway" and that they can *better* follow with the aid of the authority (at least not directly). However, while the content of the rule may be inconsequential to them, the affairs of the club in general presumably are not. In deference to H. L. A. Hart, this is an instance of what Raz calls a content-independent justification (Raz 2009a, 210):

A reason is content-independent if there is no direct connection between the reason and the action for which it is a reason. The reason is in the apparently "extraneous" fact that someone [...] has said so, and within certain limits his saying so would be reason for any number of actions, including (in typical cases) for contradictory ones. (Raz 1986, 35)

The distinction between ordinary reasons and authoritative reasons rests squarely on the fact that it is not necessary to inquire into and calculate the merits of an action prescribed by an authority in order to decide whether or not to perform it. The considerations that establish whether or not the rule is binding do not bear primarily on the desirability of the act prescribed (Raz 2009a, 210). The rule about water toys may be binding because it is better for the affairs of the club to be governed by its board of directors than to be organized some other way or be left in disarray (ibid., 209). However, such reasoning seems overly permissive, and it could justify a whole variety of rules. As we just saw, it could even justify contradictory rules (ibid., 210). This raises problems.

Raz (ibid., 212) writes: “For a content-independent justification to be possible there must be reasons for an agent to behave in a certain way other than the value of the behavior in question.” But there are no specific reasons that Raz provides. Instead, the key to understanding the content-independent justification of rules lies in a specific explanation of how they and practical authorities function through the use of exclusionary and protected reasons. Here we come to the preemption thesis.

In the example, the board of directors of the yacht club provides its members with a protected reason against using water toys in the marina. The rule is not only a reason for action but part of a structure of interrelated reasons (ibid., 216). It is, firstly, a reason for the conduct prescribed and, secondly, a reason not to act for other competing reasons (i.e., it is an exclusionary reason) (ibid.). Reasons that members may have had with respect to the use of water toys are now excluded and replaced with the rule. This latter point may be said to be an instance of *res judicata*. The board has, ideally, already considered the possible relevant reasons (for and against) that all those subject to this rule may have and has replaced them with the current rule.

The preceding paragraph resolves some of the nagging questions about rule-following. The NJT justifies following the directives of the authority because it is by following these that subjects improve their conformity with reasons which apply to them anyway. The authority is placed in a superior position to assess background reasons that justify the rule. So, in our case, it is presumed that the board of directors of the yacht club is better placed to judge matters concerning the management of the marina.

We can see how the problem of justifying rules as reasons for action is solved by adopting the service conception. In spite of opaqueness and content-independence, a rule is a valid reason for acting because it has attained a protected status. This protected status means that a rule is now a reason to do what it prescribes (i.e., a first-order reason to act) and a reason not to act on those reasons that rival it (i.e., an exclusionary second-order reason).

The binding nature of the rule does not come from its content, but is rather owed to a legitimate source that provides protected reasons for subjects. In our example, the board of directors, having had the opportunity to weigh the benefits and demerits of having water toys in the marina (e.g., attendant risks and benefits), has issued a rule that disallows them (ibid.). This rule is now a reason for subjects not to act on reasons that were already considered. The rule displaces the reasons that the board was meant to take into account (ibid.). Typically, ordinary reasons are added to pre-existing reasons and their relative weight assessed. However, the rule is a valid reason for action not because it has won (by weight) against other reasons that a member

may have had. The mark of the rule is that it works through exclusion (winning by kind) and not through addition.

The example of the yacht club was meant to offer an illustration of the workings of the service conception. In following some of Raz's main arguments, focus was placed on arriving at an explanation for the possibility that authoritative directives (in the case offered, rules) can constitute content-independent exclusionary reasons for action. It is a matter of debate whether or not the explanations provided by Raz and reconstructed above are sufficiently compelling to demonstrate that authoritative directives are indeed valid reasons for action of this sort. In the following section I will address at least one reason why one may doubt that Raz's explanations are sufficient.

4. Critical Analysis of the Service Conception—Knowability

Having set out some of the core elements of the service conception of authority, and then having provided an example in order to better conceptualize the account's operation, I now want to turn to a crucial feature underlying Raz's conception: knowability. The following, however, is not mere description. Through critical analysis, it casts doubt on the feasibility of satisfying the knowability condition. It is necessary to note at the outset a shift in focus from reasons for action, which occupied the considerations in the preceding parts of this work, to reasons for belief. Again, reasons for action are facts which constitute a case for or against the performance of a certain action (Raz 2009b, 37). Reasons for belief are epistemic reasons (i.e., reasons to believe in a proposition as facts that are part of a case for the belief in the truth of the proposition—truth-related considerations) (*ibid.*).

About the knowability condition, Raz (2006, 1025) writes:

Someone or somebody can be an authority only if the fact that the two conditions are met can be known to its subjects. [...] If one cannot have trustworthy beliefs that a certain body meets the conditions for legitimacy, then one's belief in its authority is haphazard, and cannot [...] be reliable. [...] The only reliable way of conforming to authority is through having a reliable belief that it is an authority, and therefore should be obeyed.

This is the place that the knowability condition occupies in Raz's account of authority. The entire conception seems predicated on its realization.

In accordance with the passage above, the knowability condition of the service conception of authority stipulates that the satisfaction of the two conditions which establish the legitimacy of practical authorities—the normal justification thesis (NJT) and the independence condition (IC)—must be knowable to subjects. Knowability in the sense employed here means that subjects must be able to know through reasonable inquiry that the two conditions are met. A central question follows from this depiction; namely, is it ever possible to actually know that an authority meets the two conditions?

Raz assumes that "whenever one can form reliable beliefs that the conditions for legitimacy are met, one can also have knowledge that they are met" (*ibid.*, 1025). Note, then, that at the foundation of knowability is the ability to form reliable beliefs. In this sense, asking about the feasibility of knowability is asking about the possibility of belief formation. Rephrasing the question so as to take this qualification into account: Is it possible to form reliable beliefs that the conditions of legitimacy are met (given Raz's premises)? The answer to this is a starting point for doubt.

Raz claims that in order for an authority to be legitimate the two conditions for legitimacy (the NJT and the IC) must be met. Of course, there may be cases where the fact that the authority meets the two conditions is not sufficient to establish legitimacy; but in general, we can affirm that, according to Raz, a legitimate authority ought to meet the two conditions for legitimacy. Further, and this will be considered below, subjects must be able to know (through inquiry) that these conditions are in fact satisfied by the authority so that it is justified to obey its directives.

In the following, I want to disentangle some of the claims above and show what they mean when applied to (hypothetical) authorities and subjects. To start, I want to detail a bit of what it takes for an authority (call it A) to meet the two conditions for legitimacy:

If A meets the first condition for legitimacy—the NJT—then it has been shown that its subjects are likely better to comply with reasons which apply to them anyway if they accept its directives as authoritatively binding (Raz 1986, 53).

If A meets the second condition for legitimacy—the IC—then it has been shown that it is better for subjects of A to comply with reason than to decide for themselves (Raz 2006, 1014).

In order to expose the problems surrounding the two conditions and the way in which they relate to knowability, I will take the perspective of a would-be subject of A (call him subject S).

As noted, according to the knowability condition, S must believe that A is a legitimate authority, otherwise her obedience is haphazard (*ibid.*, 1025). According to Raz, the way in which S comes to form the belief that A is a legitimate authority is by believing that A satisfies the two conditions for legitimacy. Further, S must also believe that satisfying the two conditions amounts to establishing the legitimacy of A. I want to focus on this latter point. One can wonder if satisfying the two conditions constitutes sufficient, reliable reason for belief. Further, and the following will show this to be a weak point in the service conception, one can wonder whether or not the fact that S believes that A meets the two conditions can be considered a reliable reason for S to believe that A is a legitimate authority. It seems doubtful.

The reason for doubt is that meeting the two conditions does not (necessarily) establish belief. This can be restated as follows: believing that the NJT and IC have been satisfied can provide S with a reason to act *as if* A were a legitimate authority, but not necessarily with a reason to believe that A *is*, in fact, a legitimate authority. Of course, S may just happen to believe that A is a legitimate authority without justifiable support, but this would not satisfy the condition of knowability. The idea is that it does not necessarily follow from meeting the two conditions for legitimacy, which are the Razian grounds for establishing legitimacy, that S has sufficient, reliable reason to believe that A is a legitimate authority.

A distinction between belief and acceptance that Raz himself employs can help reveal the extent of the preceding problem.⁵ That is, satisfying the two conditions for

⁵ About the distinction between belief and acceptance much more can be said than I do here. I limit myself to presenting matters in brief, in part because Raz accepts this basic distinction. Therefore, it seems that the basis on which I build my critique would not be problematic for Raz himself. The conclusions I derive are, of course, a different matter.

legitimacy can be sufficient grounds for S to accept A as a legitimate authority, but not necessarily to believe that A is a legitimate authority. The distinction between belief and acceptance is captured in the following:

accepting a proposition is conducting oneself in accord with, and because of, the belief that there is sufficient reason to act on the assumption that the proposition is true: acceptance of the proposition that P entails belief, but not belief that P. Rather it entails belief that it is justified to act as if P. (Raz 2009b, 38)

This points to acceptance as combining reasons for action with reasons for belief, but makes clear that the ultimate target of acceptance is action (*ibid.*).

A significant point of contrast between belief and acceptance is that the latter allows for the possibility of a gap between what is actually the case and what one is willing to go along with.⁶ On the other hand, reasons for belief do not allow for such a gap, as they are necessarily truth-related (*ibid.*, 37). Thus, acceptance, although a basis for action, is not necessarily an indication of belief. The possibility of having one without the other—that is, the possibility of acceptance without belief and belief without acceptance—constitutes grounds for distinguishing between the two and a popular strategy for theorists who advocate for and employ this distinction.⁷

The above belief/acceptance distinction parallels the NJT, whose exact formulation is as follows:

The normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly. (Raz 1986, 53)

This can be captured more succinctly, without altering the meaning of the NJT by the following statement: S (subject) will do better in complying with reasons which apply to him anyway if he treats A's (the authority's) directives as binding. The above illustrates that S will do better in complying with reasons if he treats A *as if* it were a legitimate authority. The satisfaction of the NJT entails (for S) the belief that it is

⁶ Audi (2008, 91) refers to acceptance as a kind of working hypothesis, and this seem to capture the latter thought well.

⁷ Another point of contrast between the two concepts is that acceptance involves a voluntariness, which is not present for beliefs. About this, William P. Alston (2007, 132) writes that "accepting that p is both a complex dispositional state markedly similar to believing that p, but distinguished from it by the fact that it issues from acceptance [as] a mental act that is voluntarily engaged in." Audi (2008) also supports and employs the distinction also. He argues that acceptance is behavioral in a way in which belief is not. Van Fraassen (1980) argues that acceptance is a prevalent attitude in science to be distinguished from belief. According to him, scientists, who very often do not think that a particular theory is true, nevertheless accept it as a basis for research. Therefore, although lacking in belief, acceptance allows them to proceed and act accordingly. Bratman proposes "the ladder case" for illustrating the distinction. In his example, an agent may genuinely believe, even before checking, that a very tall ladder is stable. However, given that so much depends on this actually being the case (were the agent to climb it), and also because, in general, it makes for good policy, the agent may not accept that the ladder is stable until she has properly checked it (Bratman 1999, 24). Thus, in spite of her belief, the agent performs actions that suggest her nonacceptance. For other important discussions of acceptance/belief, see Cohen 1989; 1992; Frankish 2004; Harman 1986; Velleman 2000.

justified to act as if A were a legitimate authority, or, in other words, on the *assumption* that it is. Recall, that this is precisely what the definition of acceptance from above stipulates.

Notice that it does not follow from satisfying the NJT that S has reason to believe that A is a legitimate authority, or that S should believe that A is a legitimate authority, or that A is in fact a legitimate authority. Because A satisfies the NJT, S has reason to act as if A were legitimate, meaning S has reason to obey A. However, this does not mean that S (necessarily) has reason to believe that A is legitimate. Because the NJT is not a truth-related consideration, it cannot count as support for belief in the legitimacy of an authority. As above, the NJT entails S's belief that if he were to follow A's directives, he would be likely to achieve better conformity with reason. NJT entails the belief that it is justified to act *as if* A were a legitimate authority (i.e., on the assumption that A is in fact a legitimate authority), but NJT does not support the belief that A is in fact a legitimate authority.

On the basis of the above, it seems that the truth regarding A's legitimacy is not the concern of the NJT. Rather, the NJT is about providing subjects with reasons for acting, and not necessarily with reasons for believing. This is not a statement that constitutes a departure from what Raz himself would say about the condition. Raz's concern is with providing justification for following the directives of authority or with what is referred to by him (and by many others) as surrender of judgment. While he is successful in providing such a justification for action, the problem is that the aims of the NJT are not consistent with the demands of the knowability condition. From this it follows that the NJT, as a condition that helps to establish who or what is, in fact, a legitimate authority, may not be apt to do so. The most it can do is establish who or what alleged authority should be treated *as if* it were legitimate (i.e., should be *accepted* as legitimate, as opposed to being *believed* to be so).⁸

It may not be clear at this point how the issues above affect the knowability condition. Recall that the knowability condition stipulates that it must be knowable to subjects that an authority is legitimate (i.e., that it meets the two conditions for legitimacy): "one can reliably conform (to authority) only if one has reliable beliefs regarding who has legitimate authority." Raz would claim that S cannot have reason to believe that A is a legitimate authority unless A meets the conditions for legitimacy. It follows that, for Raz, if S believes that A meets the conditions for legitimacy, then S has reliable reason to believe that A is a legitimate authority. However, as above, meeting the two conditions does not establish that an authority is, in fact, legitimate. It does not necessarily follow that if S believes that the two conditions are met, S also has sufficient, reliable reason to believe that A is a legitimate authority: It only follows that S has reason—non-truth-related reason—to accept A as if it were legitimate and to accordingly follow its directives. The fact that the normal justification thesis is not truth-related shows that it is, not a reason for belief, but rather a *practical* reason. As such, it may justify action but not belief.

The analysis has not yet tackled the issue of true and false beliefs. I start from the assumption that it is not irrational for an individual to act out of false beliefs when

⁸ It might be questioned whether asking for a greater commitment than acceptance would be asking for too much. Regardless of how one might come down on this matter, the answer would not alter the fact that there is a difference between acceptance and belief and that the NJT does not close the gap between them. I should thank an anonymous reviewer for raising this point.

that individual does not have sufficient reason to suspect that she has a false belief. However, this does not show the individual to have a reason to act on those false beliefs. Suppose S has a false belief along these lines:

S believes wrongly that A will bring better conformity with reason.

It follows that:

S believes wrongly that she has a reason to follow A.

Those two assertions cannot, in general, make it the case that S (in fact) has reasons for acting. In other words, it does not follow from those two assertions that:

S has a reason to follow A, because A will (in fact) bring better conformity with reason.

Ulrike Heuer (2004) addresses the issue of true and false beliefs in distinguishing between justificatory and explanatory reasons. According to Heuer the latter may rest on mistakes without any loss to their explanatory force (*ibid.*, 44). So, if S believes that she has reasons to follow A because this will improve (right) reason, and it turns out later that she was wrong, her belief can still explain why she performed the action. However, it can justify performing the action only if she was right (*ibid.*, 44–5). The idea is that false beliefs, in general, do not justify (*ibid.*). Heuer makes this point by looking at the structure of some excuses:

If a false belief could justify, there would be no need for an excuse in such cases. But in fact, we do excuse ourselves by claiming that the situation—say, our specific epistemic situation—was such that it wasn't possible for us to get it right. Only, because this is so—because it was impossible or extraordinarily difficult for us to form the right belief—are we excused (if we are). (*Ibid.*, 45)

The analysis reveals that false beliefs do not *justify* action but can only *explain* it. If one accepts this, and there are some compelling reasons to do so, then the consequence for the example from before is that false beliefs with regard to the legitimacy of A—based on false (and sometimes even true)⁹ beliefs about A satisfying the two conditions for legitimacy—may not justify S's actions even if they could help explain them. So, if A is not, in truth, a legitimate authority (as the NJT permits given that its entailment of acceptance of the legitimacy of A allows for a gap between the truth about A and what subjects are willing to go along with), then S's obedience might not be justified. It follows that in order for S's actions to be justified A must be, in fact, a legitimate authority. Justification can only come from true beliefs.

The whole of the above serves to qualify a previous statement. It was stated that the fact that the normal justification thesis did not entail in its formulation any truth-related considerations about the bearers of legitimacy pointed towards its being not a reason for *belief* but rather a *practical* reason. Consequently, it could justify action

⁹ The preceding discussion about belief and acceptance aimed to expose such a case. Even when S had a true belief that A met the conditions for legitimacy, this was insufficient to establish whether A was, in fact, legitimate.

but not belief. In fact, that the NJT is not truth-related illustrates that it may not even justify action. What it can do is *explain* it.

So far, the primary focus has been on the normal justification thesis. By analyzing it in the above, some potential weaknesses in Raz's conception became clearer. To summarize, the NJT does not necessarily provide sufficient, reliable reasons for belief in the legitimacy of an authority, but rather reasons for acceptance of an assumed legitimacy. In light of this, the feasibility of satisfying the knowability condition can be put into doubt. That is, so long as knowability demands that one have a reliable belief about who has authority, the fact that the NJT might not establish this proves problematic.

5. Knowability and the Independence Condition

Having concentrated heavily on the NJT does not leave us without things to say about the independence condition. The two are related, and what was said of the NJT affects what can be said about the IC. After all, they have to be satisfied in conjunction with each other in order for legitimacy to be established. The preceding points, then, retain their strength. To make a brief note of them: If S believes that the independence condition is met, then that may only give S reason to accept authority as legitimate (i.e., reason to act on assumption), but it does not necessarily provide strong, reliable reasons to support the belief that the authority is, in truth, legitimate. Nonetheless, the following assesses what it means for the independence condition to be satisfied. In so doing, it also takes account of two more aspects of weakness related to the knowability condition.

In order for the independence condition to be met, it must be the case that for matters in which the NJT obtains, it is better to improve conformity to right reason than for a subject to decide for herself, without the aid of the authority (Raz 2006, 1014). There are at least two problems associated with the preceding, both addressed below. The first pertains to the difficulty of comparing between independent values (i.e., arriving at "right reason" and deciding for oneself). The second pertains to the issue of right reason itself and the vagueness and difficulties that surround it.

As to the first problem, Raz acknowledges that one possible objection to his account is that a subject may not be able to make a comparison between the importance of deciding for herself and the importance of conforming to right reason (Raz 2006, 1015).¹⁰ However, he attempts to dismiss this objection from incommensurability by saying that it is premised on a false assumption, namely, by claiming that concerns which underlie reasons to act independently and reasons to conform to "right reason" have nothing to do with one another (*ibid.*, 1015). He may be right about this. Still, even if concerns that undergird both reasons may be in some way connected, that hardly resolves the problem of incomparable values.

Put briefly, the incomparable value problem arises when attempting to compare the value of achieving better conformity with "right reason" with the value of

¹⁰ At various points in his body of work, Raz refers not only to the NJT's requirement of improved conformity with right reason, but also to reason, background reasons, and reasons. Raz comes close to offering more of an explanation of what he calls "right reason" when he equates it with what is best in "On the Nature of Law," in *Between Authority and Interpretation* (Raz 2009a, 114).

deciding for oneself unaided by authorities (ibid., 1015).¹¹ Even though Raz attempts to mount a defense from objections like this one, ultimately he concedes that “often the two concerns, one satisfied by conformity with reasons, the other by acting on one’s own judgment, may be radically different, and the cases for conformity or independence may be incommensurate, with the (uncomfortable) result that whether one is then subject to authority is undetermined” (ibid., 1016). Notice, then, that in finding weakness in the service conception on the basis of incommensurability, one need look no further than Raz himself. How this point affects the knowability condition specifically is explained below.

Unresolved by Raz, the incommensurable value problem is pertinent to the broader consideration of the service conception, but the main purpose of mentioning it here is that it affects the possibility of meeting the knowability condition. The most basic source for doubting that the condition’s satisfaction is feasible comes from Raz’s own admission that the case of incommensurable values may leave one in a situation of indeterminacy with respect to her obligation to follow authority.

Although there is a vast literature on the topic of incommensurable values, we can put aside debates surrounding finer theoretical points about it, and assert with Raz that, at least on some occasions, subjects may find themselves in a deadlock with respect to how they should act (cf. Adler 1998; Broome 1997; Crisp and Hooker 2000; Richardson 1994; Sinnott-Armstrong 1985). Deciding whether to follow one’s own reasons or improve right reason instead may not be such an easy task. The consequence is that subjects may not know whether or not the IC is met. Recall that meeting the IC involves subjects knowing that it is better to follow the directives of an authority, so as to improve conformity with right reason, than it is for them to decide for themselves (Raz 2006, 1014). This is precisely what the incommensurability problem questions. In turn, this means that the satisfaction of the IC may, at least in some cases, be unknowable, which means that the knowability condition (i.e., that subjects must know that the authority meets both the NJT and the IC) is less feasibly attainable.

The second problem identified above concentrates on right reason. As will be seen, some of the difficulties that arise because of this, center on Raz’s limited explanation of both what right reason is and how it can be known by subjects. This affects the possibility of comparing between the value of arriving at right reason and that of deciding autonomously. Furthermore, it ultimately affects the possibility of forming reliable beliefs concerning who has authority (i.e., the knowability condition).

The service conception holds that the legitimacy of authority turns primarily on its value in achieving something beyond itself—conformity to “right reason” (ibid., 1026). The main advantage brought by recognizing authority as legitimate in Raz’s conception is that following authority is “a more reliable and successful guide to right reason” (Raz 1985, 25). One implication of this is that it must be possible for a subject to know (i.e., form reliable beliefs) that the authority is more likely than not to achieve “right reason.” Further, Raz claims that through reasonable inquiry one should be able to discover that an authority is an authority, and that as such it should be obeyed (Raz 2006, 1025). The reasonableness of the inquiry turns on the degree

¹¹ The terms *incomparable* and *incommensurable* are here used synonymously.

of improvement of conformity with “right reason,” where the more important the improvement, the more extensive the inquiry (ibid.).

This does not mean that subjects necessarily have to know what “right reason” is. Any trepidation detected in the preceding sentence comes from Raz’s lack of explication of “right reason” and associated epistemic conditions. At a minimum, in order for conditions of legitimacy to be satisfied, subjects must believe that by following authority they will be able to achieve conformity to “right reason.” This may not necessarily mean that a legitimate authority knows what that “right reason” is either, at least not prior to deliberation. In a nutshell, subjects must believe that, given the good judgment and coordinative abilities of an authority, it is more likely that by following it they will arrive at that which best instantiates “right reason.”

Remember that the legitimate authority considers only reasons that apply independently to subjects (i.e., the dependence thesis). Underexplained in this is how the authority comes to know the reasons that apply independently to subjects. Yet another feature that is given limited treatment is how one selects and weighs these reasons. How many (independent) reasons are preempted by the authority’s ruling is also a bit of the unknown.¹² Now, it is possible that Raz can answer these concerns and provide a more robust depiction, but exactly how he would do this is not entirely clarified in his conception.

Belief in the legitimacy of an authority is conditional on the authority being more likely than not to help subjects conform to “right reason.” On this depend the lengths that one should go to in order to inquire into the legitimacy of a particular authority. However, in spite of many references to “right reason,” Raz provides no full explanation of it (Lukes 1990, 214; Martin 2014, 83). This is a problem that works in at least two ways. One is simply that Raz’s account lacks clarity on key points. The other appears when we try to see how Raz’s account would function. On this point, we can wonder what subjects would do if they were trying to determine “right reason” for themselves, perhaps in order to test whether the authority in fact meets the legitimacy conditions. There might be a multiplicity of conceptions of what it is (assuming one believes that it can be obtained, which is disputable). These conceptions would be grounded in a variety of beliefs, values, traditions, and so on. With these differences comes a pronounced possibility of disagreement and conflict. Of course, there are many cases where we can say with a level of confidence that such conflicts will not arise. In the absence of clarification by Raz of both the meaning and the procedure for arriving at “right reason,” the simple lack of clarity looks to be more threatening to the service conception. Notice that inquiring into whether an authority is legitimate (i.e., Raz’s reasonable inquiry) depends on being able to know what “right reason” is. This in turn affects the knowability condition, as a subject must be able to know that an authority is legitimate.

Exclusionary reasons, which are part and parcel of how authoritative directives operate according to Raz, are also not without problems. Given the opaqueness of rules, a subject may not know which reasons have been excluded by the authority and which ones are left standing. Furthermore, the weight of background dependent reasons as taken into account by an authority considering them may be unknown. In addition, the weight assigned to such reasons may be different from a subject’s

¹² For a criticism of Raz incorporating these and related problems, see Gur 2007.

perspective than it is from an authority's perspective, and such differences might fluctuate over time. These matters can prove problematic when attempting to determine improvements in conformity with right reason. Furthermore, as Martin (2014) argues, there appears to be a conflict between, on the one hand, the NJT and the IC conditions—which demand that subjects constantly reflect on and assess conformity with right reason, as well as balance this against their autonomy interests—and, on the other, the pre-emption thesis, which seeks to exclude subjects' consideration of dependent reasons. Ultimately, because a subject is barred from acting on background reasons, and possibly even from consulting them, she may not know whether an action prescribed by a rule is the correct one. Because of this, she may not know whether, overall, the rules point to right reasons and thus help improve conformity with them.

One might quickly reply to the above criticism that the service conception is not about knowing what "right reason" is. An ideal legitimate authority helps conformity with "right reason" because it is best placed to do so, given its expertise and coordinative abilities. So, the argument goes, it does not matter that Raz does not explicate "right reason." Even taking these points into account, the legitimacy of authority seems intimately bound up with its being able to determine what "right reason" is. This is because an alleged subject should be able to decide for herself whether an authority has done what it claimed it could do. An alleged subject should be able to criticize authority on the grounds that it has failed to provide what it set out to provide. Finally, an alleged subject should be able to have in place a test for the success of authorities. After all, this is part of what the service conception sets out to achieve.

To conclude, the above points indicated potential weaknesses in Raz's service conception of authority.¹³ They all pertained most directly to the condition of knowability as set out in his account. The problems noted were the distinction between belief and acceptance when it comes to authority; incommensurability of values; and most recently, right reason. About the first, I pointed out that it is acceptance of legitimacy that is supported by the two conditions (NJT and IC), and not necessarily belief in the legitimacy of an authority. The consequence was that the satisfaction of the two conditions could (at most) provide subjects with reasons for action and not with reasons for belief required for the satisfaction of knowability. As to the second, I illustrated that due to incommensurable values (conforming to "right reason" and self-reliance) subjects might find it impossible to determine if the conditions for legitimacy are met. On that basis, I pointed out that subjects might not be able to form a reliable belief with regard to their obligations. Finally, I highlighted how Raz's limited explication of "right reason" posed difficulties for both scholars and (ideal) subjects. The latter impacted the possibility of forming a reliable belief concerning who has authority (i.e., the knowability condition).

6. Conclusion

This work has focused not only on some of the core elements of Joseph Raz's account, but also on certain points of weakness associated with the condition of knowability treated within it. In initially isolating the basic but central features of the service

¹³ There is a vast literature on the service conception with extensive critiques pointing to weaknesses related to the ones mentioned in this paper, as well as to other problems not addressed here. I cannot do justice to the diversity and breadth of these positions.

conception of authority, the essay made them more perspicuous through example and reconstruction. Following this, problem areas of knowability were identified, indicating those areas within the theory that can be refined or clarified.

What remain, then, are difficult questions for the service conception. As indicated, these pertain to subjects being able to know whether an authority can be or, better yet, *is* legitimate. The conclusions arrived at by critical analysis highlight not only the difficulties in Raz's conception but also, and even more critically, the general epistemological problems of which they are a part.

Institute of Philosophy
University of Graz
Heinrichstrasse 26 Graz
Austria

Email: adriana.placani@uni-graz.at

References

- Adler, M. D. 1998. Law and Incommensurability: Introduction. *University of Pennsylvania Law Review* 146(5): 1169–84, https://scholarship.law.upenn.edu/penn_law_review/vol146/iss5/1.
- Alston, W. P. 2007. Audi on Nondoxastic Faith. In *Rationality and the Good: Critical Essays on the Ethics and Epistemology of Robert Audi*. Ed. M. Timmons, J. Greco, and A. Mele, 123–39. New York: Oxford University Press.
- Audi, R. 2008. Belief, Faith, and Acceptance. *International Journal for Philosophy of Religion* 63(1–3): 87–102. <https://doi.org/10.1007/s11153-007-9137-6>.
- Bratman, M. 1999. *Faces of Intention: Selected Essays on Intention and Agency*. Cambridge: Cambridge University Press.
- Braybrooke, D. 1960. Authority as a Subject of Social Science and Philosophy. *The Review of Metaphysics* 13(3): 469–85.
- Broome, J. 1997. Is Incommensurability Vagueness? In *Incommensurability, Incomparability, and Practical Reason*. Ed. R. Chang, 67–89. Cambridge, MA: Harvard University Press.
- Cohen, L. J. 1989. Belief and Acceptance. *Mind* 98(391): 367–89.
- Cohen, L. J. 1992. *An Essay on Belief and Acceptance*. Oxford: Oxford University Press.
- Crisp, R., and B. Hooker, eds. 2000. *Well-Being and Morality: Essays in Honour of James Griffin*. Oxford: Clarendon Press.
- Dworkin, R., and J. Coleman. 2002. Thirty Years On. Review of *The Practice of Principle: In Defense of a Pragmatist Approach to Legal Theory*, by Jules Coleman. *Harvard Law Review* 115(6): 1655–71.
- Flathman, R. 1980. *The Practice of Political Authority: Authority and the Authoritative*. Chicago: University of Chicago Press.
- Frankish, K. 2004. *Mind and Supermind*. Cambridge: Cambridge University Press.
- Gur, N. 2007. Legal Directives in the Realm of Practical Reason: A Challenge to the Pre-emption Thesis. *The American Journal of Jurisprudence* 52(1): 159–228. <https://doi.org/10.1093/ajj/52.1.159>.
- Harman, G. 1986. *Change in View: Principles of Reasoning*. Cambridge, MA: MIT Press.

- Heuer, U. 2004. Reasons for Actions and Desires. *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 121(1): 43–63.
- Lukes, S. 1990. Perspectives on Authority. In *Authority*. Ed. J. Raz, 203–17. New York: New York University Press.
- Martin, M. 2014. *Judging Positivism*. Oxford: Hart Publishing.
- Moore, M. 1989. Authority, Law, and Razian Reasons. *Southern California Law Review* 62(3–4): 827–96.
- Raz, J. 1975. *Practical Reason and Norms*. Oxford: Oxford University.
- Raz, J. 1979. *The Authority of Law: Essays on Law and Morality*. Oxford: Clarendon Press.
- Raz, J. 1985. Authority and Justification. *Philosophy & Public Affairs* 14(1): 3–29.
- Raz, J. 1986. *The Morality of Freedom*. New York: Oxford University Press.
- Raz, J. 1990. Authority and Justification. In *Authority*. Ed. J. Raz, 115–41. New York: New York University Press.
- Raz, J. 2006. The Problem of Authority: Revisiting the Service Conception. *Minnesota Law Review* 90: 1003–44.
- Raz, J. 2009a. *Between Authority and Interpretation: On the Theory of Law and Practical Reason*. New York: Oxford University Press.
- Raz, J. 2009b. Reasons: Practical and Adaptive. In *Reasons for Action*. Ed. D. Sobel and S. Wall, 37–57. Cambridge: Cambridge University Press.
- Raz, J. 2010. On Respect, Authority, and Neutrality: A Response. *Ethics* 120(2): 279–301.
- Richardson, H. 1994. *Practical Reasoning about Final Ends*. Cambridge: Cambridge University Press.
- Sinnott-Armstrong, W. 1985. Moral Dilemmas and Incomparability. *American Philosophical Quarterly* 22(4): 321–29.
- Van Fraassen, B. C. 1980. *The Scientific Image*. New York: Oxford University Press.
- Velleman, D. 2000. *The Possibility of Practical Reason*. Oxford: Clarendon Press.