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The Justification of Authority

A Response to Raz

The political project of Liberalism centers around the value of freedom within political societies. Specifically, the reconciliation of the value of free individual action with the necessity of political authorities that are seen as limiting that freedom. Attempts to resolve this supposed tension between subject and authority inevitably lead to questions regarding the exact relation of the individual to his government and usually result from the prior claim that “all men are created equal.” Given such supposed equality, under what conditions can one individual acquire a right to shape the actions of another individual if all individuals are understood as being by nature free and equal? The acceptable scope of political authorities, the conditions under which their claims to obedience are justified, and the nature of individuals’ right to freedom all receive extensive treatment by Liberal theorists.

One of the more popular approaches to resolving the tension between the need for authority and the value of individual freedom are those grouped under the heading of Consent Theories. Such theories, as first proposed by Hobbes, Locke and Rousseau, characterize the nature of the relationship between governor and governed as one of consent or contract. The individual chooses to be under the authority of another and thus preserves his right to freedom; her duty to obey is the result of her freely-performed actions. This virtue of freely placing oneself under political obligations is what justifies the authority of the governor. In this way, political authorities are reconciled with individual freedom by asserting that a certain expression of individual freedom, i.e. consent, is what justifies political authorities’ limitations of freedom.

However, the view that consent is fundamental to the justification of political authority has come under fire by Joseph Raz in his book, The Morality of Freedom. Raz claims that to understand the

relationship between political authority and its subjects, one must first understand exactly what it is to be a political authority. Furthermore, in understanding what it is to be an authority, Raz claims that one must first understand what an authority itself is, independent of political contexts. He argues that a complete conception of authority will show that consent is superfluous in the justification of said authority. That is, normative conditions for the justification of authority derive from a proper understanding of what an authority is.

In this paper I intend to object to Joseph Raz's argument for the justification of authority. Authority, on Raz's view, is justified if it provides reasons for action that enable a subject to act more in line with independent reasons that apply to him. I object to this justification of authority on the grounds that it misunderstands the nature of reasons. Raz assumes that part of the nature of reasons is their ability to make some action good. That is, reasons have some good-making property which makes the actions for which they are reasons intelligible to the agent. Therefore, on Raz's view, the ability of an authority to make an agent act more in-line with reason justifies the authority. I deny the conceptual necessity between 'reasons' and 'the good' and argue that, with this tie severed, Raz's justification of authority no longer holds.

In making my argument I will first outline Raz's claim that authorities are justified in virtue of the kinds of reasons that they provide. Then, in the second part, I will point out the ways in which justifying authority in this way is problematic. First, I contend that this way of justifying authority is too strong because it justifies authorities that we have independent reasons for regarding as unjustified if we take seriously the claim to a natural right to freedom. Then I will show how Raz's method of justification is also too weak insofar as we should not regard reasons as having justificatory power qua reasons, that

is, reasons are explanatory and not justificatory. Given these problems regarding the way in which Raz justifies authorities, I conclude that authorities can not be justified exclusively by referencing the reasons they provide their subjects.

I. Raz's Project¹

In his book, The Morality of Freedom, Joseph Raz offers his account of how authorities can be justified. In doing so he denies that traditional consent theory accounts are best suited to justify authority. On those accounts, authorities are justified in virtue of the subjects' consent, i.e. their expression of intention to alter the normative position they are in relative to another. Raz thinks he has found a better alternative by examining what an authority is and deriving from those fundamental features of authority normative conditions against which authorities can be justified. He calls his account a "normative-explanatory account" because he believes that a full explanation of authority includes normative claims about its power and legitimacy.

The crux of Raz's normative-explanatory account of authority is that there is nothing that consent can add to its justification that isn't already implied in the concept of authority itself; "consent is binding only if it meets certain conditions, and that in the case of consent to be governed by authority those are roughly the conditions establishing the legitimacy of an authority independently of consent."² In this section I will lay out Raz's argument for this claim that consent is superfluous in the justification of political authority by examining what he intends to place in its stead. Proceeding in this manner, we must first understand his conception of authority, i.e. what authority is. Then, we must discover how that conception of authority includes the conditions that establish the justification of such authority. In what

¹ Page numbers for this section refer to J. Raz, *The Morality of Freedom*, Oxford, 1986, unless otherwise noted.

² pg 21 - 22

follows I will trace these four steps in an effort to effectively lay-out the relevant arguments Raz makes.

I.i What Authority Is

Raz begins his discussion of what authority is by distinguishing it from what it is not. Authority is not, on Raz's view, justified coercive power; "It seems plain that the justified use of coercive power is one thing and authority is another."³ He makes this distinction in order to outline the unique claims made by an authority. The defining feature of an authority is not just that it is capable of getting people to do what it wants, but rather, that it claims a duty to obey. Raz uses the example of knocking out and locking up people with dangerous diseases as an instance of justified coercive power that lacks authority. In this case one is using coercive power in a way that may be justified, but we would stop short of saying that one has the authority to act in such a way as described.⁴ The fact that authority claims a right to obedience, and the correlative duty of subjects to obey, and that this claim can distinguish it from mere coercive power, serves as a basis for a further distinction between *de facto* authority and legitimate authority.⁵ One has *de facto* authority if she is able to get people to do as she commands, however, the term 'authority' is only ever rightly applied to those cases where the commands are "coupled with a claim that those people are bound to obey."⁶

Thus, on Raz's view, legitimate authorities are identified by the kinds of claims they make of their subjects. Such authorities claim direct and normative influence such that when we as subjects accept the duties intended by authoritative utterances, we are in practice accepting the authority as an authority. This attitudinal feature of subjects, namely, that subjects take a certain attitude of acceptance

³ pg 25

⁴ pg 25

⁵ By 'legitimate authority' I mean 'authority rightly called'

⁶ pg 27 - 28, Raz does note that *de facto* authority is a necessary condition of having legitimate authority, but the contention here is against *de facto* authority being sufficient for legitimate authority.

towards authorities that is constitutive of what it means to be an ‘authority,’ is what distinguishes the legitimate authority from a vigilante. Even though the vigilante may be successful and justified, this theory holds that he cannot be considered a legitimate authority because in the vigilante claims no duty to obey.

Raz formalizes the claims of the theory in the following manner:

Saying that the influence of an authoritative utterance is meant to be direct and normative means that a person who accepts the authority of another accepts the soundness of the arguments of the following form:

Y has authority;
Y decreed that X is to do A;
Therefore, X ought to do A.⁷

Notice that this formulation is a description of the states of affairs that are rightly called ‘authorities.’ That is, authorities are authorities in virtue of the nature of the claims they make, i.e. claims of a duty to obey. However, such a description does not tell the whole story as Raz still must explain why a subject would accept the soundness of arguments of that type. Raz dismisses two popular explanations of this phenomenon before settling on his preferred theory.

The first explanation of this attitude of acceptance Raz considers he calls the Recognitional Conception. On this view an authority’s utterance does not affect the overall balance of reasons to act, but rather, is a reason to believe that there are independent reasons for doing what the authority has directed.⁸ This view renders authoritative utterances as reasons for holding a certain belief but not for acting in a certain way. Thus, X ought to do A because Y’s utterance is a reason for X to believe that there are a sufficient number of independent reasons that he should do A. Even though the fact of Y’s utterance is not one of those independent reasons to do A, it is a reason for him to believe that he ought

⁷ pg 28

⁸ pg 29

to do A. Such attempts to explain authoritative utterances as providing reasons for belief attempts to explain practical authority by way of theoretical authority.⁹

However, the way in which the Recognitional Conception recasts practical authority as theoretical authority is part of the reason why Raz rejects the explanatory power of such a conception. Exhibiting practical authority, not just theoretical authority, is part of what it means to be an authority at all according to Raz. The difference in getting one to act a certain way and getting one to believe a certain thing comes to the forefront in Raz's consideration of what he calls the no difference thesis, i.e. "the view that authority does not change people's reasons for action."¹⁰ The problem of the no difference thesis comes to the forefront when one considers the role of authority in the solving of coordination problems.¹¹ The example Raz gives is that of driving on the right side of the road. There are no reasons for any one member to choose either to drive on the right or the left, but there is good reason for everyone to choose the same thing. An authority can solve such a coordination problem by arbitrarily choosing either the right or the left. However, this would not fit into the model of the Recognitional Conception because the the authoritative utterance "Drive on the right side of the road" is a reason for the subjects to drive on the right side of the road, not a reason for them to believe that there is a reason for them to drive on the right side of the road. Given that authorities do solve coordination problems in effective ways indicates that authoritative utterances provide reasons to act, not reasons to believe. If the authoritative utterance, "Drive on the right side of the road" was taken as a reason to believe that there are reasons to drive on the right side of the road then the utterance would result in a

⁹ That is, the ability to get one to act as you have commanded (practical authority) is explained by the ability to get one to hold certain beliefs about the reasons for acting in the way commanded (theoretical authority).

¹⁰ pg 30

¹¹ Coordination problems arise when there is reason for all the members of a group to decide the same thing, but there is no reason for any individual member to choose one option over another.

false belief. As it stands, there is no reason for an individual to drive on the right side of the road, there is only a reason that she drive on the same side as everyone else. The authoritative utterance is able to make this happen by giving the subjects a reason to act in a certain way not to believe a certain way.¹²

Raz also briefly considers what he calls the Inspirational Conception of authority. On that view, X wants to do A out of his love for Y, “and the wish to do so is not preconceived, is not derived from our other interests and needs.”¹³ Furthermore, X wants to do A for its own sake, not to ingratiate himself with Y. It is not the case that X wants what Y wants so that Y will like X, but rather, that X wants what Y wants because Y wants it. X’s love for Y inspires him to do what Y wants for the reasons that Y wants, and Y wants X to do A for A’s own sake. Raz, I think rightly, rejects this conception due to its dissimilarity to any authoritative relationships that we observe in society; “even if some authorities are of this mould, it is clear that many are not, and it is arguable that many should not be.”¹⁴

Finally Raz arrives at his chosen explanation of authority which frames authoritative utterances as being themselves reasons for actions. To put this another way, authoritative utterances provide content-independent reasons to do what was uttered. Raz writes, “A reason is content-independent if there is no direct connection between the reason and the action for which it is a reason.”¹⁵ No matter what A is in the schema above, it does not effect the reason that Y’s utterance of it provides X. This can

¹² A way that, as it were, would be false.

¹³ pg 32

¹⁴ pg 34 It should be noted that Raz’s rejection of the Recognitional Conception and the Inspirational Conception both derive from their empirical inadequacy. In the case of the Recognitional Conception, it is unable to account for a substantial realm of observed authoritative action, i.e. in the solution of coordination problems, and in the case of the Inspirational Conception it explains little to no realms of observed authoritative action. The nature of his normative-explanatory account requires an accurate explanation of the nature of authority. For Raz, a condition of being an accurate explanation of authority is a certain level of empirical adequacy.

¹⁵ pg 35

be shown by the fact that X will have a reason to do A even if we substitute contradictory actions for that variable. That is, whether Y directs X to stay in the room or to leave the room, X will have an equal reason to do either depending on which one Y chooses. The reason for X to do as the authority Y directs is in this sense external and is the result simply of Y's command.¹⁶

Raz recognizes that authoritative commands are not the only kinds of content-independent reasons. Promises, vows, threats and requests all provide such content-independent reasons to do as promised, vowed, threatened, requested, etc. However, the reasons provided by authoritative commands can be differentiated from other content-independent reasons in important ways. In the case of promises and vows, the reason for action applies only to the agent, whereas, in the case of authoritative commands, the agent is the authority and the reasons apply to its subjects.¹⁷ In the case of threats, the reason is the result of the communication that some undesirable future event may be avoided by the threatee. The threator need not have any practical authority as the threatee has the option of deciding whether or not the reason is applicable to him, i.e. whether the undesirable future event is undesirable enough.¹⁸ However, instances of authority are characterized by a level of practical authority absent in the case of threats. Finally, where requests are concerned, the requestor is not intent on making the requestee act as requested, but rather, on simply providing a reason to act as requested. Perhaps there are other stronger reasons for the requestee to not act as requested and the requestor recognizes this. As Raz puts it, "The speaker leaves it to the addressee to judge what is right. He intends to influence him only by tipping the balance somewhat in favour of the requested act."¹⁹ It is only in the

¹⁶ pg 35

¹⁷ pg 35

¹⁸ pg 36

¹⁹ pg 37

case of commands issued by a legitimate authority that the content-independent reason is meant to be peremptory, that is, a sufficiently strong reason for action on its own.²⁰

Here we see Raz's chosen explanation of authority. Legitimate authoritative commands are successful in getting people to act as commanded because they are accepted as sufficient reasons for acting as commanded. To be an authority is to be in the position of issuing commands that are reasons for action in virtue of the commands themselves, i.e. they are content-independent. An authority therefore cannot fully be described as mere justified coercive force because the subjects recognize the commands of an authority as sufficient reasons for acting as commanded. Furthermore, authoritative utterances are recognized as such not because they indicate the existence of independent reasons for action nor out of love for the authority issuing them. The thrust of the reasons comes from the subject's acceptance of the commands themselves as sufficient reasons for action. Thus, a full conception of authority on Raz's view includes a description of the states of affairs rightly called 'authorities' and an explanation of how those states of affairs come about.

It should here be noted that Raz is not committed to the claim that being an authority rightly turns exclusively on subjects' acceptance of the authority's commands as sufficient reasons for acting. Obstinate subjects alone cannot dissolve an authority. Rather, Raz is describing a feature of the ideal legitimate authority in order to point out what all nominal authorities are claiming of their subjects when they issue commands. Even if I do not accept the commands of my professor in the classroom as a sufficient reason for me to act in his desired way, that does not mean that the professor is not, at least, *claiming* authority since she lacks practical authority. To be sure, should my professor be unable to get

²⁰ pg 37

me to act as commanded then we would be hesitant to say the professor is truly in a position of at least recognized authority since she lacks practical authority. However, the professor may still be a legitimate authority because her commands *should* be understood by me as a peremptory reason for action.²¹

Problems of unheeded authority are problems of perceived legitimacy since subjects should accept legitimate authoritative commands as peremptory reasons. The point is that authority is defined by the kind of reason it gives people for acting.

I.ii When an Authority is Justified

The conception of legitimate authority on offer is a situation wherein the commands of the authority are understood as peremptory reasons for action. However, there is still the normative question of under what conditions this state of affairs is justified. The next task Raz sets for himself is to identify those conditions in virtue of which the commands of an authority achieve their status as peremptory reasons for action. Raz is not committing himself to the thesis that wherever one's commands are recognized as peremptory reasons one is a justified authority. Justification conditions will determine whether or not the subjects *should* accept the commands of a certain authority as peremptory reasons for action. Section I.i was a positive description of the states of affairs that can be rightly called 'authorities,' now we are concerned with when these states of affairs are justified.

Since only the commands of a justified authority should be regarded as peremptory reasons for action, the problem of justifying authority can be examined within the context of the role authoritative commands play in our practical reasoning. Raz offers three theses that characterize the interaction between authoritative commands and practical reasoning. In this section I will outline these theses in

²¹ This points to the normative feature of Raz's conception of authority, i.e. he is offering an explanation of authority based on how ideally legitimate authoritative claims should be understood.

order to better understand how an authority could be justified.

The first thesis Raz provides is the Dependence Thesis:

Dependence Thesis (D): 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.

D requires that authoritative commands, “should require action which is justifiable by the reasons which apply to the subjects.”²² That is, D requires that the balance of reasons that the subjects independently have for action are determinant on what action is commanded. Accordingly, D ensures that in issuing commands an authority is not subjecting anyone to irrelevant reasons. At first glance, D may seem to entail the no difference thesis insofar as an authority whose commands are dependent on prior existing reasons gives its subjects no additional reason for action. If D entails the no difference thesis, then the exercise of authority would be irrelevant, that is, it would command subjects to do what they were already going to do. Raz denies this entailment by providing three counterexamples wherein the authority can make a difference in the actions of subjects while still adhering to D.

In the first counterexample, Raz considers a case where reasons are insufficient for reaching a decision. He gives an example of a legislator considering the institution of a new tax.²³ The tax may either be collected on a monthly or quarterly basis. There are no reasons sufficient enough to prefer one method over the other. The options, then, are individual choice, or authoritative command. Considering there may be reasons to not leave details of tax collection to individual choice, the authority may command that the tax be collected quarterly. In this example, there is a difference, as the individuals are

²² pg 51

²³ The following three examples come from pg 49 - 51

denied a choice, but it is based on all the relevant reasons given the circumstances.

The second counterexample is that of what Raz calls “conventions.”²⁴ By the word ‘conventions’ Raz means specifically solutions to coordination problems. To take the simplified coordination problem from before, an authoritative command instructing drivers to stay in the right lane establishes a convention by which the problem is solved. The establishment of such a convention then creates a reason for subjects to act in a way they had no reason for acting before. However, this reason is dependent on reasons to establish and maintain a convention that the subjects had before the command was issued. That is to say, before the command, the subjects drove wherever they pleased. In the interests of safety, these subjects had a reason to coordinate their driving and contain themselves to one side of the road. The authoritative command to drive on the right makes a difference in how the subjects may act, but it is dependent on the aforementioned reasons for driver coordination.

Finally, Raz’s third counterexample includes Prisoner’s Dilemma type situations as examples of opportunities for authoritative commands to make a difference while relying on dependent reasons. In these situations, the individual subjects have reasons to act through cooperation but are unable or unwilling to do so given their limited, individual-centric scope. Or rather, “while people have reason to act in a certain way, given the situation they are in, they also have reason to change the situation, though they are unable to do so by themselves.”²⁵ Again, in these situations authorities are able to issue commands that change the subjects’ actions but for reasons relevant to the type of situation they are in. These three counterexamples are meant to show that D need not entail the no difference thesis.

Additionally, Raz is clear that D does not mean that an authority is only concerned with the

²⁴ pg 49

²⁵ pg 50 - 51

specific reasons applicable to each individual. He allows that authorities may issue commands for reasons that are applicable to the authority alone and not the subjects.²⁶ It is only required that these reasons *reflect* those relevant to the circumstances in which the subjects find themselves. As an example of this he cites bureaucratic factors that may influence authoritative decisions but not the decision of the subjects absent an authoritative command. Such factors, though, must be allowed if “doing so reliably leads to decisions which approximate better than any which would have been reached by any other procedure, to those decisions best supported by reasons which apply to the subjects.”²⁷ Indeed, even different outcomes are to be allowed if the authoritative command is more attuned to the relevant reasons than the subject’s own action would have been.²⁸

Given D, Raz is able to extrapolate the relevant features of authority and use them to formulate the conditions under which authority can be justified. If the reasons that an authority gives depend on independent reasons that weigh on the subject, then an authority can be understood as more or less justified depending on the degree to which the authoritative reasons are effective, that is, able to get the subject to act in accordance with those independent reasons. In this way, D forms the foundation by which a thesis can be formulated for the justification of authority. Raz calls this thesis the Normal Justification Thesis:

Normal Justification Thesis (NJ): 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

²⁶ pg 51

²⁷ pg 52

²⁸ The point here, I take it, is that authorities often must act in ways that do not seem to immediately reflect the reasons that weigh on their subjects. This type of action can be understood in Raz’s schema as setting the foundation or framework by which the authority will be better able to achieve its goal of getting its subjects to better act in accordance with the reasons that pertain to them.

*apply to him directly.*²⁹

Raz claims that NJ is the normal way by which authority is justified. If the commands of an authority would result in the subject acting in conformity with reasons that apply to him with more regularity than he would if left to his own devices, then the authority should be recognized as one, i.e. her commands should have the force of peremptory reasons for action. The claim is not that such an authority is *entitled* to that position, but rather, “that he has it, that he is in authority, with all the consequences which follow from this fact.”³⁰

NJ therefore answers the problem mentioned earlier concerning the how the essential features of authority can justify it. That is, given there are certain states of affairs that can be rightly called ‘authorities,’ on what conditions should we say that those states of affairs are justified and thus should be maintained?³¹ To be an authority is not a matter of meaning for Raz, but rather, one of normative justification.³² The meaning of ‘being an authority’ has been given as having one’s commands be accepted as peremptory reasons for action. However, whether someone is *in fact* an authority or not depends on whether those commands are normatively justified. If they are, then the commands are authoritative and should be considered as such by those to whom the commands are directed. So, for instance, in the case of the unheeded professor, if it were the case that the professor’s commands did not induce me to better act in accordance to the reasons relative to me, then I would be right to not regard them as peremptory reasons because the professor is not an authority. However, if it were the case that her commands, if followed, would induce me to better act in accordance to relevant reasons,

²⁹ pg 53

³⁰ pg 56

³¹ Namely, the states of affairs wherein the commands of someone are regarded by others as peremptory reasons for action.

³² pg 56

then I would be wrong to disregard them because she is an authority relative to me. This is the sense in which one's position as an authority is dependent not on the *meaning* of authority but rather on the *justifiability* of the authority's commands.

If we accept D and NJ, then we are led to claims about the proper way in which authoritative commands should function in our practical reasoning. Raz presents the Pre-emptive Thesis as a formulation of the way in which the reasons that authoritative commands provide relate to other reasons:

*The Pre-emptive Thesis (P): the fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them.*³³

P characterizes all authoritative commands as pre-emptive in the sense that they replace rather than add to a subject's balance of reasons for action. We can see why this must be so by revisiting the Dependence Thesis. If the reason for any authoritative command is a dependent one, then that reason will reflect all the relevant reasons weighing on the subject, and, as Raz puts it, "When considering the weight or strength of the reasons for an action, the reasons for the rule cannot be added to the rule itself as additional reasons."³⁴ The rule of doing as the authority commands is justified by its reflection of all the relevant reasons pertaining the subject. Therefore, it misrepresents the situation to suppose that the subject is faced with a decision between the rule and competing relevant reasons. Whatever force that rule has is completely exhausted by its underlying justifications, i.e. the competing relevant reasons. Therefore, in order to avoid a sense of double-counting, the rule of acting in accordance with the authoritative command must pre-empt or replace in the practical reasoning of the subject all those

³³ pg 46

³⁴ pg 58

relevant reasons it reflects. Since P requires an assumption of D and NJ, it should be understood as a justification of the subject's correct attitude toward an authority while D and NJ concern themselves with the conditions by which an authority exists and is legitimate.³⁵ That is, given that D and NJ hold, P determines the correct attitude to take toward the command.

The combination of D, NJ and P set the stage for the way in which Raz is attempting to flesh out his conception of authority. His "normative-explanatory account of the core notion of authority" is fundamentally opposed to a linguistic account of authority.³⁶ Raz's approach seeks to single out important features of authority by casting them as norms to which nominal authorities in the world may approach to varying degrees. By picking out the unique features of an idealized legitimate authority, Raz is attempting to at once give an account of the fundamental aspects of the class of 'authorities' while at the same time setting the conditions by which an entity may be included in that class.

II. Response to Raz's Argument

In this section I will show how Raz's argument for the justification of authority is in a sense both too strong and too weak. It is too strong in how it allows for the justification of authorities that we have separate reasons for regarding as unjust. For example, the Benevolent Dictator whose perfect knowledge of the reasons applying to his subjects allows his dictums to always be justified on Raz's account. I will argue in the first part of this section that the case of the Benevolent Dictator is one in which the natural human right to be free is abridged. If this is true then we must abandon either the claim that there is a natural right to freedom or NJ as formulated by Raz. I will argue that we should prefer to abandon NJ since the entire structure of rights rests on the natural right to freedom.

³⁵ It isn't clear whether Raz can make a distinction between a legitimate authority and an existing authority, the combination of D and NJ seem to require that an authority be legitimate in order to exist.

³⁶ pg 64

In the second part I argue that Raz's NJ is too weak in that it puts all the justificatory work on reasons qua reasons. In this section I will argue that there is no virtue called 'reasonableness,' i.e. acting in accordance with reasons in and of itself has no value. I admit that by and large acting in accordance with reason is also acting towards some good but I deny that this is a conceptual necessity. Accordingly, I deny the classical conception of agency that regards reasons as considerations that aim actions towards some good. I will replace this with the more generalized notion of reasons being connected to the internal viewpoints of agents rather than facts about the good. If reasons themselves cannot justify in the way Raz intends then NJ is too weak for justifying authority.

II.i The Case of the Benevolent Dictator

In objecting that Raz's NJ is too strong, I will show that it justifies certain authorities that we should regard as unjustified given the natural right of freedom. I also contend that in rectifying the contradiction we should prefer to abandon NJ rather than the natural right of freedom given that this right is more fundamental to our conception of the project of morality in general. My argument relies on the case of the Benevolent Dictator as an example of an authority that is justified under NJ but not under considerations of the natural right to be free.

The case of the Benevolent Dictator is one in which an omniscient and omnipotent dictator rules absolutely and to the best interest of the populace. Nobody in the populace has any choice to disobey him and all facets of the populace's lives are directed by his dictums. Consequently, all members of the populace act in accordance with reasons that apply to them. To add Raz's component, all the dictums of the Benevolent Dictator are justified by NJ, that is, all his dictums enable the populace to act in accordance with independent reasons that apply to them better than they would absent the dictums. In

this society, the price of reasonableness is individual choice. Should we be content to live in such circumstances?

On the one hand, it should be noted that the case of the Benevolent Dictator is the ideal condition of the Razian conception of authority. Notwithstanding the probable practical impossibility of the existence such an omniscient ruler, there are other independent conditions for why we should regard the Benevolent Dictator as unjustified. These conditions have to do with the natural right of freedom. In talking about such a natural right to freedom I am following in the path of the original arguments made for such a right by H.L.A. Hart in his paper, "Are There Any Natural Rights?"³⁷ On his view, the very conception of any rights is founded on a natural right of humans to be free which he formulates thus:

By saying that there is this right, I mean that in the absence of certain special conditions which are consistent with the right being an equal right, any adult human being capable of choice (1) has the right to forbearance on the part of all others from the use of coercion or restraint against him save to hinder coercion or restraint and (2) is at liberty to do (i.e., is under no obligation to abstain from) any action which is not one coercing or restraining or designed to injure other persons.³⁸

All other rights, Hart claims, presuppose that humans have this one natural right. Insofar as rights claim to delineate those areas of human activity that may or may not be interfered with, it must be that humans naturally have a prior right to non-interference that these other rights, whether they are natural or acquired in some sense, claim to modify.³⁹

With this sense of a natural right to freedom in mind, let us consider a case wherein such a right may be abridged by an authority justified by NJ. For example, consider a Benevolent Dictator, that is, an absolute authority who only hands down directives that are known to be for the good of the

³⁷ Hart, "Are There Any Natural Rights" *The Philosophical Review*, Vol. 64, No. 2 (April 1955), 175-191.

³⁸ *Ibid.* p 175

³⁹ Whether or not one finds Hart's argument convincing is a topic for another paper. Here I intend only to show that Raz's view is inconsistent with the kind of natural right to freedom that Hart identifies.

populace. We may also ascribe to this dictator perfect knowledge of all the relevant reasons that apply to her subjects, in accordance with NJ. Thus, every time a directive is given by the Benevolent Dictator, it not only reflects the independent reasons that weigh on the subjects, but it also must be obeyed; the subjects have no right to forbearance. If an authority is justified then there is an obligation to obey it. The Benevolent Dictator is justified on the grounds of NJ. However, its justification by NJ depends on the subjects not claiming their natural right to freedom. If they did, then the Dictator would be unable to get them to better act in accordance with reasons that apply to them and thus would no longer be a justified authority according to NJ.⁴⁰

To draw out the implications of this case, let us consider another example. Consider a man living alone in the forest. He has reasons to go to the store once a week to buy food and provisions. Thus the Benevolent Dictator demands this action. However, perhaps the man would prefer to hunt and gather his own food, perhaps because of personal desires, i.e. the enjoyment of the act of hunting, which do not constitute valid reasons on Raz's conception.⁴¹ Given the natural right to freedom the man is acting permissibly in hunting for the week instead of buying his food since in doing so he is not harming others. However, he is acting impermissibly as regards NJ. The reasons that apply to him recommend purchasing food and thus the Benevolent Dictator demands it. In doing so, the man has a pre-emptive reason to purchase food rather than hunt it. If he doesn't then he is not recognizing the justified authority of the Benevolent Dictator and thus he is acting impermissibly. Therefore, by hunting for his food the

⁴⁰ It has been noted that the Benevolent Dictator example may beg the question. If a Benevolent Dictator were to exist, it may seem irrational to claim a natural right to freedom since the only thing to be gained is the freedom itself. However, I argue that the freedom itself has intrinsic value. That is, the same act made by the same agent in the same situation can be better or worse if it was made freely or not freely. In fact, the argument for a natural right to freedom derives from this claim. Our natures as human beings make it such that free action is valuable over not free action, thus there must be some natural right to free action.

⁴¹ The reasons Raz has for denying that desires are valid reasons are expanded on below.

man is acting in a way that is permissible on view but not on the other. In order to rectify this contradiction we need either abandon NJ or the natural right to freedom. Since the entire system of rights presupposes the existence of a natural right to freedom, we have a reason to prefer the abandonment of NJ to it.

One might object that the man's enjoyment of hunting constitutes a reason that applies to him which the directives of the justified authority, i.e. the Benevolent Dictator, must reflect. However, Raz does not allow for such types of reasons. He aligns himself to the so-called classical view wherein reasons are "facts in virtue of which...actions are good in some respect and to some degree."⁴² Still, is it not the case that the man has a reason to hunt for his food insofar as the action of hunting for food is good at least to *some* degree. However, I think this is problematic since it is not clear that personal preferences merit the title of 'facts.' Surely it is a fact that the man prefers hunting to shopping, but can such a preference truly be said to be good? Assume, all things being equal, that the only relevant factual difference between the man hunting and the man shopping is that hunting fulfills a preference of his. However, a man living in another section of the forest prefers shopping. In this case both hunting and shopping must be regarded as in some sense good, but if good is allowed to be defined by preference in this way then in what sense is it a fact that an action is good? Simply because, *ceteris paribus*, the agent desires one of the actions to another? Ultimately, if one feature of reasons is that they apply to all people who find themselves in the same set of circumstances then desires should not count as relevant reasons and thus would not be reflected in the directives of a justified authority.

Even if this line of argument fails to be convincing, it isn't clear that desires themselves are

⁴² Raz, "Agency, Reason and the Good" pg 23

actually the reasons for action. If a reason is to be an explanation of an action, which I believe is a fundamental feature of reasons though this claim may be controversial, then desires will not be able to adequately live up to what it means to be a reason. Bittner provides a view of reasons that may be helpful in drawing out this point. On his view, “to be a reason for which an action is done is to be something to which the action is a response.”⁴³ Is it true that I go to the ice cream parlor in response to my desire for ice cream? To say so, Bittner replies, is to misrepresent the case. It is not that I have a desire for ice cream which I then respond to by going to the ice cream parlor, but rather, there is ice cream at the ice cream parlor. By saying ‘I want ice cream’ I am helping you understand my reason but not giving you my reason for action. The presence of ice cream in the store is what explains my action in the way Bittner intends. That state of affairs is what I am responding to when I go to the ice cream parlor to get ice cream. To see the distinction it may be helpful to consider the possibility of action absent each of these two approaches, desire for ice cream and the presence of ice cream in the store. Absent the desire, the action of going to the ice cream parlor can still be explained by reference to the presence of ice cream in the store. That is, there is nothing incoherent by answering the question, ‘Why did you go into the store?’ with ‘Because there is ice cream in there.’⁴⁴

However, were we to remove the state of affairs of there being ice cream in the parlor then we remove all possible reasons for the action. How would one be able to answer questions of the sort, ‘Why did you go into the ice cream parlor? What was your reason for doing so?’ Bittner claims that all

⁴³ Rudiger Bittner, *Doing Things for Reasons*, p 67

⁴⁴ I admit that this may be incomplete or unsatisfying, for it leaves open the question of the exact nature of the relationship between there being ice cream in the ice cream parlor and my going into the ice cream parlor. Desires are appealing as reasons because they can illuminate this relationship, i.e. why the state of ice cream being in the ice cream parlor has motivated some action. However, the desire itself, as I will show, is not, strictly speaking, the reason for acting in such a way.

answers to questions of this sort will result in a ‘historical explanation’ that offers prior states of affairs and events as those things that are possible reasons for action. Possible reasons are restricted to prior events and states of affairs because actions are always describable as being done in response to something prior. If I do not at least believe there is ice cream in the ice cream parlor then my desire alone makes no sense. ‘I desired ice cream’ can not be a reason because it is not something that is reacted to, but rather, something that makes you more susceptible to certain kinds of states and events, namely, those involving the existence of ice cream. The point of this distinction is to point out how ‘explanatory’ need not include any considerations of the good.

A defender may attempt to avoid this objection by carving out certain areas of life that are not subject to the rule of reason. Therefore, in these situations, the Benevolent Dictator has no authority since there are no relevant reasons. While this response might seem appealing, it is subject to some serious objections. It isn’t clear why we only act reasonably in certain areas of life. If intentional action is action for a reason, then these areas of life to which reasons don’t apply would have to be considered realms of unintentional action. However, when I satisfy a preference, such as choosing chocolate ice cream over vanilla, I am not acting unintentionally, but rather, consider my preference to be a valid reason for action.

This suggests a slightly altered response to the objection. Couldn’t it be that in certain areas of life preferences do constitute valid reasons, that is, there are some realms of action in which you would be acting reasonably if you fulfilled your preferences. However, even this response is subject to the same kinds of problems. On the one hand, it isn’t clear why preferences should all of a sudden stop being a valid reason once we move into certain areas of our lives. If it is good to satisfy a preference for

ice cream flavor, why is it not good to satisfy a preference for whether or not I obey the speed limit on an empty road? It may be argued that in the speed limit case there are independent facts about the world that should weigh stronger on an agent than his preferences, e.g. the decrease in driver safety relative to the increase in speed. However, it isn't clear why these independent facts should count as 'stronger' reasons than preferences. On what is the hierarchy of reasons founded? One is tempted to say 'the good', i.e. a reason is stronger if the good it aims towards is better. But now we need a basis for a ranking of goods. A defender of Raz inclined to support this response would need to establish a basis for a ranking of reasons which is likely to lead to a hierarchy of goods.

Ultimately, this objection points to a tension between the nature of reasons and the project of justification. It does not seem that justification can be based exclusively on reasons as Raz intends. Essentially, Raz's argument grounds an authority's justification on the fact that it provides appropriate reasons for action. However, the term 'appropriate' doesn't apply to the content of the reasons so much as their mere existence. Since Raz assumes that reasons already aim at some good, as long as an authority's provides reasons that accurately reflect those that independently weigh on an individual, then that authority is justified. Notice that this shifts the burden of justification. To be a justified authority for Raz is to identify the correct reasons which are already by their nature justified. However, there are many other ways we talk about authorities being unjustified that don't depend on the inherent force of reasons. For example, the way in which an authority operates is subject to justification claims. If authority A demands compliance at the end of a gun and authority B demands compliance through a structure of laws, then, even if the directives are the same in both cases and both of these cases live up to NJ, we are hesitant to ascribe justification to A in the same sense as we are to B. I think rightly so,

since justification has more to do with than just the mere inherent force of reasons. This tension will come to the forefront in the following section.

II.ii No Virtue called ‘Reasonableness’

The claim that reasonableness is a virtue relies on a particular understanding of the nature of reasons. This approach is the one I have referred to above as the ‘classical view.’ Raz describes the classical approach as such:

This approach, the classical approach, it may be called, can be characterized as holding that the central type of human action is intentional action; that intentional action is action for a reason; and that reasons are facts in virtue of which those actions are good in some respect and to some degree.⁴⁵

It follows then that if one is acting reasonably, then one is acting in accordance with reasons, and since reasons aim toward the good, all reasonable action aims towards the good. Virtues are traits that aim towards some good, thus reasonableness is a virtue.

If one accepts the above argument then NJ derives all of its justificatory power from the nature of reasons themselves and not from the nature of the authority itself. Since the authority is better able to get its populace to act in accordance with reasons that apply to them, and since these reasons, in virtue of being reasons, aim towards the good, the authority itself aims its populace towards the good and is thus so justified. However, there are good reasons for wanting to separate the justification of authority from the justification of reasons, especially if the justification of reasons derives merely from the definition of reasons themselves. Since authorities, especially political authorities, are in a position to abridge other independent goods while still promulgating the good provided by reasons qua reasons, we

⁴⁵ Ibid.

should expect that these extra-rational behaviors are also subject to justification conditions.⁴⁶

Furthermore, the reliance of NJ on the nature of reasons exposes it to a different objection. I have already argued that NJ is too strong insofar as it justifies authorities we have independent reasons for regarding as unjustified. However, NJ is subject to a different objection. It is too weak insofar as reasons do not have any justificatory power qua reasons. In this section I will argue that ‘reasonableness’ is not a virtue because reasons cannot justify qua reasons. That is, the justification of an authority cannot rely on the inherent value of reasons because there is no inherent value of a reason. The nature of the relationship between reasons and the good are misunderstood by the classical approach. I will grant that to act in accordance with reason is often also to act towards some good, but I deny that to do so is a conceptual necessity. That is, it is possible for one to act for a reason and not act towards some good. If this can be shown, then it follows that NJ is too weak since it places all of the justification of authority in the assumed virtuous nature of reasons.

My argument relies on a distinction between ‘justified’ and ‘reasonable.’ I take ‘justified’ to mean ‘aimed at some good’ insofar as I don’t see any other way of constructing a notion of a ‘just’ thing outside of some reference to the good. On the other hand, ‘reasonable’ in its most fundamental sense means ‘done for a reason.’ The classical approach equates ‘aimed at some good’ with ‘done for a reason’ but this equation, in my view, is too hasty. As a substitute, I suggest we understand ‘done for a reason’ as having an answer to the question ‘Why did you do X?’ However, we seem to already encounter a problem. Defenders of the classical approach will object that having an answer to ‘Why did you do X?’ indicates that the action was intentional and not necessarily reasonable. Depending on what

⁴⁶ This is the point of the Benevolent Dictator objection.

the answer to the question is, i.e. whether or not the answer refers to some notion of the good, will determine whether the provided answer is in fact a valid reason. However, to separate reasonableness from intentionality in this way is in my view problematic.

On the one hand, to do so assumes the conclusion I am arguing against. If all valid reasons are aimed at some good then justification and reasonableness *are* the same thing. However, to collapse the notion of reasonable into that of justified makes notions of moral judgment meaningless. Why somebody acted in a certain way and our moral judgments of that action must be kept separate because, I think, the reasonable villain is not a logical impossibility. Reasons have to do with the proper functioning of intellectual capacities while justifications have to do with the permissibility of chosen ends. It simply is not correct to say that one's intellectual capacities are only functioning properly if they are aimed at appropriate ends, to do so is to confuse an 'ought' with an 'is.'⁴⁷

Raz responds to a similar kind of objection in "Agency, Reason and the Good." He claims that some reasons that seem to be value-neutral are in fact aimed at some 'small value':

I do not believe that for an action to be of value, or to be good, it must possess a good-making property connecting it to big Values, like justice or beauty, or well-being or any other value for which we have an abstract name. Small goods are small but good none the less, nor need they be trivial instances of big values.⁴⁸

Even in cases where one acts seemingly towards no big Value, there must be some small value such that we can say the action was in at least some sense a good one. Raz's response is to deny that value-neutral reasons are truly value-neutral. He then anticipates the objection that in so doing he is undermining the explanatory power of value by collapsing it into the very thing it is meant to explain, i.e.

⁴⁷ This claim, while controversial, cannot be fully defended here. The point is that there is an important difference between an agent's internal viewpoint regarding his action, i.e. that he takes it to be a reason for action, and whether or not this 'reason' is recognized as a good one.

⁴⁸ Ibid. p 30

reasons. This results in the “maxim that whatever constitutes a reason is of value.”⁴⁹ Of course, to say this would be to assume the conclusion and thus be a valid objection to Raz’s response.

Raz responds to this objection by asserting the interdependence of concepts such as value, reason and intention and then claiming that this interdependence means “We cannot but explain one in terms of the others.”⁵⁰ Furthermore, the concept of justification is sufficiently distinct from reason and yet connected to value that it can provide the explanatory work that value was purported to do. By setting up justification as different from intelligibility we can get a grasp on how value can come apart from reason:

To put the point briefly: values not only show how certain actions are intelligible but also how they are justified. It is central to the classical approach that the same concept is crucial both for intelligibility and to justification (and therefore also to evaluation). Of course, intelligibility and justification can come apart. Intelligibility depends, according to the common assumption, on how things looked to the agents at the time. Justification and evaluation depend on how things really were at the time, though they allow for different types or dimensions of evaluation which take greater or lesser account of the agents’ subjective perspective.⁵¹

This response is unsatisfactory. Raz needs to show how reasons and value can be conceptually distinct so that one can explain the other. He attempts to do so by defending the claim that reasons for action are able to say why, given the multitude of possible actions, one was chosen over the others. Only a consideration of the good, on Raz’s view, is able to explain why one action is chosen over another. However, this is an assumption that permeates his response and is exactly the claim I am attempting to avoid. Raz contends that an act can be intelligible and yet unjustified but that in both cases the agent has in mind considerations of the good when acting. Whether the action was actually good, or only seemed so at the time, is another question. The point is that, according to Raz, the agent always aims at the good

⁴⁹ Ibid. p 31

⁵⁰ Ibid. p 31

⁵¹ Ibid. p 31

when looking for a reason for acting. However, I am proposing an alternative wherein actions can be intelligible as an action chosen without reference to the good, but rather, with reference to an end.

Most instances of people acting reasonably are in the context of achieving some end, but the value of that end need not be associated with any good for an action to either approach it or retreat from it. If we talk about reasons as only those considerations that make an action approach a given end, then we can see the conceptual distinction between value and reason. Value comes into play when considering the moral justification of actions given the way in which the chosen ends participate in some good. Reasons need only refer to the way in which those actions approach that end. I propose this teleological approach to reasons as an answer to Raz's charge of the conceptual impossibility of "non-good-making qualities [making] an action eligible."⁵²

Nevertheless it may be argued that reasonable action so often does involve the good that it must be that there is a conceptual connection between reasons and value. The frequency with which reasonable action is good action can be accounted for in that humans generally desire good ends. Thus, simply statistically speaking, if we assume that there is a average aptitude for knowing when certain actions approach chosen ends and when they don't, one can expect a larger number of examples of properly functioning intellectual capacities to be aimed at good ends than bad ones. This creates the illusion that all reasons must include the good, but to argue in this way is to be a victim of confirmation bias. There is no conceptual necessity that a reason for action must make that action good, instead, reasons are better understood as making actions approach some end.

Given the lack of conceptual necessity between reasons and value, NJ is not strong enough to

⁵² Ibid. p 27

justify authority. The ability to act in accordance to reasons that apply to you would only be justified if the ends that your reasons approach are independently justifiable. To answer this objection, NJ would have to be amended to read:

NJ: An authority is justified if by following its directives one is able to better act in accordance with reasons that approach a good end than one would be able to do without it.

However, rewriting NJ in this way empties it of its justificatory power. It would mean that an authority is justified if it enables you to pursue justified ends. This leaves one with a prior problem of justifying said ends. That is, one would not be able to say whether or not an authority is justified until one is sure whether or not the ends pursued are justified. Once this question is answered then the question of whether or not the authority is justified can be asked, i.e. whether or not by following the directives of the authority one is more likely to achieve those ends.

However, in this case, the justification of authority dissolves into the justification of the ends and not NJ at all. That is, NJ does not add any substantial justificatory work independent of the justification provided by the values of the ends chosen. The question of whether an authority is justified cannot even be asked unless the ends are justified. Furthermore, even if the ends are justified, it is in virtue of that fact that the authority is really just. If we claim that an authority that enables people to better pursue just ends is itself justified, then the justness of the authority is dependent on the justness of the ends.⁵³ Even if you accept this weaker claim that an authority is justified if it helps one achieve justified ends, there still

⁵³ This is not a complete dependence. For example, the ends may be just, but an authority may be unable to get its subjects to approach those ends, therefore, the authority is not justified. However, the point is that even in this case, the authority is unjustified because it doesn't direct actions towards an independently justifiable end. The question of the justness of the ends is prior and thus determines our considerations about the justness of authority.

remain Benevolent Dictator-type problems in understanding how the modes in which an authority acts relate to its justification. It can't only be the ends that justify authority; just authorities must also abide by just means.

Therefore, it cannot be that reasonableness is a virtue in and of itself. Reasonableness is good for achieving certain ends but this value is contingent on the value of the chosen end. In this part I have ventured to show that the justification of authority by NJ is in a sense too strong and too weak. It is too strong in that it justifies certain kinds of authorities that we have independent reasons for regarding as unjustified and it is too weak in that it is based on a faulty assumption that all reasons and value are necessarily conceptually connected.

III. Conclusion

In considering Raz's arguments for the success of the Normal Justification thesis in justifying authority, we can see that it is intimately tied to a classical conception of agency. Such a conception regards intentional action as acting for a reason and reasons as facts about the world which make the action good in some sense. On the classical conception, action that is done for a reason is justified in virtue of the nature of reasons as good-making. This can be extrapolated to apply to authority if an authority is understood as an entity whose utterances are understood as pre-emptive reasons for acting as commanded. Accordingly, such an authority would be justified to the extent that its commands enable its subjects to act better in accordance with the independent reasons that apply to them. The good-making properties of reasons, on Raz's view, provide the justification of the actions for which they are reasons, insofar as to be just is to be oriented towards some good. Authorities therefore can be justified to the degree by which they aid in this project of orienting individuals' actions to the good by

aligning them with reasons.

I have objected to this method of justifying authorities offered by Raz on two fronts. First, it is too strong. His theory justifies authorities that we may have independent reasons for regarding as unjust if we take seriously the claim that individuals have an equal, natural right to freedom. Furthermore, by focusing solely on the types of reasons that authorities provide Raz overlooks certain relevant results in the justification of authorities, such as the means by which the authority acts. My second criticism is that his theory is too weak. This argument focuses on a challenge to the assumption of the classical conception of agency, specifically, that reasons are by their nature good-making. It is more plausible that reasons are fundamentally explanatory considerations that enable an agent to say why she acted a certain way. This explanation is in no way necessarily connected to justification. Whether or not the action is 'good' is not necessarily connected to whether or not it can be explained. Ultimately, these considerations point to the conclusion that Raz is unable to provide a coherent alternative justification of authority to consent.

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