Two Distinctions in Authority

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1 Authority, Robbery, and Expertise

In *The City of God* St. Augustine asks, rhetorically: “Justice removed, then, what are kingdoms but great bands of robbers?”¹ In *The Concept of Law* H.L.A. Hart asks, non-rhetorically: “How then do law and legal obligation differ from […] orders backed by threats?”² The two questions are closely related. Indeed, we might say that Augustine’s question proposes an answer to Hart’s. Both states and bands of robbers issue orders backed by threats, the former in the form of enforceable law. However, the latter’s “[Give us] your money or [else we will take] your life!” is unjust, whereas the laws of a state are not, or more to the point, states are only states as opposed to great bands of robbers if their laws are just.

Hart of course disagrees with the Augustinian answer to his (Hart’s) question. Many states are unjust, some to the extent that they may fairly be considered bands of robbers (or even worse), yet even then they are not just that, just as even unjust laws are not just orders backed by threats, or so Hart believes. As Hart frames the³ difference between the two, mere orders backed by threats merely oblige, whereas the law obligates. There is a difference between the normative force that the law at least purports to have and the normative force of the robber’s “Your money or your life!” Another way

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¹ Augustine, & Dyson, 1998.
³ Hart discusses other differences between law and orders backed by threats, such as the fact that not all law is happily conceived as taking the form of orders, Hart, 1994. However, these further differences need not concern us here.
of framing the point is that the law has *authority*, or at least purports to have it, while the robber does not. Authoritative orders obligate, non-authoritative ones such as the robber’s merely oblige.

As it stands, these distinctions merely *name* an answer to the question at hand. For Hart’s answer proper, we need to turn to his “Commands and Authoritative Legal Reasons,” where he proposes to conceive of authority in terms of the idea of an “authoritative […] reason.” Authoritative reasons are reasons that are “content independent” and “peremptory.”

Hart explains the idea of content independence as follows:

> Content independence of commands lies in the fact that a commander may issue many different commands to the same or to different people and the actions commanded may have nothing in common, yet in the case of all of them the commander intends his expressions of intention to be taken as a reason for doing them. It is therefore intended to function as a reason independently of the nature or character of the actions to be done.

A reason is peremptory in turn when it is intended to preclude or cut off any independent deliberation by the hearer of the merits pro and con of doing the act. The commander’s expression of will therefore is not intended to function within the hearer’s deliberations as a reason for doing the act, not even as the strongest or dominant reason, for that would presuppose that independent deliberation was to go on, whereas the commander intends to cut off or exclude it.

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5 Hart, 1982.
6 Hart, 1982.
7 Hart, 1982.
According to Hart, then, authoritative commands, such as legal commands, *obligate* in the sense that they create content-independent and peremptory reasons, whereas mere orders backed by threats, such as those of bands of robbers, merely *oblige* in the sense that whatever reasons they create are not authoritative in this sense.

It is, I think, fair to say that the majority of legal philosophers nowadays subscribe to Hart’s analysis of the idea of authority in terms of the idea of a content-independent and peremptory reason. The most prominent and influential among them is probably Hart’s student Joseph Raz, whose “service conception” of authority seems to have attained the status that Robert Nozick once ascribed to John Rawls’s *A Theory of Justice*: legal philosophers must either work within it or explain why not.

One such explanation has emerged with particular force in recent years. It is pithily summed up in the title of a paper by Kenneth Einar Himma: “Just ’Cause You’re Smarter than Me Doesn’t Give You a Right to Tell Me What to Do.” An adequate account of authority needs to account not only for the difference between authoritative commands and mere orders backed by threats but also for the difference between authoritative commands and expert verdicts or pieces of advice. The charge is that the service conception lacks the resources to do so.

Stephen Darwall’s critique of the service conception in “Authority and Second-Personal Reasons for Acting” and “Authority and Reasons, Exclusionary and Second-Personal” constitutes perhaps
the most sustained development of an argument along these lines. According to Darwall, authority is an irreducibly “second-personal” concept. Any attempt to account for the idea of authority in non-second-personal terms is liable to the “wrong kind of reason” objection. The service conception does attempt to do just that and so fails, or so Darwall argues.

The normative difference in question here—the one that the service conception fails to capture according to Darwall—is often described in terms of the difference between theoretical or epistemic authority on the one hand and practical authority on the other. The law has practical authority—as do parents, bosses, military commanders, and so on—whereas experts have theoretical authority, or so the thinking standardly goes.

Raz and Darwall too frame their debate in these terms. Here is Darwall in “Authority and Second-Personal Reasons for Acting:” “Call the authority I am concerned with practical authority to distinguish it from various forms of epistemic authority or expertise, including the kind of authority on practical matters a trusted advisor might have.” Similarly, in his reply to (among others) Darwall, “On Respect, Neutrality, and Authority: A Response,” Raz frames his concession to Darwall’s critique as follows: “One of the failings of my explanation of the service conception […] was a failure to explore the way it relates to epistemic authority.”

How are we to conceive of the relation between theoretical and practical authority? The standard approach is to start with the idea that theoretical and practical authority share the same formal structure and differ merely in the substantive content filling in said structure. In particular,

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12 Darwall has a third paper on Raz, “Authority, Accountability, and Preemption” Darwall, 2011. Since the paper is for the most part identical to “Authority and Reasons, Exclusionary and Second-Personal,” I will set it aside here.
13 Sobel, & Wall, 2009. See also The Second-Person Standpoint, where Darwall says that “epistemic authority is not itself second-personal; it is third-personal.” Darwall, 2006
14 Raz, 2010.
whereas theoretical authority applies to *theoretical* reasons, or reasons for *belief*, practical authority applies to *practical* reasons, or reasons for *action*\(^\text{15}\) (or intention\(^\text{16}\)). The formal structure of authority in turn *just is* the one proposed by Hart, *i.e.* the idea that exercises of authority create content-independent and peremptory reasons.

The picture that emerges is this. If exercises of authority create content-independent and peremptory reasons, it follows that to have authority is to have a certain normative *power*, namely the power to do just that. *Theoretical authority* is the power to create content-independent and peremptory reasons for *belief*. *Practical authority* is the power to create content-independent and peremptory reasons for *action*.

In this paper I argue that, however conceptually neat, the picture of the relation between theoretical and practical authority is mistaken. Instead of a single distinction, there are in fact two different and nested distinctions at play here. The first and fundamental distinction is the distinction between what I call “merely relational” and “directed” authority. The second and subordinate distinction is that between different kinds of relational authority.

\(^\text{15}\) Raz in *The Morality of Freedom* articulates this approach as follows: “It is possible that practical and theoretical authorities have little in common. But it is more likely that, while they provide reasons for different things, they share the same basic structure.” Raz, 1986 Similarly, Daniel Star and Candice Delmas in “Three Conceptions of Practical Authority” argue that “the best place to begin understanding practical authority is with a pared back conception of it, as simply a species of normative authority more generally, where this species is picked out merely by the fact that the normative authority in question is authority in relation to action, rather than belief.” Star, & Delmas, 2011

\(^\text{16}\) Some philosophers believe that the domain of normativity is the domain of mental states and their interrelations. Since the relation between mental states and action is merely causal, action falls outside the domain of normativity, or so they think. The distinction between theoretical and practical reason, and by extension between theoretical authority and practical authority, thus needs to be understood in terms of a distinction between different mental states, or more precisely a difference in their “direction of fit.” Theoretical authority governs mental states with a world-to-mind direction of fit, such as belief, whereas practical authority governs mental states with a mind-to-world direction of fit, such as intention. This, or at any rate something like this, is how the view goes. I will ignore the complication posed by it and simply say that, on the understanding of authority under discussion, theoretical authority governs belief and practical authority action. Those with sympathies for the “mentalist” picture just described should feel free to mentally substitute ‘intention’ for ‘action’ throughout.
My argument for the distinction between distinctions I wish to draw is largely indirect, by way of scrutinize two recent debates on practical authority and showing that in different ways both suffer from a failure to distinguish the two distinctions in authority. First, there is Darwall’s critique of Raz’s service conception of authority and Raz’s reply to Darwall. Second, there is the debate over whether practical authority consists in a normative power or a right to rule, with David Enoch and Scott Hershovitz taking opposite positions on the matter. Once the two distinctions are in place, the problems besetting these debates become considerably more tractable, or so I argue.

I will proceed as follows. In sections 2 and 3 I outline Raz’s and Darwall’s respective accounts of authority. In section 4 I summarize Darwall’s critique of Raz as presented in the two papers mentioned above. In sections 5 and 6 I discuss the soundness of Darwall’s critique of Raz by reference to Raz’s official reply to Darwall. In section 7 I discuss the normative-power vs. right-to-rule debate as instantiated in Enoch’s and Hershovitz’s work. In section 8 I finally introduce and defend the two distinctions in authority. Section 9 concludes.

2 Raz on Authority

According to Raz, for one person to have authority over another is for the former to have the normative power to “impose or revoke duties or to change their conditions of application,”17 which for Raz is equivalent to the claim that those in authority have a right to rule over those who are subject to their authority and the latter a correlative duty to obey the former. As Raz puts it approvingly, “[i]t is common to regard authority over persons as centrally involving a right to rule,

17 Raz, 1986.
where that is understood as correlated with an obligation to obey on the part of those subject to the authority.”

Authority is thus something different from, and normatively more exalted than, the right to causally affect others or the justified use of coercion for Raz. Specifically, for one person to exercise legitimate authority over another is for the former to create “protected” or “preemptive” practical reasons for the latter. A protected reason is the “systematic combination” of a (first-order) reason to do as the directive directs and a (second-order) “exclusionary reason not to act for certain reasons (for or against that act),” as Raz puts it in the postscript to the second edition of *Practical Reason and Norms.*

Note that a protected reason in Raz’s sense is all but equivalent to a content-independent and peremptory reason as Hart conceives of it. The first-order element of a protected reason is content independent in the sense specified by Hart. It is “intended to function as a reason independently of the nature or character of the actions to be done.” The second-order, exclusionary element in turn excludes other first-order reasons applying to the action in question, just as a peremptory reason in Hart’s sense is “intended to preclude or cut off any independent deliberation by the hearer of the merits pro and con of doing the act.” Raz thus conceives of the concept of authority—and hence of the difference between authority and other, less exalted normative phenomena—more or less wholesale in Hartian terms.

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18 Raz, 1986.
19 Raz, 1999.
20 One difference between Hart and Raz here is that a Hartian peremptory reason is supposed to “cut off deliberation,” whereas a Razian exclusionary reason is supposed to merely exclude acting for the reasons excluded; see Raz, 1986. Note that David Enoch’s recent notion of a “quasi-protected reason” is designed to encompass both Hartian preemption and Razian exclusion; see his “Authority and Reason-Giving” Enoch, 2014.
Raz’s conception\textsuperscript{21} of authority—\textit{i.e.} his account of the conditions under which the concept of authority so conceived applies—consists of three theses, the “preemption thesis,” the “normal justification thesis,” and the “dependence thesis.” The first of these reflects Raz’s Hartian concept of authority. According to the preemption thesis, “[t]he 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 replace some of them.”\textsuperscript{22} This, however, is just another way of saying that authoritative directives create \textit{protected} reasons.

The normal justification thesis and the dependence thesis spell out Raz’s conception of practical authority proper. According to the normal justification thesis, “[t]he normal and primary way to establish that a person should be acknowledged to have 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, than if he tries to follow the reasons which apply to him directly.”\textsuperscript{23} The dependence thesis in turn says that “[a]ll authoritative directives should be based, among other factors, on reasons which apply to the subjects of those directives and which bear on the circumstances covered by the directives.”\textsuperscript{24}

Raz calls this conception the “service conception” of authority. Its animating idea is that “the function of authorities […] is to serve the governed,”\textsuperscript{25} where to serve the governed \textit{just is to help}

\textsuperscript{21} For the distinction between concept and conception see Rawls’s \textit{A Theory of Justice (Revised Edition)} Rawls, 1999
\textsuperscript{22} Raz, 2001.
\textsuperscript{23} Raz, 2001.
\textsuperscript{24} Raz, 2001.
\textsuperscript{25} Raz, 1986.
them conform better with the reasons that apply to them.\textsuperscript{26} The exercise of authority is legitimate just in case\textsuperscript{27} it fulfills this function. The three theses making up the service conception in turn may be conceived of as three elements in a single argument giving expression to this idea: \(A\) has authority over \(B\) just in case \(B\) conforms better to her reasons by treating \(A\) as having authority over her (normal justification thesis)—and so treating \(A\)'s directives as creating protected reasons (preemption thesis)—than by attempting to “directly” conform to her reasons; however, \(B\) is only going to conform better with her reasons by treating \(A\)'s directives as authoritative if \(A\)'s directives reflect \(B\)'s underlying reasons (dependence thesis).\textsuperscript{28}

Note that, for Raz, the concept of a practical rule runs parallel to the concept of practical authority. As he says, “Authoritative directives are often rules, and even when they are not, because they lack the required generality, the same reasoning applies to them.”\textsuperscript{29} Like authoritative directives, practical rules create protected reasons for action. By the same token, the justification of a practical rule mirrors the justification of one person's having authority over another. An authoritative directive is legitimate just in case its subjects conform better with their reasons by treating the directive as authoritative, and so as creating protected reasons. Analogously, a practical rule is valid

\textsuperscript{26} To serve the governed thus is not to further their interests, or rather, it is to further their interests only insofar as these interests are reasonable.

\textsuperscript{27} This is not quite accurate. Raz thinks that his service conception is neither a necessary nor a sufficient condition for legitimate authority but rather merely the “normal way” in which it gets established. I will ignore this complication here and treat the service conception as proposing necessary and sufficient conditions for authority.

\textsuperscript{28} For the record, I find this last step dubious, for two reasons. First, whether or not \(B\) really is only going to conform better to her reasons by treating \(A\)'s directives as authoritative is a contingent matter. Second, as Raz emphasizes, “[t]he dependence thesis does not claim that authorities always act for dependent reasons, but merely that they should do so.” Raz, 1986 However, the service conception is supposed to describe the conditions under which one person in fact has authority over another. It is therefore not clear that there is logical space on the service conception for someone to have authority over another yet to fail to satisfy the condition set out in the dependence thesis. One way out would be to treat the dependence thesis as a constitutive or internal standard of authority, in the sense developed by Christine Korsgaard and David Velleman among others. However, there is no indication that this is what Raz has in mind. I won't pursue the matter further.

\textsuperscript{29} Raz, 1986.
just in case those who to whom it applies conform better with their reasons by treating the rule as creating protected reasons. The preemption and the dependence thesis therefore apply not only to authoritative directives but also to practical rules. Both legitimate authoritative directives and valid practical rules preempt and (are supposed to) depend on the relevant ultimate reasons.

Both authoritative directives and practical rules thus “provide an intermediate level of reasons” between ultimate reasons and actions. The legitimacy of authoritative-directive- respectively the validity of practical-rule-created intermediate reasons in turn depends on their standing in a facilitative relation with the ultimate reasons that apply to the relevant agents. The normativity of rules and authoritative directives are therefore instances of a more general principle according to which the force of a reason gets transmitted to whatever facilitates conformity with that reason. Since on Raz’s view the instrumental principle just is the facilitative principle so understood, it follows that normativity of authority and the normativity of practical rules are continuous not only with each other but also with the normativity of instrumental rationality for Raz.

Note the substantivist character of Raz’s account. Facilitation is a substantive relation. It follows that the justification of both authoritative directives and rules—which depends on their standing in a facilitative relation with the reasons that underlie them—proceeds in substantive terms.

3 Darwall on Authority

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30 See footnote above for some reservations about the parenthesized clause.
31 Raz, 1986
32 As David Enoch observes in “Authority and Reason-Giving,” “Razian exclusion [as it applies to practical authority] is really an instance of a much wider phenomenon.” Enoch, 2014.
Darwall likes to illustrate the concept of the second-person standpoint by appeal to an example taken from David Hume.\(^{34}\) Suppose that I step on your foot and thereby cause you pain. Your pain is a reason for me to step off your foot in two distinct senses, or so Darwall argues. First, your pain is a reason for me to step off your foot in virtue of the fact that I have reason to avoid bringing about bad states of affairs and the fact that your pain constitutes a bad state of affairs. Darwall calls this reason “state-of-the-world-regarding” or “agent-neutral.”\(^{35}\)

However, your pain is also a reason for me to step off your foot in virtue of the fact that you have a valid claim against me that I not cause you gratuitous pain, which I would (continue to) violate by remaining on top of your foot. Darwall calls this latter reason “second-personal” or “agent-relative,”\(^{36}\) where as second-personal reason is “one whose validity depends on presupposed authority and accountability relations between persons and, therefore, on the possibility of the reason’s being addressed person-to-person.”\(^{37}\) None of these presuppositions are built into non-second-personal reasons, which merely presuppose the more fundamental capacity to be motivated by practical reasons.

The concepts by reference to which Darwall defines the idea of a second-person reason—authority and accountability—are themselves second-personal, or so Darwall argues. Moreover, they are not in fact prior to the idea they define. Instead, the four second-personal concepts mentioned—authority, accountability, claims, and second-personal reasons—“constitute a circle of interdefinable, irreducibly second-personal concepts.”\(^{38}\) For \(A\) to have authority vis-à-vis \(B\) is for \(A\) to have the

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\(^{34}\) Hume, & Selby-bigge, 1902.

\(^{35}\) Darwall, 2006.

\(^{36}\) Note that Darwall thinks that second-personal reasons are merely one species of agent-relative reasons; see Darwall, 2006. However, this complication need not concern us here.

\(^{37}\) Darwall, 2006.

\(^{38}\) Sobel, & Wall, 2009.
standing to make valid claims against B and for B to be accountable to A if she (B) fails to comply with those claims. For A to have the standing to make valid claims against B and for B to be accountable to A for complying with those claims in turn is for A’s valid claims to create second-personal reasons that apply to B. The normative force of these concepts is not reducible to any non-second-personal normative concepts, As Darwall puts it, paraphrasing Bernard Williams: “‘Second-personal authority out, second-personal authority in.’”

The sorts of attitudes Peter Strawson calls “reactive attitudes” in “Freedom and Resentment,” such as resentment, indignation, or gratitude, are illustrative of the second-personal standpoint according to Darwall. For instance, resentment constitutes our affective response to someone’s (perceived) failure to acknowledge or comply with (what we perceive to be) a valid claim of ours on them.

The various elements of Darwall’s circle of interdefinable and irreducibly second-personal concepts represent the form in which what Darwall calls “the second-person standpoint” finds expression. The second-person standpoint is “the perspective you and I take up when we make and acknowledge claims on one another’s conduct and will.” To take up the second-person standpoint hence is to adopt a particular form of practical reasoning, similar—although of course not identical—to entering the original position, engaging in public reason, or reasoning from the standpoint of reasonable rejectability.

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40 Strawson, 2008.
44 See Thomas Scanlon’s What We Owe to Each Other Scanlon, 1998.
4 Darwall’s Critique

On Darwall’s view, then, practical authority is an irreducibly second-personal concept. It is a condition on the possibility of one person’s having authority over another that the two parties concerned stand in a relation of mutual accountability and susceptibility to the other’s valid claims, where this relation cannot be conceived of in terms other than those expressive of the second-person standpoint.

Raz’s service conception of authority makes no reference to second-personal concepts. As we saw above, the service conception says that one person’s authority over another depends on the latter’s (non-second-personal) ultimate reasons, via the facilitative principle. Hence, if the service conception is correct, then Darwall’s claim that practical authority is irreducibly second-personal is false. It is in this sense that Darwall considers the service conception a “challenge to my irreducibility thesis.”45 The task Darwall sets himself in the two papers mentioned in section 1 is therefore to show that the service conception is in fact not correct and so fails to falsify the irreducibly second-personal nature of practical authority.

In “Authority and Second-Personal Reasons for Acting,” Darwall ascribes to Raz the following three theses:

(I) If B would do better in complying with independently existing reasons were B to treat A’s directives as pre-emptive reasons, then B has sufficient reason so to treat A’s directives.

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45 Sobel, & Wall, 2009.
(II) If B would do better in complying with independently existing reasons were B to treat A’s directives as pre-emptive reasons, then A’s directives actually are such preemptive reasons for B.

(III) If B would do better in complying with independently existing reasons were to treat A’s directives as pre-emptive reasons, then A has authority with respect to B. (Normal justification thesis)46

Darwall rejects all three theses47 but limits himself to discussing the latter two, the second thesis in “Authority and Reasons, Exclusionary and Second-Personal” and the third in “Authority and Second-Personal Reasons for Acting.”

On both counts, Darwall’s case turns on an argument from what is known as the “wrong-kind-of-reason problem.” The term derives from Strawson’s case against “pragmatic” justifications of our reactive practices (i.e. the practice of responding with resentment, anger, gratitude, and so on, to certain behaviors). According to “pragmatism,” these practices are justified on consequentialist grounds: the practice of acting as though certain behaviors merit certain responses elicits socially desirable consequences. According to Strawson, however, “this is not a sufficient basis, it is not even the right sort of basis, for these practices as we understand them.”48 The right sort of basis would be one that accounts for the appropriateness (or lack thereof) of our reactive attitudes, not merely their utility. Such an account would have therefore to make irreducible reference to notions such as culpability, incapacity, negligence, and so on.

47 See Darwall, 2010.
48 Strawson, 2008.
In “Authority and Second-Personal Reasons for Acting,” Darwall argues that a parallel objection applies to thesis (III) above. According to Darwall, the fact that B's acting as though A has authority over her assists B in doing better at doing what she has reason to do is the wrong sort of basis for ascribing A actual authority over B. The trouble is that, by Raz's own lights, A's having authority over B entails a right on A's part against B to B's obedience and a duty on B's part to A to obey her. However, the fact that B does better at doing what she has reason to do when she obeys A is the wrong sort of basis for, and so could not possibly explain, a relation of authority so conceived. Instead, any such relation could only be accounted for in terms that already make reference to the second-personal standpoint, or so Darwall holds.

Darwall appropriates an example of Raz’s to illustrate the point. Suppose that A is an expert in Chinese cooking, and suppose that B has reason to cook a good Chinese meal. Presumably B would do better at conforming to her reason to cook a good Chinese meal if she treated A's cooking instructions as protected reasons. By (III), it follows that A actually has authority over B. However, it seems plain that A does not thereby have a right against B to “rule over” her, nor does B have a duty to A to “obey” her. Call this example “Cooking Expert.”

Raz agrees (and in fact introduced the example as an illustration of a similar point). His reply is that the “[A does] not have authority over [B] because the right way to treat [A's] advice depends on [Bs] goals.” In terms Raz introduces in later works, A has no authority over B because the relevant reason is not “categorical,” that is, it is not a reason whose “application is not conditional on the

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49 Raz, 1986.
agent’s inclinations or preferences.” Since according to Raz duties just are categorical reasons, it follows that $A$ has no authority over $B$ because $B$'s underlying reason is (merely) a reason and not (also) a duty.

However, Darwall argues, this won’t do. Suppose that $A$ is a financial adviser, and suppose that $B$ has a duty (in Raz’s sense of a categorical protected reason) to invest her money prudently. $B$ would do better at conforming with her duty to invest prudently if she followed $A$’s advice, yet $A$ still doesn’t seem to have authority over $B$ in the sense that she ($A$) has a right against $B$ to “rule” over her, nor does $B$ have a duty to $A$ to “obey” her. Call this example “Financial Adviser.” As Darwall says,

In such a case, an alleged authority would more plausibly appeal to an obligation to do as he directs. If the only way we can adequately comply with our moral obligations is to treat an alleged authority’s directives as preemptive reasons, then there seems to be a sense in which it is plausible to suppose that we would be under an obligation so to treat them. Even so, it wouldn’t follow from this that the alleged authority himself thereby acquires any authority (beyond any he might have had already) to hold others to moral demands.

In other words, Darwall’s argument in “Authority and Second-Personal Reasons for Acting” is that there is a tension between Raz’s concept and his (Raz’s) conception of practical authority. Raz’s

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50 Raz, 2010.
51 See for instance his Ethics in the Public Domain: “Duties are categorical reasons, i.e. they are binding independent of the will or goals of their subjects.” Raz, 2001
52 Sobel, & Wall, 2009.
53 In “Authority and Reason-Giving” David Enoch makes a similar observation: “I think it is one of the advantages of Raz’s service conception of authority—indeed, perhaps one of its original points—that it only allows authorities to be justified in terms of the service they render the subjects. It is, as it were, all about helping the subjects (conform to reasons), not about the authority itself. Precisely for this reason, though, I find it perplexing to find Raz himself routinely talking in terms of the authority’s right to rule.” Enoch, 2014
Micha Glaeser

discussion of the concept of authority appeals to ostentatiously second-personal considerations, in particular the idea that authority relations are relations of correlative rights to rule and duties to obedience. However, Raz’s conception of authority as expressed (in part) in the normal justification thesis lacks the resources to account for the second-personal nature of his concept of authority. As Darwall puts it, “much of what Raz says about practical authority in *The Morality of Freedom* aside from the normal justification thesis seems well attuned to practical authority’s second-personal character.”\(^{54}\) However, the normal justification thesis *just is* Raz’s conception of authority, whereas those elements of Raz’s account to which Darwall refers approvingly are precisely those specifying the concept of authority as Raz conceives of it.

One reply on Raz’s part to Darwall’s objection is therefore to remove the tension between concept and conception by removing all reference to second-personal elements from the concept of authority. In terms of the three theses above, this reply would amount to giving up on (III) and merely asserting (I) and (II). In “Authority and Second-Personal Reasons for Acting” Darwall explicitly allows for this reply:

> Suppose, however, that Raz were to eschew talk of obligation in this sense “all the way down,” and simply take the position that all he really means by a duty of obedience is that there are preemptive reasons for following an alleged authority’s directives. Similarly, he might hold that the latter is all that it is for someone to have practical authority in the sense in which he has in mind. If we interpret the normal justification thesis as applying to practical authority defined in this way, it seems much more plausible. But it should be clear that practical authority so defined is not a thesis that entails anything about any right to

\(^{54}\) Sobel, & Wall, 2009
obedience or about any obligation to obey, at least as we ordinarily understand rights and obligations. So understood, the normal justification thesis is simply a thesis about preemptive reasons.\textsuperscript{55}

However, “Authority and Reasons, Second-Personal and Exclusionary” Darwall argues that (II) is false as well. The normal justification thesis is not sufficient for the capacity to create preemptive reasons for others either, since this capacity too presupposes the second-personal standpoint, or so Darwall argues:

Although I agree with Raz that the capacity to create preemptive reasons (that is, to create exclusionary reasons not to act on reasons that would otherwise be unimpeached along with a new reason that “displaces” or preempts the excluded reasons) is a mark of practical authority, I believe that this capacity itself requires the second-personal relation of accountability. In a slogan: ‘No preemptive reasons without the standing to hold accountable.’\textsuperscript{56} If, as I maintain, the latter can be established only within a second-personal framework, it will follow that the former requires a second-personal framework also.” [Ref: 261]

Darwall once again argues from the wrong-kind-of-reason problem. Just as the fact that their socially desirable consequences constitute a reason of the wrong sort for holding others responsible for their actions, the fact that B would do better at doing what she has independent reason to do if she were to treat A’s directives as creating preemptive reasons for her is the wrong sort of basis for ascribing to A the capacity to actually create such reasons through her directives. As Darwall puts it,

\textsuperscript{55} Sobel, & Wall, 2009

\textsuperscript{56} Note that Darwall seems to have had a change of mind here. On p. 18 of \textit{The Second-Person Standpoint} Darwall says that exclusionary reasons in Raz’s sense do not presuppose second-personal authority.
“Why should the fact that one has reason to regard or treat someone's directives as creating exclusionary reasons make it the case that their directives actually do create such exclusionary reasons?”

Darwall illustrates his point with the following example. Suppose that B has reason to get out of bed at a certain time but finds that ordinary alarm clocks don’t work for him. Instead, he gets himself an “authority alarm clock” whose alarm consists of an authoritative voice telling him to get up. The authority alarm clock induces in B an “authority experience,” that is, the experience of being ordered out of bed by someone with authority over him, which, given his deferential personality, is effective at getting him out of bed. Given that by hypothesis B has reason to get out of bed, he has reason to treat the alarm clock’s “verdicts” as creating a preemptive reason to get out of bed. However, Darwall argues,

it is also obvious that whatever weight the reasons B might have to get out of bed at 7 a.m. and so to treat his experience as veridical, they cannot actually make his experience veridical or even bear on its accuracy. They would be completely impotent to make it the case that the alarm’s “directives” actually are legitimate or genuinely create preemptive reasons. When the alarm clock goes off and the voice speaks, B has the very same reasons to get up at 7 a.m. and, by hypothesis, the same less weighty reasons to continue to lie in bed. Granted, B has pragmatic reasons to respond to the alarm, on the one hand, and, on the other, not even to think about his reasons for staying in bed (since if he does consider them he is likely to act contrary to the weightier reasons and stay in bed). But this doesn’t mean that he may not legitimately think about these reasons, that it is outside his discretion, or that the latter

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57 Darwall, 2010.
reasons have somehow been displaced, preempted, or defeated, only that he would be foolish to consider them. Clearly, the person who recorded the “authoritative voice” acquires no authority by virtue of the fact that B will comply better with reasons if he treats his voiced directives as creating preemptive reasons.58

Suppose further that the authority alarm clock eventually fails to create authority experiences in B. Instead he now hires A to order him out of bed every morning. A’s orders once again provide B with the sought-after authority experience. B therefore has reason to treat A’s verdicts as creating a preemptive reason to get out of bed, but it doesn’t follow that A actually has the capacity to create preemptive reasons. The right sort of basis for ascribing to A the capacity to create exclusionary reasons for B instead is one that makes irreducible reference to the second-person standpoint, or so Darwall argues.

5 Raz’s Reply, Part One

Raz replies to Darwall’s critique in “On Respect, Neutrality, and Authority: A Response.”59 In this section and the next I will discuss two points Raz raises there, each of which addresses one of Darwall’s two criticisms respectively. To anticipate: I will argue that Raz’s reply succeeds against the criticism in “Authority and Reasons, Second-Personal and Exclusionary” but fails against the criticism in “Authority and Second-Personal Reasons for Action.”

58 See Darwall, 2010.
59 Raz, 2010 There is also an unpublished paper of Raz’s, “The Possibility of Partiality,” in which he discusses Darwall’s critique. Some of the arguments there made their way into Raz’s official reply to Darwall, some didn’t. Since the paper is unpublished, I won’t refer to it here.
The first (and as I will argue successful) reply addresses the argument Darwall marshals below the slogan “No preemptive reasons without the standing to hold accountable.” Raz notes that “[Darwall’s] objection is not specifically to the claim that the [normal justification thesis] may give rise to preemptive reasons. Rather it is that, in itself, meeting the conditions of the [normal justification thesis] does not give rise to reasons of any kind.” Raz’s observation turns on the fact that the wrong-kind-of-reason objection, insofar as it applies, applies not only to thesis (II) but also to thesis (I) above. Recall:

(I) If B would do better in complying with independently existing reasons were B to treat A’s directives as pre-emptive reasons, then B has sufficient reason so to treat A’s directives.

(II) If B would do better in complying with independently existing reasons were B to treat A’s directives as pre-emptive reasons, then A’s directives actually are such preemptive reasons for B.

Darwall’s argument against (II) was that the fact that B would do better at doing what she has reason to do by treating A’s directives as creating preemptive reasons does not make it the case that A’s directives in fact create preemptive reasons for B. The former is the wrong sort of basis for the latter. However, the same line of argument seems to falsify (I) as well, or so Raz observes. After all, if—as Darwall claims—the transition from “B would do better in complying with independently existing reasons were she to treat A’s directives as creating preemptive reasons” to “A’s directives actually are preemptive reasons for B” is invalid, then why is the transition from the former to “B has (non-preemptive) reason so to treat A’s directives” not also invalid?

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60 Raz, 2010.
According to Raz, what validates the transition from antecedent to consequent in (I) and (II) is the facilitative principle. As Raz puts it, the authority-created reasons whose existence Darwall disputes “are there by reasoning analogous (some would say identical) to that which establishes the existence of instrumental reasons: you have reason to do A, doing B (walking to the station, obeying the authority) will facilitate doing A, therefore you have reason to do B. It is more complicated to establish that the authoritative reasons are preemptive, and that was all I argued for in presenting my account of authority. But that point is not challenged by Darwall.”

Darwall might grant that the facilitative principle validates the transition from antecedent to consequent in (I) but deny that the same is true of (II). After all, the antecedent of both (I) and (II) says that what facilitates B's doing what she independently has reason to do is treating A's directives as preemptive reasons, so by the facilitative principle what B has reason to do is treat A’s directives as preemptive reasons. However, this is just what (I) says, whereas (II) omits reference to the idea of B's treating A’s directives as preemptive reasons and instead says that those directives are preemptive reasons for B. Hence, (I) is true but (II) is false. To once again paraphrase Bernard Williams's slogan, “‘treatment-as’ out, ‘treatment-as’ in.” Or so Darwall might argue.

Note that, while the “‘treatment-as’ out, ‘treatment-as’ in” principle on which the present argument seems to turn may well serve to distinguish reasons of the right from those of the wrong kind, it makes no reference to the second-person standpoint. According to the “‘treatment-as’ out, ‘treatment-as’ in” principle, from the fact that there is a reason for A to treat X as a reason for doing Y it does not follow that X is a reason for A to do Y. So conceived, however, the “‘treatment-as’ out,
‘treatment-as’ in” principle contains no reference to anything second-personal. Insofar as the irreducibly second-personal nature of preemptive reasons was supposed to be the conclusion of Darwall’s argument from the wrong-kind-of-reason problem in “Authority and Reasons, Second-Personal and Exclusionary,” the argument therefore amounts to a non sequitur.

Moreover, Raz has a straightforward reply to the argument from the “‘treatment-as’ out, ‘treatment-as’ in” principle I am imputing to Darwall here. Note that to treat A’s directives as creating preemptive reasons just is to “do as the directive directs and […] not to act for certain reasons (for or against that act)” for Raz. (I) may therefore be reformulated without reference to the notion of ‘treatment as:

(I*) If B would do better in complying with independently existing reasons were B to (i) do as A’s directives direct and (ii) not act for certain reasons (for or against that act), then B has reason to do (i) and (ii).

Now, by analogy to the above reasoning, the facilitative principle validates the antecedent-consequent transition in (I*). From the fact that B would do better in complying with independently existing reasons were she to (i) do as A’s directives direct and (ii) not act for certain reasons for or against that act, it follows (by the facilitative principle) that B has reason to do (i) and (ii). However, to have reason to (i) do as A’s directives direct and (ii) not to act for certain other first-order reasons just is to have preemptive reason to do as A’s directives direct, by Raz’s definition of “preemptive reason.” Hence, (I*) might be reformulated as follows:

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63 Darwall might protest that the (I*) is not in fact equivalent to (I). If so, then this would be so much the worse for (I).
(I**) If B would do better in complying with independently existing reasons were B to (i) do as A’s directives direct and (ii) not act for certain reasons (for or against that act), then B has preemptive reason to do as A’s directives direct.

Assuming that “B has preemptive reason to do as A’s directives direct” is equivalent to “A’s directives actually are preemptive reasons for B,” it follows that (I**) is equivalent to (II). Hence, if (I**) is true, then so is (II). Since (I**) was derived from (I) (via (I*)), it follows that, if (I) is true, then (II) is true as well. Note that this argument confirms Raz’s observation that Darwall’s critique applies not only to the claim that the normal justification thesis accounts for the power to create preemptive reasons specifically but to the claim that the normal justification thesis accounts for the power to create any reasons whatsoever.

The argument for the irreducibly second-personal character of preemptive reasons I ascribed to Darwall therefore fails. However, much of Darwall’s discussion in “Authority and Reasons, Second-Personal and Exclusionary” suggests that the second-personal nature of preemptive reasons is in fact supposed to serve as a premise of his argument there, not come out as the conclusion of an argument from the “‘treatment-as’ out, ‘treatment-as’ in” principle. For instance, in his discussion of the “authority alarm clock” example Darwall claims without argument that the fact that B has reason to treat the alarm clock’s “verdicts” as creating a preemptive reason to get up “doesn’t mean

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64 If this is the right reading of Darwall’s argument, then it is not entirely clear what its conclusion then is supposed to be.

65 One immediate issue with the authority alarm clock is that Raz certainly wouldn’t accept the claim that the authority alarm clock has authority over B. Part of the concept of authority as Raz receives it from Hart is that those who issue authoritative commands intend for their intended audience to take their recognition of the issuers’ intention as their reason for action; see again Hart’s “Commands and Authoritative Legal Reasons” Hart, 1982. Since alarm clocks have no intentions, however authoritative their recorded voices may sound, it fails a necessary condition for bearership of authority by Raz’s lights. (Though it is unclear how this condition fits together with everything else Raz says about practical authority, in particular the normal justification thesis. Also, and to be fair to Darwall, the example goes on to transfer the task of the authority alarm clock to a person, and hence a possible bearer of intentions.)
that he may not *legitimately* think about these reasons, that it is outside his *discretion*, or that the latter reasons have somehow been displaced, preempted, or defeated, only that he would be foolish to consider them.”66 Needless to say, “legitimacy” and “discretion” are second-personal concepts.

In that case, however, Darwall’s argument violates the very strictures he himself had imposed on his own argument in “Authority and Reasons, Second-Personal and Exclusionary.” Recall that the reply on Raz’s behalf that “Authority and Second-Personal Reasons for Action” left open and “Authority and Reasons, Second-Personal and Exclusionary” was then supposed to close off was to “eschew talk of obligation in a second-personal sense ‘all the way down’” and take practical authority to merely consist in the power to create protected reasons for action, without any reference to second-personal notions such as standing, or a right to rule and a correlative an obligation to obey. However, talk of “legitimacy,” “discretion,” and so on smuggles in precisely the sorts of second-personal elements that were supposed to be left to one side in “Authority and Reasons, Second-Personal and Exclusionary.”67

Moreover, if the supposed second-personal character of protected reasons figures as a premise in Darwall’s argument, then the argument between him and Raz has come to a standstill. Raz of course *doesn’t* believe that protected reasons are irreducibly second-personal in Darwall’s sense, nor does anything he says about protected reasons commit him to doing so. For Raz, recall, a protected reason to do X is the “systematic combination” of a reason to do X and an exclusionary reason not to act on any other reasons pertaining to the question whether or not to X. The fact that it would be

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67 Note that in “Authority and Reasons, Exclusionary and Second-Personal” Darwall seems to loosen these strictures in the very framing of the question under consideration there: “[I]s satisfying the conditions of the [normal justification thesis] sufficient (or necessary) to establish that one person has the standing to create preemptive reasons for another?” Darwall, 2010. Note the reference to (the distinctly second-personal) “standing” here.
foolish to consider those other reasons, say because doing so would get in the way of doing X or whatever else one has independent reason to do, may well qualify as constituting the exclusionary element in the relevant preemptive reason, just as the fact that it would be foolish not to take the means to one’s ends constitutes a reason to do so. The distinction on which Darwall’s argument turns, namely that between its being foolish and its being illegitimate to consider some reason, is not in the last resort genuine on Raz’s view.

Whether it is supposed to enter the argument in “Authority and Reasons, Second-Personal and Exclusionary” as a premise or the conclusion, then, Raz has been given no grounds for conceding the supposedly irreducibly second-personal character of protected reasons.

There is a common theme underlying Darwall’s failure to get any dialectical purchase on Raz on either of these counts. Like the distinction between second-personal and non-second-personal reasons, Darwall conceives of the distinction between non-protected and protected reasons in formal terms. The appeal to the wrong-kind-of-reason problem in what Darwall calls “Strawson’s Point” in The Second-Person Standpoint is supposed to tease out the formal nature of the first distinction. Similarly, the appeal to the wrong-kind-of-reason problem implicitly in the argument from the “‘treatment-as’ out, ‘treatment-as’ in” principle in “Authority and Reasons, Second-Personal and Exclusionary” is supposed to tease out the formal nature of the second distinction. In fact, the appeal to the second-person standpoint in “Authority and Reasons, Second-Personal and Exclusionary” is supposed to further show that the second distinction collapses into the first. (Above I argued that the latter claim is a non sequitur.)

I do not mean to endorse Raz’s account of instrumental rationality here. The point here is merely to explain why Darwall’s appeal to the supposedly second-personal nature of preemptive reasons fails to engage Raz.
For Raz on the other hand the distinction between protected and non-protected reasons is substantive, and doubly so. First, protected reasons are simply reasons with a particular content, namely to (i) perform some action and (ii) not act on certain other considerations. Second, the existence of these reasons depends on their facilitative—and hence a substantive—relation with other reasons. The idea of a protected reason is therefore substantivist all the way down for Raz, which in turn provides him with the resources to “eschew talk of obligation in this [i.e. a second-personal and hence formal] sense all the way down.”

6 Raz’s Reply, Part Two

Let me turn to the second (and as I will argue unsuccessful) half of Raz’s reply to Darwall. As I argued in section 4, on one reading of Darwall’s argument in “Authority and Second-Personal Reasons for Acting,” Raz’s conception of authority with its appeal to third-personal considerations does not qualify as an interpretation of the concept of authority with its seemingly second-personal elements such as that of a right to rule and a correlative duty to obey. Cooking Expert and Financial Adviser were meant to illustrate this point: while their directives satisfy the conditions of the service conception (and while, moreover, the underlying reasons amount to duties by Raz’s own lights in Financial Adviser), neither a right to rule nor a correlative duty to obey seem to be involved there.

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69 This point is implicit in the transition above from “A has (non-preemptive) reason to do (i) and (ii)” in the consequent of (I*) to “A has preemptive reason to do (i)” in the consequent of (I**). If the distinction between protected and non-protected reasons was formal, no such transition would be admissible.

70 Raz’s conception of a protected reason, which we saw above is closely related to his conception of a practical rule, thus falls under what Rawls calls the “summary conception” (as opposed to the “practice conception”) of rules in “Two Concepts of Rules.” Rawls, & Freeman, 1999. For a discussion of the related contrast between formal and substantive justifications of rules and other forms of “practical generality,” see Part III of Michael Thompson's Life and Action Thompson, 2008.
In his reply to Darwall, Raz concedes that the financial adviser\textsuperscript{71} has no authority over those whom she advises and locates the failure of the service conception as originally conceived to account for this fact in his “failure to explore the way it relates to epistemic authority.”\textsuperscript{72} Raz discusses the distinction between theoretical and practical authority in some detail in “The Problem of Authority.”\textsuperscript{73} Two points there are of particular relevance here. First, Raz says that “[t]heoretical authority resembles practical authority in its point (to improve conformity with reason) and in being preemptive […].”\textsuperscript{74} Both theoretical and practical authority thus create preemptive reasons according to Raz, the former for belief, the latter for action. Note that this \textit{just is} what in section 1 I described as the standard approach to the relation between theoretical and practical authority.

\textsuperscript{71} Recall that on Raz’s view the Chinese cooking expert has no authority because the relevant reasons are not categorical. See section 4.
\textsuperscript{72} Raz, 2010. Raz’s official reply to Darwall takes a perplexing turn at this point. I quote: “But why does [the financial adviser] not have authority? She has epistemic authority. He [Darwall, i.e. the financial adviser’s client] should believe that if he is to invest in a pension fund, he should invest in the fund she designated, and he should believe that because that is her opinion and she is an expert. Suppose that Darwall believes that. In that case, she no longer meets the condition of the [normal justification thesis]. She believes that if he is to invest in a pension fund, he should invest in this particular one, and he believes the same.
She does not know what he should do better than he does.” There is much that strikes me as odd in Raz’s description here of what is going on when an adviser advises. Even setting these intuitive concerns aside, however, it is unclear whether Raz thinks that the financial adviser does or does not have theoretical authority in this case. Both alternatives are problematic from an interpretive standpoint. The idea that the financial adviser still has theoretical authority for Raz is difficult to reconcile with his claim that she “does not know what [Darwall] should do better than he does.” Isn’t superior knowledge the \textit{essence} of theoretical authority or expertise?
If on the other hand the financial adviser ceases to have theoretical authority upon successfully communicating her advice, then it is unclear why Raz would concede that the example illustrates that the relation between theoretical and practical authority is supposed to be more complicated than he had initially envisioned. After all, on the present reading there theoretical authority is not even at play in the example! For all we know, the normal justification thesis may therefore still constitute the proper conception of both kinds of authority on the present reading, just as for all we know those with theoretical authority still have authority \textit{over} their “subjects.” These various substantive and interpretive difficulties are the reason why I set aside this particular aspect of Raz’s official reply to Darwall and instead draw on his more perspicacious discussion of the distinction between theoretical and practical authority in “The Problem of Authority.”
\textsuperscript{73} Raz, 2006
\textsuperscript{74} Raz, 2006.
Second, however, Raz argues that, “[t]hese similarities notwithstanding, there are significant differences between theoretical and practical authorities.” Among other things, theoretical authorities, experts, cannot order us to believe one thing or another, and cannot impose duties to believe — the nature of belief and belief formation excludes such duties. Belief formation, just like actions, is responsive to reasons, but only actions, and not the formation of beliefs, involve the will. Duties exist only when (but not always even then) the response to reason involves the will.

These differences, Raz notes, are associated with important differences of idiom. For example, some people are authorities on eighteenth-century farming methods, but they do not have authority over anyone. I know nothing about eighteenth-century farming methods and should take what they say as authoritative, but they do not have authority over me. Similarly the notion of legitimate authority is confined to practical authority. People may or may not be experts in or authorities on eighteenth-century farming methods. But they cannot be de facto authorities or legitimate authorities on the subject. Finally, only regarding practical matters can we say that someone has authority, or lacks it. In theoretical matters, someone either is or is not an authority, but no one has authority.75

The distinction between theoretical and practical authority so conceived is supposed to account for the difference between Financial Adviser and cases of genuine practical authority. The financial adviser’s advice does not impose duties on her advisees. Hence, she merely has theoretical authority. By the same token, we would not say that she has authority over those whom she advises. By

75 Raz, 2006.
contrast, those whose directives do impose duties on others have practical authority. Accordingly, we
speak of the former’s having authority over the latter in this case.

There are three problems with the account in “The Problem of Authority.” First, it is not clear
that it is coherent. As we just saw, Raz appeals to two distinctions as grounding the distinction
between theoretical and practical authority: On the one hand, there is the distinction between
theoretical and practical reasons. On the other hand, there is the distinction between (mere)
reasons and duties. However, while all duties are practical reasons for Raz, not all practical
reasons are duties, as the parenthesized qualifier “but not always even then” in the second-to-last
passage just quoted indicates. The two distinctions thus come apart in cases where one person’s
directives create preemptive but non-categorical reasons for action for another. Cooking Expert is
illustrative here. In the example, the Chinese cooking expert’s advisee has reason to cook a good
Chinese meal, which is a reason for action. However, the assumption was that her reason for
cooking a good Chinese meal depends on her goals and so is not categorical. Cases of this sort fall
under practical authority by the first distinction but theoretical authority by the second.

As we saw in section 4, Raz grants that the Chinese cooking expert has no authority over the
person who has reason to cook a good Chinese meal. His reply is to add the qualifier that the
relevant reasons for actions be categorical, that is, independent of the agent’s goals or preferences,
and so duties. For A to have authority over B it is therefore not sufficient that obeying A’s directives
facilitate B’s compliance with her (B’s) practical reasons for Raz. Rather, A has authority over B if
and only if obeying A’s directives facilitates B’s compliance with her (B’s) categorical practical
reasons, i.e. her duties. Or at any rate this is the conception of practical authority that emerges
from Raz’s discussion of Cooking Expert.
As we also saw in section 4, however, the appeal to categoricity is of no use in answering the challenge posed by Financial Adviser. By assumption, the adviser’s advisee not merely has reason but instead has a duty to invest her (the advisee’s) money wisely. Financial Adviser thus appears to satisfy even the amended conception of practical authority, yet by Raz’s own admission she doesn’t have authority over her advisees.

Raz’s reply is that the financial adviser does not impose duties on her advisees but merely creates reasons for belief about their duties for them. Since she creates reasons for belief rather than reasons for action, Financial Adviser counts as a case of theoretical rather than practical authority, or so Raz argues. However, note that this move merely sidesteps the issue raised by Financial Adviser, by adjusting the example so as to no longer fall under practical authority. So long as there is conceptual space for cases in which one person’s directives facilitate another’s conformity with her categorical practical reasons—and nothing in what Raz says qualifies as even an attempt to close this space—the problem remains. Moreover, Raz’s move raises the question why those cases which he would classify as instances of genuine practical authority—say, the authority of the sort of law that satisfies the service conception—would not also instead qualify as cases of theoretical authority. That is, it is unclear what resources the service conception contains to account for the acknowledged normative difference between Financial Adviser and cases of one person’s genuinely having authority over another.

Presumably the Raz of “Respect, Neutrality, and Authority” would also argue that the Chinese cooking expert creates reasons for belief about practical reasons rather than (non-categorical) reasons for action. Note that, if this is so, then Raz would no longer need to restrict his conception of practical authority to categorical reasons in order to account for Cooking Expert.

By way of illustration, consider a modified Cooking Expert case in which the advisee’s reason to cook a good Chinese meal is categorical, say because she promised to do so to someone.
Third and finally, there is something intuitively awkward about interpreting both Cooking Expert and Financial Adviser as cases of theoretical authority, yet this is precisely what Raz appears to be committed to. Note that the respective awkwardness enters at slightly different places in the two cases. What is awkward about Cooking Expert is the fact that she counts as a theoretical authority despite the fact that, by assumption, her directives create preemptive reasons for action. With Financial Adviser on the other hand the awkwardness resides in Raz’s reinterpretive claim that her (the financial adviser’s) directives create reasons for belief.

7 Normative Power vs. the Right to Rule

Let me recapitulate. Raz’s account of the distinction between theoretical and practical authority seems to suffer from a tension. On the one hand, Raz proposes to conceive of the distinction in terms of the distinction between reasons for belief and reasons for action (and hence along the lines of what in section 1 I described as the standard picture of the distinction). On the other hand, he proposes to understand practical authority in terms of the idea of one person’s having authority over another, which he takes to be equivalent to the former’s having a right to rule and the latter a correlative duty to obey. As both Cooking Expert and Financial Adviser illustrate, however, the two come apart.

Note that the tension between the two distinctions in terms of which Raz draws the distinction between theoretical and practical authority is on all fours with the tension between Raz’s concept and his conception of practical authority in terms of which I interpreted Darwall’s critique above. The distinction between the two kinds of reasons supplements Raz’s conception of authority—i.e. the
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service conception—with the idea that the kind of authority in question is theoretical whenever the relevant reasons are reasons for belief and practical whenever the relevant reasons are reasons for action. Raz's concept of practical authority on the other hand says that for one person to have practical authority, and hence for her to have authority over another, is for the former to have a right to rule over the latter and for the latter to have a correlative duty to obey the former.

In fact, it would be more accurate (if more cumbersome) to say, not that there is a tension between Raz's concept and his conception of authority, but rather that the service conception implies a concept of practical authority that is inconsistent with Raz's official concept of practical authority. What the service conception implies is the idea that for one person to have practical authority over another is for the former to have the power to create protected reasons for action for the latter. (Note that the concept of authority implied by the service conception hence just is the practical species of the “standard picture” discussed in section 1, namely the normative power to create content-independent and peremptory reasons.) Raz's official concept of authority on the other hand turns on the correlative ideas of a right to rule and a duty to obey.

Raz grants that neither the Chinese cooking expert nor the financial adviser have authority over anyone and seems to infer that therefore neither has practical authority either. Hence, when confronted with the logical space between the two concepts of practical authority just discussed, Raz seems to side with the official concept, i.e. the one making appeal to the right to rule. Raz's appeal to the qualifier that practical authority apply only to categorical reasons for action might therefore be seen as his attempt to amend the concept of practical authority implicit in the normal justification thesis so as to bring it in line with the official concept. As we saw in the preceding section, however, this move both fails to answer the challenge posed by Financial Adviser and leaves
Raz in the awkward position of having to treat both Cooking Expert and Financial Adviser as cases of theoretical authority.

The key to solving Raz’s various troubles should by now be apparent. All of them depend on the assumption that the distinction between theoretical and practical reasons on the one hand and the idea of one person’s having authority over another along with the idea of a right to rule and a correlative duty to obey on the other all ground the same distinction, namely the distinction between theoretical and practical authority. What I wish to propose therefore is to give up on this assumption and instead assume that there are really two different distinctions at play here. In the remainder this section and the next I will develop this proposal.

My point of departure is another recent debate in legal philosophy, namely the debate over whether practical authority is correctly conceived of as the normative power to create protected reasons for action or in terms of the right to rule. David Enoch defends the former view in “Authority and Reason-Giving,”78 Scott Hershovitz the latter view in his “The Authority of Law”79 and “The Role of Authority.”80

Note that the two positions in the debate correspond to the two competing concepts of practical authority that I just argued emerge from Raz’s discussion. As we saw at the beginning of section 2, Raz’s official view of course is that there is no conceptual space between the idea of a normative power to create protected reasons for action on the one hand and that of a right to rule on the other. The two notions are equivalent, or so Raz seems to think. However, the equivalence of these two notions as Raz conceives of them is precisely what the argument in the preceding section was

78 Enoch, 2014.
79 Marmor, 2012.
80 Hershovitz, 2011.
meant to cast doubt on. There is a sense in which both the Chinese cooking expert and the financial adviser have the power to create preemptive reasons for action—in the case of the financial adviser even categorical ones—yet neither of them has the right to rule, nor do their advisees have a correlative duty to obey.

In “The Authority of Law” Hershovitz makes an argument along much the same lines. Having interpreted Raz as holding that practical authority is the power to create protected reasons for action, he argues: “Raz is surely right to think that authorities have a normative power to obligate their subjects. However, it is important to see that the converse does not hold—the possession of a normative power to obligate does not entail that one has authority.” The converse does not hold on precisely the grounds illustrated by Financial Adviser according to Hershovitz: the financial adviser has the power to create categorical protected practical reasons for her advisees (and in this sense has the power to obligate them), yet she does not have a right to rule, nor do they have a duty to obey her.

Note that, so long as the notion of a duty to obey is conceived of merely in terms of the idea of a protected reason, it is not clear what the contrast on which Hershovitz’s criticism turns is supposed to amount to. As we saw in section 5, for one person to obey another is for the former to treat the latter’s directives as protected reasons, which just is for the former to do as the latter directs and not to consider other applicable reasons, or so Raz holds. However, the financial adviser’s advisee has a duty to do just that. Hence, if the idea of a duty to obey is understood along Razian lines, it is unclear what the contrast is supposed to be between a normative power to obligate on the one hand.

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81 For the reasons discussed above, I disagree with this interpretation. However, nothing of substance ends up hanging on this disagreement.

82 Marmor, 2012.
and a right to rule and a correlative duty to obey on the other, and hence how the contrast is supposed to furnish a critique of Raz.

However, Hershovitz does not conceive of the idea of obedience along Razian lines. According to Hershovitz, a duty to obey in the relevant sense is not, or at any rate not merely, a protected reason for action. Instead, the duty in question is directed. As Hershovitz puts it, “[t]he key [is] seeing that the end result of an exercise of authority is an obligation owed to the authority.” (22, italics added) According to Hershovitz, this is what is missing in Financial Adviser in particular and in the idea of authority as a normative power in general. While the financial adviser creates duties for her advisee, those duties are either monadic—i.e. non-directed—or (in Hershovitz’s variant of the example) owed to some third party.

There are two problems with Hershovitz’s account. First, consider the following modification of Financial Adviser. Suppose that B owes A money. Hence, B presumably owes it to A to pay her back. Now suppose that A is also an investment expert. Following A’s investment directives would therefore facilitate B’s discharging her duty to A to pay A back. By Hershovitz’s own lights, A therefore has the power to obligate B. Moreover, the resulting duty is a duty owed to A. Nevertheless, A does not seem to have authority over B. A has a right against B that B pay her back. Moreover, she has the power to obligate B. However, she does not have a right to rule over B. Pace Hershovitz, then, A’s power to oblige and the fact that A’s exercise of authority results in a duty owed to A is not sufficient for A’s having authority over B. Call this case “Financial Adviser/Creditor.”

The source of the trouble with the Financial Adviser/Creditor for Hershovitz is that the source of the duty B owes to A is distinct from the source of A’s power to obligate B. B’s duty to A is grounded in the fact that B owes A money. A’s power to obligate B on the other hand is grounded
in A’s investment expertise. This suggests that only if A’s power to obligate B and B’s duty to A are grounded in the same thing does A have authority over B in the sense of A’s having the right to rule over B.\(^{83}\)

Even so amended, however, Hershovitz’s account is still vulnerable to a second problem, one articulated by Enoch. An arbitrator for instance has authority, Enoch argues, yet the parties to the arbitration owe compliance with the arbitrator’s decision to each other, not to the arbitrator. The same goes for political authority, at least in democratic regimes: “The thought, for instance, that an authoritative democratic legislature is the one to whom obedience is owed seems very odd, and indeed antagonistic to the democratic spirit—it’s your fellow citizens to whom you owe your obedience to the democratic legislature (if indeed you owe such a duty), isn’t it?\(^{84}\) What the two examples thus suggest is that A may have authority over B even if A’s exercise of authority does not result in a duty owed by B to A. The latter is therefore not only not a sufficient but also not a necessary condition for A’s having authority over B (again in Hershovitz’s sense of a right to rule).

8 Two Distinctions in Authority

As we just saw, the debate between Hershovitz and Enoch is premised on the idea that, pace Raz, the power to obligate is not equivalent to the right to rule. By the same token, however, both agree with Raz that the power to obligate is a non-directed or—as I will put it—“merely relational”\(^{85}\) concept. What I wish to argue in this section is that the problems confronting Hershovitz’s account

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\(^{83}\) The structure of the example here is therefore not unlike the structure of Gettier cases.

\(^{84}\) Enoch, 2014. Andrei Marmor makes a similar point in a different context in his “The Dilemma of Authority” Marmor, 2010.

\(^{85}\) The term is Michael Thompson’s. See his “What Is It to Wrong Someone?” in: Wallace, et al., 2004. Much of what I say in this section is inspired by Thompson’s piece.
are remediable by distinguishing two concepts of a normative power, one merely relational and the other directed. The distinction between monadic and directed power in turn will furnish the distinction between the two distinctions in authority that—as I will argue—in turn remedy the difficulties besetting Raz’s account of practical authority.

The concept of a directed power is well familiar to lawyers. It is one of the elements in Wesley Hohfeld’s well-known scheme of “legal incidents.” Formally speaking, Hohfeldian incidents are three-place relations, the relata being two persons and some action. For instance, a Hohfeldian “right” or “claim” takes the following form: ‘A has a right against B that B do x.’ Hohfeldian incidents have what Hohfeld calls “correlates” and “opposites.” Thus, the correlate to a right is a “duty.” Hence, A’s claim against B that B do x is B’s duty to A that B do x. The opposite to a claim in turn is a “no-right.” Hence, the correlate to A’s right against B that B do x in turn is A’s no-right against B that B do x. Correlates entail each other, opposites entail each other’s negation. (It follows that duties and liberties are opposites and liberties and no-rights correlates.)

Rights, duties, no-rights, and liberties comprise the first-order Hohfeldian legal incidents. Hohfeld also defines a set of four second-order legal incidents. One of these is a power. A power is the normative capacity to change another’s first-order Hohfeldian incidents in some particular domain. Hence, if A has power over B, then A has the capacity to change the incidents to which B is subject in some domain D. The correlate to a power is a “liability.” Hence, B is liable to A if B in D if and only if A has power over B in D in the sense just defined. (The opposite of a power is a “disability,” the opposite of a liability is an “immunity.”)

Note that not all three-place relations involving two persons and an action are directed. Some are merely relational. For example, ‘Scott is better than David at playing the trombone’ is relational but not directed. Scott and David are described here as standing in a merely comparative relation, not in a relation of (as it were) “being towards each other.”

Specifically, power in the sense at play in Raz’s discussion of authority as well as in the debate between Hershovitz and Enoch is not directed but merely relational in this sense. For Raz for instance, $A$’s power to create protected reasons for $B$ is grounded in normative facts that apply essentially only to $B$—such as $B$’s underlying reasons—in conjunction with the normal justification thesis *qua* species of the facilitative principle. I say “essentially” because the relevant normative facts may also be relational or even directed facts making reference to two persons, as was the case in Hershovitz’s variant of Financial Adviser in section 7, where the advisee has a duty *to a third party* to invest wisely. Moreover, those directed facts may even make reference to $A$, as was the case in Financial Adviser/Creditor in section 7, where $B$ owed $A$ money. However, the point is that the reference to other persons, including $A$, was merely accidental as far as the relevant exercise of power is concerned. (Note that this was the feature that created trouble for Hershovitz in the preceding section.) The directed nature of instances of directed power on the other hand is not grounded in anything that is at best accidentally directed. Instead, $A$’s having power over $B$ is not grounded in anything that is not essentially a directed normative fact making reference to both $A$ and $B$. The same goes for Hershovitz and Enoch, who conceive of the idea of a normative power in essentially terms.

What I want to propose is that the formal distinction between directed and merely relational power corresponds to a formal distinction between two kinds of authority, which I will call
“directed” and “merely relational” authority. To have directed authority just is to have directed power. To have merely relational authority just is to have merely relational power.

The “important differences of idiom” to which Raz points—see section 6—are indicative of the formal distinction between the two kinds of authority. We refer to instances of directed authority by saying that A has authority over B in domain D. We refer to instances of merely relational authority on the other hand by saying that A is an authority in D. The preposition “over” in the idiom descriptive of directed authority indicates the essentially directed relation between A and B. The language we use to talk about merely relational authority on the other hand, which makes no reference to B at all, indicates that A’s authority with respect to B is not grounded in an essentially directed fact referring to both A and B.

It is no coincidence that we tend to describe experts as being authorities in their fields, and hence in terms proper to merely relational authority. Expertise constitutes a merely relational form of authority. Hence, while we might say that A is an authority in some domain D for B, what we thereby specify is something merely comparative, namely that A is better acquainted with D than B.87 Here again we have a three-place relation involving two persons, yet the relation is merely comparative and so merely relational, not directed.

The right to rule on the other hand is a directed concept and in this sense is formally akin to directed authority. However, note that the end result of A’s exercise of authority over B need not be a duty that B owes to A. A’s exercise of authority may result in any number of changes to B’s first-

87 It follows that expertise is an essentially relative concept. Thus, my high school physics teacher is an authority in astrophysics for (read: compared to) me. Stephen Hawking on the other hand is an authority in astrophysics for my high school physics teacher, and a fortiori for me. When we speak of someone’s being an expert without explicitly specifying for whom, what we are implicitly referring to is something like “for the average person,” or alternatively pragmatic context may fix the referent.
order normative situation, including duties that B owes to some third party C. This promises to take the sting out of Enoch’s argument both Arbitrator and Democratic Authority. The fact—if indeed it is a fact\textsuperscript{88}—that an arbitrator has authority over the parties to the arbitration does not mean that her exercise of authority necessarily creates duties owed to her. Instead, they may be duties that the parties owe to each other. It is just that the parties are liable to the arbitrator’s exercise of power. The same goes, \textit{mutatis mutandis}, for exercises of power in a democratic regime.\textsuperscript{89}

Both Cooking Expert and Financial Adviser are cases of merely relational authority. This is why we would not use the language of their having authority \textit{over} anyone (let alone the language of their having a \textit{right to rule}). As we saw above, acknowledgment of this fact put Raz in the awkward position of having to treat both as cases of theoretical authority. Nothing of the sort is necessary on my account. Instead, both may be considered instances of the \textit{practical subspecies} of merely relational authority. Let me call this subspecies “authority of counsel.” Stephen Hawking’s expertise in Big Bang Theory on the other hand may be considered an instance of the \textit{theoretical} subspecies of merely relational authority. Let me call this subspecies “authority of expertise.” The result is a nested couple of distinctions, along the following lines:

\textsuperscript{88} Hershovitz doubts that it is. See Marmor, 2012.

\textsuperscript{89} Arthur Applbaum’s argument in his “Legitimacy without the Duty to Obey” Applbaum, 2010 turns on a similar observation. Like me here, Applbaum there proposes to conceive of relations of authority in terms of the Hohfeldian correlates of power and liability, rather than the correlates of a right to rule and a duty to obey. Applbaum calls this the “power-liability account” of practical authority. Since on the power-liability account the subjects of the exercise of authority have a liability rather than a duty to obey, the account creates logical space for justified civil disobedience, that is, disobedience that does not violate any duties yet is consistent with the state’s having legitimate authority. I am highly sympathetic to Applbaum’s framework, even if I am doubtful about some of the moves he makes within this framework on the way to his conclusion. However, discussing those would go beyond the scope of this paper.
The distinction between theoretical and practical authority, if it is to be located anywhere, is thus best located along the broken line in the diagram, with authority of expertise falling under theoretical authority and authority of counsel and directed authority falling under practical authority. However, the diagram also provides an explanation — an error theory if you like — for why the distinction between theoretical and practical authority is prone to cause confusion, considering the complicated manner in which it relates to the two distinctions just introduced.

I should add that I take the more fundamental distinction to also be the more significant one. Nothing much hinges on classifying cases of merely relational authority as either practical or theoretical. Indeed, sometimes it may be unclear how to classify an instance of merely relational authority. Again, nothing of significance seems to me to depend on any of this.

It seems to me that Darwall takes a similarly dismissive stand towards what I called the distinction between authority of expertise and authority of advice when he speaks of the contrast
between practical authority and “various forms of epistemic authority or expertise, including the kind of authority on practical matters a trusted advisor might have.” More generally, for Darwall the distinction between practical and theoretical authority is a distinction between something second-personal and something merely third-personal. Hence, while the relation between the idea of directionality or bipolarity and Darwall’s second-person standpoint is complicated, nothing in what I said precludes regarding Darwall’s distinction between theoretical and practical authority as lining up with my distinction between merely relational and directed authority.

9 Conclusion

In conclusion, let me return to the two questions raised at the beginning of the paper. First, how does authority differ from mere orders backed by threats? Second, how does it differ from expertise or advice? What I argued is that there is a formal difference between the sort of authority at play in expertise or advice and the sort of authority at play when one person has authority over another, a distinction that is not happily described in terms of the distinction between theoretical and practical authority as it is standardly conceived of. The kind of authority that inheres in expertise or sound advice is authority of what I called the “merely relational” kind. The kind of authority at play when one person has authority over another is what I called authority of the “directed” kind.

What about the distinction between authority and mere orders backed by threats? While there are of course deep differences between instances of expertise or (sound) advice on the one hand.

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90 Sobel, & Wall, 2009.
and an order backed by a (credible) threat on the other, they have this much in common: unlike cases of directed authority, neither of them involves a directed normative relation. Hence, there is a kind of formal kinship between expertise, advice, and orders backed by threats.

Works Cited


Micha Glaeser


