

AGAINST DEFERENCE TO AUTHORITY

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JOSEPH RAZ's service conception of authority retains significant influence in moral, political, and legal theory. I raise a problem for the theory and suggest a significant revision in response. Many commentators and critics have focused on whether the service conception fits with the concept of authority or law.¹ The objection I raise lies, instead, in the justificatory structure of Raz's view, which perhaps explains why it has gone largely unseen for so long. In short, I argue that there is a deep tension between three core components of the service conception: that authority is justified piecemeal to each subject depending on their epistemic situation; that within its piecemeal domain, authority provides exclusionary reasons to obey; and that authority features directly in practical reason.

Each of these claims represents a core part of the appeal of the theory. The piecemeal nature of authority is one of Raz's principal innovations, allowing the service conception to sidestep the arguments of philosophical anarchists that no state can create general (even if defeasible) reasons to obey. The exclusionary power of authority reflects a commonly held conceptual feature of authority, that it is decisive, somehow akin to the parent commanding the child or the military officer commanding the private. The role of authority in practical reason enables authority to provide a service; if authority were merely an abstract feature which obtains or does not, it would not be able to help subjects comply with reason.

Laws are necessarily coarse-grained, operating at a level of generality that allows practical functionality. This means that even the best states will routinely make particular suboptimal commands. Raz allows for state errors and makes some room for them in practical reason by excepting from authority any epistemic domains in which a subject is an expert and thus need not rely on the state to comply with reason. But this is not sufficiently piecemeal, as I will show. It is possible to identify state errors even when one is not an expert,

¹ For just a handful of papers from the large literature, see Darwall, "Authority and Reasons"; Enoch, "Authority and Reason-Giving"; Hershovitz, "The Role of Authority"; Perry, "Second-Order Reasons"; and Raz, "Revisiting the Service Conception."

just by having some special information pertinent to a particular application of a law. Call this *accidental expertise*. This means there is no *ex ante* specifiable domain for piecemeal authority. Epistemic situations vary case by case, as well as agent by agent.

This opens up an inconsistency. If authority is exclusionary, the lack of specifiable domains of expertise leaves subjects in the lurch. They have to decide whether they are under the authority of the state in a particular situation where this decision requires deliberating about their degree of confidence in whatever information they happen to have. But this kind of practical deliberation about whether a law is worth obeying in a particular circumstance is precisely what exclusionary reasons are meant to rule out. If subjects cannot know *ex ante* whether authority obtains, and they cannot deliberate effectively without presupposing that authority *does not* obtain, then authority cannot function in practical reason because its precise scope cannot be known.

Raz has recently discussed the “knowability condition” on authority more explicitly.² As he explains there, “The point of being under an authority is that it opens a way of improving one’s conformity with reason.” This is central to Raz’s entire account of authority.³ Authority cannot improve conformity with reason if the scope of authority cannot be known. So I do not take seriously the possibility of eliminating the knowability condition. Eliminating the piecemeal nature of authority is an obvious nonstarter. Instead, I propose that the service conception should drop exclusionary reasons, and I provide an alternative.⁴

I will call the alternative “habitual obedience.” The relevant notion of habit is a *trainable but automatic* disposition to act on an established pattern or routine. Habits lie on a spectrum of dispositions to act: to one side lie instincts, which are not (significantly, in normal circumstances) trainable; to the other side lie principles, which are not (significantly) automatic. Automatic dispositions risk, and indeed accept, certain inevitable mistakes. To rely on an automatic process necessarily means being blind to some countervailing reasons which might be noticed upon reflection. The corresponding benefit is *fluency*—automatic habits save time, allow fluid and natural responses to circumstances, and can mitigate the influence of biases.⁵

I argue that a habit of obedience to (legitimate) law is a superior disposition, by Raz’s own justificatory lights, compared to treating the law as creating

² Raz, “Revisiting the Service Conception,” 1025.

³ Most obviously in the core Normal Justification Thesis, discussed below.

⁴ I do not claim that this is the only possible alternative.

⁵ See Railton, “Practical Competence,” for discussion of fluency, as well as Pettit, “The Inescapability of Consequentialism,” and Pollard, “Can Virtuous Actions Be Both Habitual and Rational?”

exclusionary reasons to obey. This is compatible with the other core features of the service conception. Justified habits of obedience will vary widely between individuals, and the law on this view still aids citizens by helping them better conform to reason than they could by deliberating on their own. But it is not clear that this is any longer a service conception of *authority*, rather than (merely?) a service conception of *law*. Raz takes exclusionary reasons to be constitutive of authority, and it is intuitive that authority connotes decisiveness within some domain. But habits do not have any particular specifiable domain: they are trained instead in the *normal case* and are delimited by “intervention control” (Pollard) or “red lights” (Pettit) which cue us to cut off the automatic process and undertake conscious deliberation.⁶ The scope of habits, while better or worse justified depending on how well they serve us, is not itself rationally cognizable. Whether one views the use of habits as compatible with a revisionary stance on authority or instead as a form of skepticism about authority is, to some extent, a matter of taste. But that is where the other central—and very appealing—elements of the Razian approach lead.

Here is the plan. Section 1 discusses the role of coordination in Raz’s conception of the practical authority of law. This is a preliminary argument explaining that while coordination makes political authority distinctively practical, deferring to political authority (by treating it as exclusionary) is only justified if it *also* is the best strategy for complying with reasons in a manner that is highly similar to theoretical authority.⁷ I suggest that the coordinative role of authority is exactly what leads to the problems with exclusionary deference in the political case. Section 2 develops the costs of deference to the law. The basic strategy is to develop several examples and then argue that Razian strategies to avoid the examples run afoul of the knowability condition. Section 3 develops the habitual obedience strategy and its advantages over exclusionary deference.

1. COORDINATION AND PRACTICAL AUTHORITY

To accept an authority as binding is to treat it as creating exclusionary reasons to obey. On Raz’s view, an authoritative command generates both a first-order reason to obey and a second-order reason not to act on—to exclude—at least some possible reasons for disobedience.⁸ This conjunction is called a

⁶ Pollard, “Can Virtuous Actions Be Both Habitual and Rational?”; Pettit, “The Inescapability of Consequentialism.”

⁷ As Raz himself emphasizes (“Revisiting the Service Conception,” 1033–34).

⁸ It does not preclude *thinking* about reasons for disobedience, so long as those reasons are not acted upon. See section 3.2 below. It does seem to imply at least a *permission* not to consider countervailing reasons since such reflection is practically idle.

preemptive reason.⁹ Authority is justified on the basis of the Normal Justification Thesis:

Normal Justification Thesis (NJT): The normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly.¹⁰

There are two main rationales for how the law can satisfy the *NJT*. One is epistemic: the law is formulated by experts, and individuals are prone to error. This rationale is similar to deference to theoretical authorities, which create preemptive reasons on the same basis.¹¹ The second is coordinative: the exclusionary character of the law allows everyone to safely act on the assumption that all other subjects will comply. The main discussion of the epistemic rationale comes in section 2. The point of this section is to head off the possibility that the special practical nature of political authority insulates it from the arguments I give there. On the contrary, the practical nature of authority is precisely what opens it up to my objection.

Here are two quick arguments for the conclusion that, while epistemic and coordinative considerations may be “inextricably mixed” for political authorities, this mixture must *contain* a robust epistemic endorsement of deferring to the state on the basis of its expertise.¹²

The first argument is that if this were not so, it would appear that coordination on its own is sufficient for authority. This would seem to take up a Hobbesian rather than a Razian line.¹³ Achieving coordination, despite its great value, is clearly insufficient for exclusionary authority. A tyrannical regime that rules by the iron fist of harsh punishment can achieve coordination, at least some of which will be beneficial compared to the state of nature. But such a regime is not authoritative. Pernicious regimes can also establish coordination without force through the sufficient development of state ideology. If the citizens of a state freely coordinate on its evil ends, it still is not normatively authoritative by

⁹ See Raz, *The Authority of Law*, 17–18, for an official characterization; he then referred to such reasons as protected, rather than preemptive.

¹⁰ Raz, *The Morality of Freedom*, 53.

¹¹ Raz, “Revisiting the Service Conception,” 1033–34. Theoretical and political authority are also similar for Raz in being “relational” or piecemeal.

¹² Raz, “Revisiting the Service Conception,” 1031.

¹³ Ladenson, “Hobbesian Conception of Law.”

the lights of the NJT, which is grounded on the objective moral reasons which apply to citizens.

The existence of functional but highly unjust states is also an object lesson against running the argument the other way and claiming that authority is necessary for coordination. We also have theoretical accounts of how coordination could emerge, even in the state of nature, without the establishment of legitimate authority. In short, the punitive powers of the state (in the proto-form of a gang, perhaps) can be sufficient to stabilize some coordinated practices. It is true that, given the need for coordination in a harsh state of nature, there is some strong reason to obey *any* promising potential leviathan to the extent that obedience helps its chances of success. But this can be captured in first-order terms from the perspective of any given individual, provided some estimation of what other people are doing.¹⁴

The second argument is even more straightforward: the value of coordination is not piecemeal. The state's coordinative powers benefit everyone. If coordination did much work for authority on its own, we would have a far simpler (and again rather Hobbesian) theory. Instead, it seems entirely clear that coordination powers and epistemic advantages are both necessary conditions for authority: without coordination, the state would be a merely theoretical authority; without theoretical authority, the state is a blunt coercive instrument. So my arguments against treating the state as epistemically authoritative, if they go through, undermine the theoretical structure without requiring any protracted discussion of coordination. Further, the epistemic and coordinative powers of the state are the only real candidates for providing exclusionary reasons which are suitably independent from the "alleged authoritative directive" itself. There are other possible reasons to obey the law, perhaps because it is legitimate in some other sense (e.g., democratically legitimate), but such reasons presuppose the state's authority rather than provide independent rational grounds for it.¹⁵

It is worth noting another connection between the coordinative role of the state and my arguments against its epistemic authority. Because coordination is a necessary condition on political authority, the state must make laws that are plausible vectors of coordination. This requires, in particular, that the law be relatively *coarse-grained*. A system of laws that attended to every possible circumstance would be cumbersome and impossible to use effectively. How the law applies should in most cases be clear. But simplicity requires the acceptance of

¹⁴ Green, *The Authority of the State*, ch. 4, considers similar issues at length. See also Kavka, *Hobbesian Moral and Political Theory*, chs. 4 and 6, for elaboration of coordination emerging from first-order instrumental rationality.

¹⁵ Thanks to an anonymous reviewer for prompting this point.

error. Coarse-grained law cannot make room for special circumstances which are, nonetheless, relevant to the moral decisions individuals must make.¹⁶ And everyone knows this about the law. This opens up some of the cases to be presented in the next section, in which even non-experts can have good reason to doubt whether particular commands of the law are justified.

2. COSTS OF EXCLUSION

2.1. *How Raz Justifies Deference*

I will focus mostly on Raz's presentation in *The Morality of Freedom*. Some relevant criticisms about the cogency of exclusionary reasons were lodged soon after that work's publication.¹⁷ But critics have not extended points about the coherence of exclusion to the crucial criticism that if authority is both exclusionary and knowable, we can generate damning counterexamples. That is the task of this section. Further, there has not appeared to be any *alternative* to Raz's account. No matter how troubling the details may be, Raz is surely right that everything cannot be conscious first-order deliberation. Section 3 provides the needed theoretical alternative in order for the criticism to fully land.

The objection is simple: Raz's account commits him to saying that we should obey authorities in some instances in which we clearly should not. I first explain how an unqualified commitment to exclusionary reasoning would generate serious counterexamples and then argue that there is no acceptable Razian way to qualify the account.

Raz's account is highly flexible in that he does not claim authoritative relations obtain generally between the state and citizens. Rather, authority is piece-meal: we must evaluate normal justification at the level of particular agents and particular claims to authority. This feature is also carried over from theoretical authority; coordination-based reasons would seem to fall on everyone equally.¹⁸ We can ask: Given an agent's knowledge, is it in fact rational for them to defer to authority rather than to undertake deliberation themselves? Raz gives the example of the pharmacologist. While there are many laws on which pharmacologists are not experts, they have a great deal of knowledge about drug regulations. So they would not comply with the reasons that apply to them by deferring to the law on questions about which drugs are safe to take;

¹⁶ This is one way of motivating philosophical anarchism: the law by nature cannot be right all the time, so why should we obey when it is wrong? See Simmons, *Moral Principles*, for the classic discussion.

¹⁷ See Gans, "Mandatory Rules"; Edmundson, "Rethinking Exclusionary Reasons."

¹⁸ See again Raz, "Revisiting the Service Conception," 1033–34.

if a pharmacologist is confronted with a decision about whether to take an illegal drug for a rare health condition, it is rational to deliberate directly about the right thing to do.¹⁹ But this is particular to the domain of pharmacology. Pharmacologists ought to defer to the law in other domains. The question is an all-things-considered one about the best procedure for complying with reason in given ranges of cases.

The general picture is something like this. We know we cannot deliberate about every single action. That would not always be the best way to arrive at the correct answers given that our deliberative powers are prone to error, and, besides, it would take up all our time. The proposal is that we can solve these problems by deferring in some ranges of decisions. Just as we often assume that experts know better than we do in our daily lives, we can generally assume (in a decent state) that the law has some epistemic advantage. Even though the law is imperfect, it is generally better than we would do on our own. This does not hold in the particular domains in which we carve out our own expertise, so the law is not authoritative (for us) in those domains. But that cuts down our deliberative burden to a reasonable scope, tailored for each individual epistemic position. This explains why it can be rational to defer; we can know that we are following a procedure with good consequences, even though it requires ignoring the consequences of particular cases.²⁰

2.2. Counterexamples

It is harder than it seems to plausibly specify the domains in which we should treat authority as exclusionary. The issue is that the true domain of authority must be sufficiently transparent to function in practical reason. Every agent has to identify which laws to defer to.²¹ But once we specify domains of authority in any tractable way, it is clear that the state can make errors *within* its proper (piecemeal) domain. These errors can be significant and transparent enough that deference is perverse. I will give several examples where state errors do not require general expertise to see; each example is meant to illustrate a broad category. I will then consider how Raz's account seeks to avoid such examples. Then I will argue that the resources Raz can deploy to successfully avoid the counterexamples run afoul of the knowability condition.

¹⁹ Raz, *Morality of Freedom*, 74.

²⁰ It bears repeating that this is not a claim about the full *nature* of authority nor of the moral problem of deference; Raz's account of rational deference is just one part of the view—but it is a necessary part, as I showed in section 1 above.

²¹ This “knowability” condition is stated most clearly in Raz, “Revisiting the Service Conception,” 1025–26. But it is latent in the main goals of the theory even when unstated: if authority is to be both piecemeal and practical, its contours must be knowable.

The two examples in this section involve, respectively, arbitrary boundaries within the law and internal inconsistencies of authority. A third example, in section 2.3, concerns moral intuitions that the commands of authority are objectionable.

Travel Restriction. The government has reasonably imposed strict travel restrictions on its citizens in response to an ongoing pandemic, splitting its territory into various districts. It is difficult to get a waiver from these restrictions, and it requires a waiting period. All of these features are reasonable on the part of the state, given the perilous circumstances and the risk of exploitation by the selfish if waivers are too easy to procure. Now consider an individual who recognizes the general authority of the state in this domain but who confronts a difficult situation: a loved one in a different district has a serious (unrelated) medical condition and is unable to receive appropriate care under the current conditions. They are suffering. The agent in question is confident in their ability to assist their loved one and can do so with no great personal sacrifice. But doing so requires flouting the state's commands. How should this agent deliberate?

On the unqualified exclusionary reasons view, there is no way to accommodate the powerful intuition that the agent should break the law to aid their loved one. It is not the case that the state has made a clear epistemic error, and even if it had, the person in question has no special expertise on appropriate pandemic travel restrictions. It would not be a good general disposition toward the law to closely evaluate each law to see if there are good personal reasons for disobedience. So the NJT is satisfied, and deference is apparently warranted. But this is seriously counterintuitive.²²

We can sharpen the case and connect it more clearly to the coarse grain of the law by stipulating that the agent in question lives immediately on one side of the district boundary, while their loved one lives just a few streets over, but on the other side of the boundary. The law has to draw boundaries somewhere. The state cannot serve its coordinative role if it attempts to operate on a case-by-case basis. Everyone knows and accepts this about the law. But it is difficult to take seriously that the law has a decisive epistemic advantage in its decision to place any given person just on one side of the boundary or the other, especially when there is a pressing reason that an individual would prefer to be (or act as if they were) on the other side. This is compatible with the thought that the state has *some* expert reason for placing the boundaries as they did; it just

²² It may be tempting to reply that if one *really* has good reason to break the law, the service conception simply does not apply. This trivializes authority and should be resisted. See section 2.5 below for an argument, but here I will rely on Raz when he writes that “even legitimate authorities make mistakes. In such cases we should conform with the directive” (“Revisiting the Service Conception,” 1023).

does not seem that that reason could pertain to the decision of whether or not to help one's loved one in our case (or in many other structurally similar cases).

Mask Mandate. Famously, the US Centers for Disease Control (CDC) was slow to recommend face masks be widely worn in shared spaces during the initial outbreak of COVID-19, instead recommending well into 2020 that masks were only useful for medical providers or for those who knew or strongly suspected that they were infected. This was eventually reversed—but the CDC was then slow to emphasize that masks vary in their efficacy, that surgical masks are preferable to cloth masks, and that (N)95 masks, in turn, are preferable to standard surgical masks. In each case, it appears that the logic was driven by worries about supply shortages of higher-grade masks. The increase in popularity of cloth masks assuaged the worry that masking simpliciter would lead to a supply crisis, but either the worry about supply of higher-grade masks persisted, or the CDC simply did not want to change its guidance again.

Few would deny that the CDC is an extremely strong case of governmental expertise on matters which require a great deal of technical knowledge. The problem is that the CDC was internally inconsistent, most obviously in its reversal on the efficacy of masking for the broad population. And the idea that masks should be preserved for medical providers (who would wear the masks regardless of whether they were infected) but would not be useful for the broader population made no sense to begin with.

This significantly damaged the credibility of the CDC, and the problems of internal logic were clear to non-experts. One *New York Times* op-ed published on March 1, 2020, by Zeynep Tufekci—an academic without medical or biological science credentials—argued that the CDC's official guidance on mask wearing was a mistaken public messaging strategy, in large part because it was misleading as advice to individuals. This public criticism apparently played a meaningful role in the CDC later changing its official position in April 2020.²³ Tufekci's argument hinged on the points mentioned already: that the CDC policy was inconsistent and that there was an alternative rationale—regarding the supply chain—that made more sense. Once again, the transparency of the error hinged on the state's need to coordinate. The CDC seemingly feared that emphasizing the importance of masks was incompatible with preserving medical supply, even if they had also asked that individuals use masks sparingly until supply could be increased. The means of achieving a desirable coordinated outcome involved damaging their epistemic authority.

So, if one was trying to make a decision about whether to wear masks in general or whether in particular to seek out N95 masks, the CDC in early 2020 was

²³ Smith, "How Zeynep Tufekci Keeps Getting the Big Things Right."

pretty evidently not a good source, despite its unimpeachable epistemic credentials. An immunocompromised person at that stage was better off reasoning on their own and might well have known it. More generally, internal inconsistency is a very important way to identify problems with authority when competing information is simply hard to come by—if a state has sufficient control over the information flow within a society, internal inconsistency may be the *only* way to see through propaganda. But this kind of evidence is accessible to everyone and depends entirely on the particular claims the state makes, not on a general fact about the general domains of expertise that the state and any given individual can claim. (In a propaganda environment, it would make sense to start generally distrusting the state; but, as we have seen dramatically illustrated in the case of COVID-19 vaccines, the failure of the CDC on mask policy was not a good general reason to distrust its advice on other topics.)

In sum: in at least some cases, the justification for treating the law as yielding an exclusionary reason is undermined because it is possible for a citizen of no particular expertise to recognize that the state's commands are particularly fallible in a given case. In other words, deferring to the state does not seem, in such cases, to help the individual comply with the reasons that apply to them better than they could on their own. This leaves two options: we maintain that the state is authoritative in such cases, and subjects should knowingly make mistakes. This looks incompatible with the basic justification of the service conception. More attractively, we can attempt to qualify the service conception to show that this sort of command is not really authoritative. But, because the cases in question do not involve special expertise on the part of subjects, this strategy will need to be even more piecemeal than the standard Razian picture. And I will argue, “robustly” piecemeal authority of this nature cannot satisfy the knowability condition. I consider three possible Razian defenses to this end. The first appeals to emergency circumstances. The second draws a distinction between clear and significant errors. The third attempts to rule bad commands outside the domain of deference.

2.3. *Emergency Exceptions*

The simplest way to qualify Raz's account is to claim that authority does not hold in certain kinds of emergency circumstances. This is a popular move.²⁴ But it is not clear exactly how it should work. “Emergency” has several connotations. One kind of authoritative emergency is a novel situation for which the

²⁴ See Raz, *Morality of Freedom*, 46; Tasioulas, “The Legitimacy of International Law,” 104; Adams, “In Defense of Exclusionary Reasons,” 46n24.

law is unprepared. That kind of case is irrelevant to my counterexamples, which lie in familiar governmental domains.

A second and more intuitive meaning of “emergency” connotes high stakes situations where there is not much time to think. Consider David Estlund’s example of the authority of the flight attendant after a plane crash. But this cannot be what Raz means: cases like the plane crash are paradigm cases for deference to authority, not cases of exemption from authority.²⁵

The third and most relevant kind of authoritative emergency is when a state error is so profound that it immediately delegitimizes the authority in and of itself. This does not seem to apply in *Travel Restriction* or *Mask Mandate*, both cases where the fallibility of the law is discernible, but the mistake is not especially profound (in *Travel Restrictions*, the policy itself is not mistaken at all). But emergencies are relevant to another important kind of case.

Moral Crimes. The stakes can go much higher than in my original cases. Consider the conventional and nuclear bombing of civilian populations near the end of World War II; the firebombing campaign in Vietnam; or the killings and maimings of civilian populations as “collateral damage” in Vietnam, Afghanistan, Iraq, or any other “counterinsurgency” campaign. These are all tragic cases; in several cases there appears to have been no remotely plausible just cause for the military operations, so they constitute significant moral crimes. Moreover, this could plausibly be known to some people at the time; we might think, at least, that anyone has good reason not to simply *defer* on the question of the nuclear destruction of entire cities.

But consider the perspective of a bomber pilot. The military, for good reason, has highly deferential norms. Bombing campaigns of massive scale had previously been undertaken, which were at least plausibly justified. And there was a coherent rationale for the late war bombings: that, by their very cruelty, they would end the war sooner and thus save lives in the final balance. This line of reasoning is suspect, and many soldiers might have rejected it. But it cannot be intuitively dismissed the way a nuclear bombing of a neutral city could be. Similarly, one might have gone in for the Domino Theory on which the fate of the world, in some sense, hung on the outcome in Vietnam. We could and should reject these rationales, but it seems plausible that the best general decision procedure for soldiers is quite deferential, and the all-things-considered evaluation of military benefits versus civilian costs is clearly a domain of authority. Nonetheless, it seems that it should be worth deliberating on

²⁵ Indeed, Estlund is in the business of motivating his account of authority when he gives that example (“Political Authority,” 356–58).

participating in a nuclear bombing campaign when the war is largely won. But that is incompatible with unqualified deference to legitimate authority.

So what can we make of the appeal to emergency exceptions? Ultimately, I think, not much: what constitutes an emergency and what reasons obtain within an emergency are questions just as subject to the rationale for deference as the original questions of authority in normal cases. We can see the dilemma played out in miniature with Raz's linkage between emergency circumstances and the possibility that a "directive violates fundamental human rights."²⁶ While some human rights violations may be completely transparent, other violations involve complex judgments about, e.g., the proportionality of the use of force.²⁷ Those questions immediately go beyond the epistemic "pay-grade" of ordinary soldiers, so we cannot help ourselves to a broad exception for human rights violations, nor emergencies, without undermining the practical function of the service conception. The next section develops a similar line of argument, back in the standard circumstances which do not require any reference to direct intuitions about moral crimes. The dialectic becomes somewhat more complicated, but the conclusion is much the same.

2.4. *Clear and Significant Errors*

One of Raz's central discussions of state fallibility concerns a distinction between clear and significant errors. He recognizes that we should not *stipulate* that significant errors cannot be authoritative; this would require individuals to judge whether any given command is a significant error, which would itself require the expertise we typically lack.²⁸ Instead, he distinguishes clear mistakes from significant mistakes. Some significant mistakes may be too difficult to detect for personal deliberation to be helpful. And some mistakes, crucially, can be so manifestly clear that they do not require deliberation at all.²⁹ Raz admits the possibility that a truly horrific state command could be disobeyed on an intuitionistic basis, circumventing deliberation altogether.³⁰

²⁶ Raz, *Morality of Freedom*, 46.

²⁷ United Nations Human Rights Office of the High Commissioner, *International Legal Protection of Human Rights*, 51.

²⁸ Raz, *Morality of Freedom*, 47.

²⁹ In the war examples from section 2.3 above, this would be more like the aggressive invasion of a random state—you might simply *know* such an invasion is wrong, unlike the cases from Vietnam or WWII, which should be immediately *troubling*, but in which one might be brought up short by the Domino Theory or the notion that the nuclear bombings would save lives overall.

³⁰ "Establishing that something is clearly wrong does not require going through the underlying reasoning. It is not the case that the legitimate power of authorities is generally limited

Raz is correct that some state errors are so transparent that they do not require deliberation about whether the law should be defied. I am happy to grant a non-deliberative proviso for such cases. He is also correct that some state errors are so difficult to identify that the best decision procedure will recommend obedience. But significant state errors do not come in only two varieties—totally opaque or totally obvious. Raz says nothing about the vast middle of this spectrum: significant errors that are partially transparent, or, as I will call them, suspicious. Suspicious state actions are those which are not so obvious that deliberation is otiose but which are troubling enough to prompt an inclination to think or learn more about the matter at hand.

All the cases considered so far can illustrate both transparent and merely suspicious state errors. One version of *Travel Restriction*, mentioned above, might have your needy loved one just down the street if you live near the border. We might intuitively break the law in that case. But in other versions of *Travel Restriction*, aiding your loved one might require traveling some distance, stopping at several gas stations, perhaps a hotel stay. The relevant risks may not be entirely clear, and while the rationale for the placement of the border can *prima facie* be seen to be somewhat arbitrary, it likely is not *completely* arbitrary. There may be mixed messages from public health authorities, which come to the fore in *Mask Mandate*—but depending on the significance and frequency of the inconsistencies, they typically damage institutional credibility rather than eradicate it. The question is how much to trust the institution, given its particular track record. An infinite range of weaker or stronger versions of the cases could be produced. All the argument requires is some range of cases in which the appropriate response is precisely *to deliberate on all the accessible reasons*, including both first-order facts about the command in question and second-order facts about institutional credibility. The transparent state error proviso artificially divides the range of possible cases: there are cases in which one should defer and cases in which the state error is so obvious that deliberation is unnecessary. But neither deference nor intuitionistic defiance is attractive in suspicious cases.³¹

One way to put the point is that Raz exaggerates the costs of deliberation. Some salient features are obvious even though not decisive. The cases I

by the condition that it is defeated by significant mistakes which are not clear" (*Morality of Freedom*, 62).

³¹ Cf. Perry, "Second-Order Reasons," 933–36, on varying "epistemic thresholds" for ceasing to defer to authority. Perry does not argue that recognizing the mere possibility of error poses a serious problem for Raz. This is because Perry (provisionally) accepts Raz's denial of "partial deference" strategies beyond intuitionism (932), discussed in the text just below. That denial sets up the "all-or-nothing" nature of exclusionary deference.

have developed are ones in which the stakes are clearly high, and the quality of the state's command is—based on what we already know—suspicious. In the *Moral Crimes* cases, the suspicion is based on a strong *prima facie* moral intuition; in the *Travel Restriction* case, it is based on the fact that any boundary-drawing exercise will be partially arbitrary; in the *Mask Mandate* case, it is based on internal inconsistency. An individual undertaking deliberation in such circumstances seems clearly worthwhile.

There is one additional worry we should consider. Raz is concerned that we can fall prey to various personal biases in our deliberation, and these biases might apply equally well to any meta-judgment about whether the state's credibility is undermined in any of the cases mentioned.³² Raz suggests a promising non-exclusionary strategy that could be used to cope with bias. We might apply a discount rate to our certainty in some cases, taking the authority's reasons to be, e.g., “20 percent stronger than it would otherwise appear to me.” Raz dismisses this proposal:

If, as we are assuming, there is no other relevant information available then we can expect that in the cases in which I endorse the authority's judgment my rate of mistakes declines and equals that of the authority. In the cases in which even now I contradict the authority's judgment the rate of my mistakes remains unchanged, i.e., greater than that of the authority.... Of course sometimes I do have additional information showing that the authority is better than me in some areas and not in others. This may be sufficient to show that it lacks authority over me in those other areas.³³

This point rests on an odd starting assumption that “there is no relevant information available.” It is precisely additional available information which grounds the additional confidence that distinguishes the cases in which our judgment survives the “bias penalty” and those in which it does not.³⁴ What the bias penalty manifests is the idea that I should not disobey the state on the basis of a deliberation that produces a credence of 0.51 on what the best choice is. We might insist on disobeying only with credences, say, above 0.75. Additional relevant information, such as the accidental expertise about my personal circumstances in the context of an arbitrary boundary-drawing law or the state

³² Raz, *Morality of Freedom*, 75.

³³ Raz, *Morality of Freedom*, 68–69.

³⁴ Perry points out that this strategy seems akin to certain familiar cases, e.g., the legal presumption of innocence (“Second-Order Reasons,” 933).

having been internally inconsistent, is just the sort of thing which can raise one's credence despite the risk of bias and error.

Credence is a subjective evaluation, so there probably is no one general standard for an appropriate “disobedience credence.” Such a standard would itself be piecemeal, depending on the stakes of the decision and on the competence and self-awareness of the agent. My deliberation might result in the conclusion that the state *seems* to have made an error but that I am not confident enough to actually disobey. This would result in deference to the state, but not *exclusionary* deference—the decision to defer to the state after an all-in deliberation is a decision, at best, to treat the state *as if* it were authoritative.³⁵ To treat the state *as* authoritative would have meant restricting deliberation from the start. Of course, as we have seen, treating the state as authoritative is compatible with disobeying in some completely transparent cases—this is akin to setting the appropriate disobedience credence at 1 for all subjects. But that standard is appropriate only for children, if even then; it is not plausible that competent agents do best by restricting their practical reason to solely self-evident state errors.

One further worry could be that the bias is so pernicious that we cannot reasonably apply a bias penalty—we are biased in assessing our own competences and credences, too. That degree of pervasive subconscious bias, however, would presumably also infect the *second-order judgment* distinguishing the domains of our expertise in which authority fails to obtain. If bias is profound, we really would need to turn to a generally less rationalistic account (see section 3 below). If, more plausibly, bias is serious but manageable, then a first-order bias penalty ought to do the trick. The fact that I have extra information which makes me highly confident in this case is good reason to think that this case—but not necessarily this *area*—is one in which I stand a better chance than the authority.³⁶

2.5. Authority's Domain

Finally, we might press the possibility that authority is really only legitimate when it does not make serious errors. Raz originally handled this thought with the unsatisfactory appeal to clear and significant errors, but he later returned to the thought that there is only legitimate authority over some domain if there is no *part* of the “domain regarding which the person or body can be known to

³⁵ See Darwall, “Authority and Reasons.”

³⁶ Cf. the classic “rule worship” objection from Smart, “Extreme and Restricted Utilitarianism.” Raz seemingly claims, at the limit, that even if I had the word of God that the almost-infallible authority is making a rare mistake in this case, deferring is still my best play.

fail the [epistemic] conditions.”³⁷ The problem again concerns the conditions in which an authority can be known to issue bad commands; it may be that this is another appeal to transparent errors and thus has the same shortcoming as the earlier version.

But there is a stronger available reading of the phrase “can be known.” Rather than invoking *ex ante* transparency of errors, it could invoke errors which can be known *after* deliberation or some process of learning. This reading marks a significant change from Raz’s original view, on which a command can be authoritative even when one recognizes that it is wrong. But it is consonant with Raz’s remark, just prior to the phrase quoted above, that “When the issue is of importance we extend our inquiries and deliberations well beyond what we do when the matter is relatively trifling. The same kind of consideration applies to establishing the existence of authorities.”³⁸

One worry is the bias concern mentioned at the close of section 2.4: Why are we better positioned to make this second-order judgment about the existence of an authority *qua* action x than the first-order judgment about action x ? But we might set that aside because there is considerable plausibility to the idea that we should proceed relatively undeliberatively with regard to unimportant actions but think carefully about important actions (when we can). That Raz mentions “inquiries” as well as “deliberations” suggests that he is not just concerned with our epistemic state at a given time but also embraces choosing to learn more about a given issue because of its importance.

Presumably, nothing is excluded in this second-order deliberation about whether authority obtains since exclusion follows from authority being known. What will the inquiry consist of? Consider two possibilities. First, one could inquire only about *general* features of the authority relevant to the issue at hand. This path will not avoid the counterexamples; one’s inquiries might lead to the conclusion, once again, that the authority is actually very reliable in this domain but just happens to be wrong in the particular case that prompted the deliberation in the first place. So only a stronger possibility helps. We can countenance full-throated deliberation about the case at hand, using whatever we can learn both about the (putative) authority’s general features and this specific command.

What does this deliberative picture look like? A special procedure kicks in whenever a command is important. But this is actually too strong because we cannot plausibly inquire about every important law. So some condition of salience will need to be met, which I have called “suspiciousness.” In suspicious

³⁷ Raz, “Revisiting the Service Conception,” 1027.

³⁸ Raz, “Revisiting the Service Conception,” 1025.

cases, we recommend unconstrained deliberation. Where has the exclusion gone? It applies, seemingly, only to unimportant cases or to cases in which it never strikes us to deliberate in the first place. In the cases we care most about, nothing is excluded. This is a rather anemic proposal. It should prompt us to ask if there is a more straightforward analysis of the relevant phenomenon. There is. This last reading of Raz—the only one which addresses the problems—is already an account of habituation in all but name.

3. HOW HABITS HELP

3.1. *Automaticity and Intervention*

Despite my criticisms of the exclusionary reason account of deference to authority, Raz is correct that the costs and risks of deliberation are prohibitive in many circumstances. It could be the case that if the choice were between always deliberating and always deferring, it is better to adopt the exclusionary stance. But there is at least one disposition that is better justified on Raz's own terms: habitual obedience. I find the habitual stance appealing, but dialectically it only has to defeat the service conception; there may be additional possibilities.

Habituation has been developed in recent years in other contexts, notably by Pollard and Pettit.³⁹ The key feature is “intervention control,” which characterizes a mental stance toward some routine process for which explicit cognitive attention is not generally necessary, but—crucially—explicit attention can be prompted at any time by unusual circumstances. Pettit gives the example of a cowboy guiding a herd of cattle down a familiar path. Generally, the cowboy simply rides nearby, not actively steering the herd. But if the cattle are spooked, the cowboy should exercise control and restore the herd to the path.⁴⁰ A more accessible example is a routine commute between home and work. Most of us do not deliberate on what route we will take on a given day—but if we see, or learn in advance, that there is a construction site in our normal path, we are prompted to deliberate today in particular.

A habit, on my view, is a moderate practical disposition between constant deliberation and principled deference. More precisely, a habit is a trainable, automatic—but defeasible—disposition to act in a certain way in a certain range of circumstances (“the usual”). Let us say that a habit is justified the same way Raz tells us authority is justified: if and only if relying on the habit is generally the best way to conform to reasons which apply to us.

³⁹ Pollard, “Can Virtuous Actions Be Both Habitual and Rational?”; Pettit, “The Inescapability of Consequentialism.”

⁴⁰ Pettit, “Inescapability,” 45–46.

Let me say a word about each of the noted features of habits. A habit is trainable. An unalterable *instinct* is not a tool available in practical reason, but a habit is. This training might be purposeful or might simply crop up with sufficient repetition.⁴¹ A habit is automatic. As opposed to deliberation, which for Raz is seemingly transparent to the agent even when exclusionary rules are followed, following a habit drops below one's awareness.⁴² But this subconscious automaticity is defeasible in the sense of intervention control—as with the cowboy, unusual circumstances prompt unusual deliberation.

Consider an example of developing a skill. When learning to play tennis, much of what it *means* to develop skill is for more and more patterns of movement and behavior to drop into automatic background processes.⁴³ Consciously deliberating on each shot is “playing tight” and leads to poor results. There are some advantages—perhaps better tactics—in deliberating on each shot. But it will fail in terms of the overall goal of winning the match. This is true of skill development generally. We can almost always perform better by relying on automatic processing. (Of course, not *fully* automatic; if our opponent is injured, intervention control kicks in to stop us from smashing the next ball at them.)

This translates reasonably directly to dispositions toward the law. My habit of following traffic laws both improves my performance—my reaction time is better when deliberative processing is not involved—and avoids some incorrect judgments that I should break the law in mundane circumstances. This morally justifies taking up the right kind of habits to the right degree. But when circumstances are genuinely unusual and there is time to invoke intervention control, such as when I need to flout traffic laws to take someone to the hospital, the habit is set aside. The counterexamples developed in section 2.2 are clear cases where intervention is warranted—even if in some other cases time is too short or information is too lacking.

3.2. *The Superiority of Habits*

There is admittedly something unsettling about the role of automaticity. If our topic is *normative* powers of authority, should we not comply knowingly? But recall that the focus here, as in Raz's *NJT*, is how authority can be justified. Authority provides a benefit—thus the *service* conception. I agree with Raz

⁴¹ Thus, my sense of habits collapses Owens's distinction with consciously chosen personal policies (“Habitual Agency,” 99–100). This is just a terminological simplification.

⁴² See Snow, *Virtue as Social Intelligence*, for helpful conceptual and empirical discussion of automaticity. See also Arpaly and Schroeder, *In Praise of Desire*, sec. 2.7.

⁴³ In Kahneman's terms, intuitive “system 1” processing rather than deliberate “system 2” thinking (*Thinking, Fast and Slow*).

that a justificatory account, rather than a mere conceptual analysis, is what we should want. But if the NJT does the work, then it is fair to argue against the exclusionary analysis by proposing a *better-justified* disposition toward the law. When you can get a better deal, you switch services.

One might press this further and ask whether a habitual account can be an account of obeying authority at all. As R. P. Wolff says, “[obedience] is a matter of doing what he tells you to do *because he tells you to do it*.⁴⁴ My position is that it is neither here nor there whether the habitual account meets such a conceptual criteria; the point of dialectical importance is what the best deliberative stance toward putative political authorities is, given Raz’s own (defensible) standard of justification. One possible conclusion is that Raz’s service conception cannot consistently be a service conception of *authority* and should instead be read as skeptical of authority. We nonetheless can defend a service *justification of the state* based on habituation. I prefer to leave conceptual space for a deflationary account of authority, on which authority is not quite what we might have thought but still warrants the title. But the substantive conclusion about justification is the central point, not the conceptual question.⁴⁵

I have indicated two arguments for the superior justification of habits. First, the habitual account—making use of intervention control—avoids the counterexamples to the exclusionary account. Second, relying on automatic choice procedures is a normal element of becoming skilled in any domain, and there is no obvious reason that competence at navigating the law should be different. This section illustrates an additional theoretical advantage: the habitual account improves on an awkward distinction Raz draws between practical deliberation and mere consideration or reasons. The principal concern is to avoid acts that are grounded on excluded reasons. But we are free to *consider* excluded reasons—“So long as one knows that one’s reflections will not affect one’s actions.” John can think about whatever he likes but “is only acting correctly if he disregards the excluded reasons in his deliberation.”⁴⁶

This opens the possibility of considering a case closely enough that it becomes clear that the excluded reasons actually should be decisive. One cannot know in advance how reflection will go. Part of the point of idle contemplation is that it sometimes leads to action. More pointedly, there is always a chance that idle reflection on some generally good rule will yield continued general endorsement of the rule but some particular conclusion about making an exception.

⁴⁴ Wolff, *In Defense of Anarchism*, 9.

⁴⁵ Thanks to an anonymous reviewer for pressing this point.

⁴⁶ Raz, *Practical Reason and Norms*, 184–85.

Consider a case where the basis for an exclusionary (or habitual) disposition is the cognitive burden of constant deliberation. Say I am permitted to go home early from work if my day's tasks are done, but doing this excessively is frowned upon. I only finish work early occasionally, so I decide simply generally not to deliberate on whether I have good reason and sufficient political capital to knock off early. One day at lunch, I idly contemplate the possibility of taking off early in the course of a conversation about the cogency of the general policy about leaving work on time. I realize that *today*, which I was merely using as an example in conversation, is actually an exceptionally good time to leave early. Due to my general policy, I have not left early in months, and I have nothing at all useful to do. If I treat my (well-justified) rule as exclusionary, however, I must maintain the firm wall between idle contemplation and practical deliberation. So I should not take off work early today because it would be too costly to deliberate about such cases generally, even though I have *already deliberated about this case*. This is a bizarre result which intervention control naturally avoids.

3.3. Habit Formation

Habit formation should play an important role in practical reason. Good habits are very valuable; they cope with our cognitive limitations without causing too many errors. That makes developing good habits a relevant part of first-order reasoning about what to do. Habits are *trained* automatic dispositions; whenever one acts in accordance with a habit, it is trained further, and when one violates a habit the training is undermined. A habit's weakness or strength can be thought of as how reliably deliberation is circumvented or truncated in the relevant range of circumstances. How we act now affects our choice procedures in the future.

Given the value of good habits, maintaining a habit can itself be a reason to act in accordance with the habit. This partially recaptures the spirit of the exclusionary account. Exclusion is typically tightly linked with content-independence. Standard examples of content-independence are reasons to do what someone says, regardless of what in particular they say; recall Raz's example of following a friend's advice in order not to offend them. Adams describes this as a reason due to the source or "container" of a specific act.⁴⁷ We might think of a habit as a container for an action; the action has whatever first-order merits and demerits but has an additional reason in its (dis)favor in virtue of maintaining or undermining a habit. The weight of this reason will vary with many factors;

47 Adams, "In Defense of Content-Independence," 147.

presumably not every violation of a habit is equally meaningful, and particular individuals may tend to form habits that are more or less fragile.

Now, one might reserve content-independence more strictly for reasons due directly to the *standing* of the source or container. Habits do not have standing in that sense but instead provide an indirect rationale for obeying (some) commands, whatever they may be.⁴⁸ But habituation fits the intuitive way of explaining content-independence and shows why we should sometimes obey even a poorly justified command. Of course, maintaining a habit is only so valuable. While habit formation and maintenance partially captures the appeal of exclusionary reasons, it does not expose the habitual obedience account to the weightier counterexamples raised against the service conception of authority.⁴⁹

This may suggest a line of orderly retreat for the service conception. Habituation offers an attenuated version of content-independence; but what about a revised analysis of authority which says that an authoritative command directly provides a content-independent, but not exclusionary, reason? The problem with this proposal is that the service authority provides is precisely to *settle* practical deliberation. Exclusionary rules are decisive, which in turn motivates the piecemeal account of authority—decisive authority is only a benefit if the authority will generally decide better. A retreat to content-independence without exclusion unravels the distinctive Razian story. Without exclusion, the law is not decisive; if the law is not decisive, it is not clear why we should say that authority is piecemeal. We might then say that authority yields general, defeasible, content-independent reasons to obey the law. This is precisely the *traditional* analysis of political obligation, attacked most famously by John Simmons.⁵⁰ This analysis retains many defenders. But it is not the Razian analysis.

48 It is easy to slide between content-independence residing in the standing of the reason-giver versus the neutrality of the reason across particular actions. Adams describes an advice-style case (“In Defense of Content-Independence,” 158–59), where what is really at stake is the effects on a relationship as content-independent. But in discussion of threats, he says, with Raz, that penalties (and presumably downstream causal effects generally) are actually part of the content of a threat, which Raz considers merely a content-independent reason to *believe* rather than to act (Adams, “In Defense of Content-Independence,” 156; Raz, *Morality of Freedom*, 36). But the threat case seems structurally similar to the advice case. The intuitive phenomenon which embraces deontological authority, threats, habituation, and concern for relationships might be better termed content *neutrality*.

49 Some readers will have been reminded of Darwall’s distinction between directives being treated as authoritative and directives actually being authoritative (“Authority and Reasons”). Another way of putting the point of the above paragraph is that habituation stays on the “treating as if authoritative” side of that distinction—and even the reasons to “treat as if” have limits.

50 Simmons, *Moral Principles*. Raz discusses political obligation, which for him is always distinct from authority, in *The Authority of Law*, ch. 12; *Morality of Freedom*, ch. 4, especially

The habitual account points out that the state can provide benefits merely because the law is a salient anchor for a habit of obedience. This provides an indirect general reason to obey the law in order to maintain the beneficial habit. The weight of that reason will vary with the justice of the state and the elasticity of a given individual's habit. But the automatic nature of habits means that they very often *will* settle deliberation—indeed, conscious deliberation will never get started. Again, habituation explains some intuitive features of authority while avoiding unattractive results.

Habits are not always beneficial. Some habits are bad—patterns of behavior that one follows unthinkingly but which, in fact, yield worse results than direct deliberation or some alternative habit. Just as there is a general reason to form or maintain good habits, there is a general reason to break bad habits. The worry about the slippery slope from disobedience into anarchy is only one side of the coin. Any habit, surely including the habit of obeying the law, can become overly entrenched and thus act as a false principle, so we must take care in the other direction as well. The ideal is equipoise, recognizing slippery slopes on both sides.

The next two sections address objections: first, that habits themselves may be analyzed as exclusionary; second, that habits may fail to stabilize political institutions in the face of collective action problems.

3.4. *Habits and Exclusion*

Here is a challenge. Habits (and policies) are sometimes themselves discussed as having an exclusionary character in practical deliberation.⁵¹ Have I replaced one exclusionary notion with another? No. Where theorists of habits invoke exclusionary considerations, they either do not or should not mean what Raz means. The shared insight is that some dispositions (habits, policies, principles, plans) serve to prevent (re)consideration of choices in some range of circumstances. But this range is not well characterized by excluding certain types of reasons as practically irrelevant. This is easy to miss. Owens writes, of a disposition to always go on a daily run, that “your policy has an exclusion zone around it, one that rules out consideration of discomfort but not of threats to your health.”⁵² But this cannot be correct. It is true that some discomfort will not prompt deliberation. A chilly day might be regrettable, but it is not relevant

sec. 4; “Revisiting the Service Conception,” 1004–12. See Dagger and Lefkowitz, “Political Obligation,” for general discussion. The habitual obedience account seems to me compatible with philosophical anarchism, but I do not think it requires it.

⁵¹ Owens, “Habitual Agency,” 105. See also Holton, *Willing, Wanting, Waiting*, 101–105; Bratman, *Intention, Plans, and Practical Reason*, ch. 5.

⁵² Owens, “Habitual Agency,” 100.

to my habit. However, a freezing cold day with hail is relevant to any normal running habit, even if it is not a threat to my health and does not pose any other kind of emergency.

Instead of focusing on reasons that are categorically excluded from deliberation, habits should be understood in terms of intervention control. In normal circumstances, we rely on our trained disposition rather than deliberation, and in that sense, many possible considerations are excluded. But any sufficiently surprising circumstances can prompt deliberative intervention. Once we are jarred into deliberation, we undertake an all-things-considered deliberation in which no reasons are excluded. Which considerations prompt deliberative intervention depends on what considerations are evident to us, which is quite contingent. I should not seek out all the possible construction sites on my commute every day, but, as illustrated above, I should not on that basis ignore the construction site I *already* know about.

The answer to the objection, then, is that habits are not exclusionary in the same way as exclusionary reasons. An exclusionary reason is a reason which is deemed irrelevant *within* an ongoing, conscious deliberation. A habit is a disposition not to deliberate at all under a range of circumstances. Once that automatic pattern is disrupted, deliberation proceeds unimpeded.⁵³

3.5. Stabilizing Institutions

Is habitual obedience enough to do what the exclusionary reasons account sets out to do—namely, explain good practices of epistemic deference and stabilize coordination goods? Plausibly, yes. There is little question that most people will develop a habit of obedience to the law in reasonably just societies. Respect for the law is part of many cultures and encouraged by parents and other influences. In a good society, it will often be natural and convenient to do what the law says, so the overall disposition will be further buttressed. And, of course, fear of punishment is always available as a general reason to obey. This seems sufficient for coordination goods of the kind Raz emphasizes.⁵⁴ Given a general habit of obedience, whatever the law says will be salient, such that in relatively neutral cases of coordinating conventions—such as which side of the road to drive on—coordination will be easily achieved. And the benefits of coordination goods will further ensconce routine obedience to the law.⁵⁵

⁵³ Thanks to an anonymous referee for requesting clarification here.

⁵⁴ Raz, *Morality of Freedom*, 48–52.

⁵⁵ See Buchanan, “Institutional Legitimacy,” 64–65, for a related discussion of what he calls the “virtue of law-abidingness.” There is also an affinity with Austin’s command theory of law (*The Province of Jurisprudence Determined*), with punishment acting to stabilize habits

All this is morally valuable to the extent that habits are justified. Just and reasonable governance will have a positive feedback loop with robust habits; the better the government, the less cause there will be to exert intervention control, causing habits to become more stable, which in turn allows the state to operate more smoothly and sympathetically because the more habitually citizens obey, the less the state must be concerned with punitive enforcement of the law.

Epistemically, one might worry that because habits do not focus as tightly on the epistemic advantages possessed by the law, the habitual stance will be a harmfully less deferential stance when the law truly is epistemically advantaged. If there is a generally established habit of obedience, the difference between habituation and exclusion will only appear in suspicious cases. In such cases, habitual obedience does entail extra deliberation compared to the exclusionary reasons account, and this may come at some cognitive cost. But there is no reason for epistemic modesty to disappear altogether. If my habit is brought up short by a surprising circumstance, but my deliberation can hardly proceed because I do not know enough, then epistemic deference is perfectly appropriate. This added deliberative step seems a small price for the moral benefit of recognizing when the law is performing quite badly in ways that *are* epistemically accessible for a given agent.

4. CONCLUSION

Raz's theory of practical authority begins with the move from what actions are normally justified to what disposition toward authority is generally justified. There is more to his account of political authority, but this move undergirds that account and by itself sets up the highly influential notion of exclusionary reasons. I have argued against this central justificatory move. Many cases are not normal, and the best-justified disposition is the one that does best across *all* cases, not in a subset—no matter how familiar. One might draw a parallel with act-utilitarian critiques of rule-utilitarianism. Just because a rule fares best *among rules* does not itself explain why any act falling under that rule is substantively correct. The act-utilitarian then faces a profound challenge because we do need *some* tractable decision procedure. But, regarding authority, I have provided—while not quite a conscious decision procedure—an attainable *stance* in practical reason, which I have argued fares better than the exclusionary stance. If the habitual stance is indeed better justified than the exclusionary stance, we have a better way to navigate our perplexing epistemic world.

of obedience. But the main aims of my argument do not concern the concept of law, so I will not pursue the connection.

Exclusionary reasons are unnecessary—and so the service conception is cut off at the knees.⁵⁶

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REFERENCES

Adams, N. P. "In Defense of Content-Independence." *Legal Theory* 23, no. 3 (September 2017): 143–67.

———. "In Defense of Exclusionary Reasons." *Philosophical Studies* 178, no. 1 (January 2021): 235–53.

Austin, John. *The Province of Jurisprudence Determined*. Edited by Wilfrid E. Rumble. Cambridge: Cambridge University Press, 1995.

Bratman, Michael E. *Intention, Plans, and Practical Reason*. Cambridge, MA: Harvard University Press, 1987.

Buchanan, Allen. "Institutional Legitimacy." In *Oxford Studies in Political Philosophy*, vol 4, edited by David Sobel, Peter Vallentyne, and Steven Wall, 53–78. Oxford: Oxford University Press, 2018.

Dagger, Richard and David Lefkowitz. "Political Obligation." *Stanford Encyclopedia of Philosophy*, (Summer 2021). <https://plato.stanford.edu/archives/sum2021/entries/political-obligation/>.

Darwall, Stephen. "Authority and Reasons: Exclusionary and Second-Personal." *Ethics* 120, no. 2 (January 2010): 257–78.

Edmundson, William A. "Rethinking Exclusionary Reasons: A Second Edition of Joseph Raz's." *Law and Philosophy* 12, no. 3 (August 1993): 329–43.

Enoch, David. "Authority and Reason-Giving." *Philosophy and Phenomenological Research* 89, no. 2 (September 2014): 296–332.

Estlund, David. "Political Authority and the Tyranny of Non-consent." *Philosophical Issues* 15, no. 1 (October 2005): 351–67.

Gans, Chaim. "Mandatory Rules and Exclusionary Reasons." *Philosophia* 15, no. 4 (January 1986): 373–94.

Green, Leslie. *The Authority of the State*. Oxford: Clarendon Press, 1988.

Hershovitz, Scott. "The Role of Authority." *Philosophers' Imprint* 11, no. 7 (March 2011): 1–19.

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Holton, Richard. *Willing, Wanting, Waiting*. Oxford: Oxford University Press, 2009.

Kahneman, Daniel. *Thinking, Fast and Slow*. New York: Farrar, Straus and Giroux, 2011.

Kavka, Gregory S. *Hobbesian Moral and Political Theory*. Princeton: Princeton University Press, 1986.

Ladenson, Robert. "In Defense of a Hobbesian Conception of Law." *Philosophy and Public Affairs* 9, no. 2 (Winter 1980): 134–59.

Owens, David. "Habitual Agency." *Philosophical Explorations* 20, no. s2 (October 2017): 93–108.

Perry, Stephen R., "Second-Order Reasons, Uncertainty and Legal Theory." *Faculty Scholarship at Penn Carey Law*. 1354 (1989). https://scholarship.law.upenn.edu/faculty_scholarship/1354.

Pettit, Philip. "The Inescapability of Consequentialism." In *Luck, Value, and Commitment: Themes From the Ethics of Bernard Williams*, edited by Ulrike Heuer and Gerald Lang, 41–70. Oxford: Oxford University Press, 2012.

Pollard, Bill. "Can Virtuous Actions Be Both Habitual and Rational?" *Ethical Theory and Moral Practice* 6, no. 4 (December 2003): 411–25.

Railton, Peter. "Practical Competence and Fluent Agency." In *Reasons for Action*, edited by David Sobel and Steven Wall, 81–115. Cambridge: Cambridge University Press, 2009.

Raz, Joseph. *The Authority of Law: Essays on Law and Morality*. Oxford: Oxford University Press, 1979.

———. *The Morality of Freedom*. Oxford: Oxford University Press, 1988.

———. *Practical Reason and Norms*. Oxford: Oxford University Press, 1999.

———. "The Problem of Authority: Revisiting the Service Conception." *Minnesota Law Review* 90, no. 4 (2006): 1003–44.

Simmons, A. John. *Moral Principles and Political Obligations*. Princeton: Princeton University Press, 1980.

Smart, J.J. C. "Extreme and Restricted Utilitarianism." *Philosophical Quarterly* 6, no. 25 (October 1956): 344–54.

Smith, Ben. "How Zeynep Tufekci Keeps Getting the Big Things Right." *The New York Times* (August 23, 2020). <https://www.nytimes.com/2020/08/23/business/media/how-zeynep-tufekci-keeps-getting-the-big-things-right.html>.

Snow, Nancy E. *Virtue as Social Intelligence: An Empirically Grounded Theory*. Oxford: Routledge, 2009.

Tasioulas, John. "The Legitimacy of International Law." In *The Philosophy of International Law*, edited by Samantha Besson and John Tasioulas, 97–118. Oxford: Oxford University Press, 2010.

United Nations Office of the High Commissioner for Human Rights.

International Legal Protection of Human Rights in Armed Conflict. New York: United Nations, 2011.

Wolff, Robert Paul. *In Defense of Anarchism*. Berkeley: University of California Press, 1998.