Session 10   Raz, "Authority and Justification"

It's helpful to start by contrasting Raz's account of political obligation with Dworkin's.

<u>Dworkin</u> argued that the obligation to obey the law, like obligations arising out of family relations or friendships, is an *associative obligation*. This gives the obligation certain features:

- The obligation is *general* – applying to any member of the association.
- The obligation gives rise to an *independent reason* to perform the mandated act, *to be added into the balance of reasons*.

Other associative obligations arguably have these qualities: friendships, for example, generate obligations for all members of the friendship, and the reasons they generate are reasons to be added to the balance of reasons. *Examples: I may have a reason to tell a lie if doing that will protect my friend (although it may be outweighed by other reasons).*

But we might worry that political communities lack some of the features that allow more intimate associations to give rise to such reasons/obligations:

- First, family-relations and friendships, if they give rise to obligations, seem to do so because such associations are *non-instrumentally valuable – valuable for their own sake*. That is, they make up a significant part of what makes our lives worth living.

- Second, *loyalty is* constitutive of these more intimate associations – the value of, say, friendship gives us reasons to act in ways that are *expressive of loyalty and concern* (as opposed to, for example, reasons to make more friendship).

- These *two* features of more intimate associations have consequences for the nature of the obligations/reasons for action they give rise to:

  - Those obligations are binding on us even when not fulfilling them would go undiscovered;
  - Those obligations might sometimes give us reason to perform actions that would bring the valuable relation to an end (if this is what loyalty requires)! (*Examples…*)
  - Because the value of friendships and family-relations is (arguably) *non-instrumental*, and independent of any role they play in helping me comply with my other reasons, such relations generate reasons that are independent of our other reasons for action, and weigh against them when they conflict.

But do these features also characterize *political obligations*?

- Consider the *fugitive slave laws* passed as part of the Compromise of 1850, requiring all citizens to aid in the apprehension of runaway slaves. (Setting aside the risk of punishment) did this law provide *any* moral reason – even one that can be outweighed by other considerations – for doing as it required?

- What makes *political associations* valuable? Are they, like friendships, *non-instrumentally valuable*? And is *loyalty* constitutive of that value?
    - It certainly seems less plausible that membership in a political community is *in itself* a significant element of what makes life worth living.
    - And the value of such membership seems much more able to survive undiscovered breaches of obligation than the value of a friendship, suggesting that loyalty is not constitutive of that value. (*Relatedly: could we ever be* required *by political obligation to do something that would bring the political association to an end?*)
- It seems like the value we get out of membership in political associations is different: such associations are *instrumentally* valuable. Membership in a political community is not *itself* – in its own right – an essential element of a good life, but such membership can help us secure many goods that are essential to living well: health, security, etc.
- If this is right, then political obligation is *not* primarily an obligation to act out of loyalty; rather it is a duty that derives from the duty to pursue those goods which political associations are instrumental in attaining.
    - This suggests that political obligations have in one way a more limited scope than, say, obligations of friendship: *unlike* the case of obligations of friendship, the obligation may not bind us to obey in circumstances where disobedience would be undiscovered, and would not undermine the ability of the association to fulfill its instrumental role (*e.g., the stop-sign in the desert*).
    - And unlike the case of obligations of friendship, political obligation could never require us to undertake acts that would result in the dissolution of the association.
    - And finally, and most importantly for our present purposes, this suggests that political obligations, unlike obligations of friendship, do not generate reasons that are *independent* of our other moral reasons, to be weighed into the balance of reasons. Rather, at least in the case of legitimate authorities, *reflect and replace* those other reasons.

This, of course, is Raz's view.

Raz defends a *service conception of legitimate authority*, according to which the primary function of government is to "help [the governed] act on the reasons which bind them." (p. 21)

That is, in contrast to Dworkin, Raz sees the value of membership in a political community as *instrumental*.

This, as Raz argues, has important consequences for the nature of the reasons for action authoritative directives (and political obligation) can give us.

<u>*Raz's Three Theses*</u>

The Normal Justification Thesis

> [T]he normal way to establish that a person should be acknowledge 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, rather than by trying to follow the reasons which apply to him directly. (pp. 19-20)

The Dependence Thesis

> All authoritative directives should be based, in the main, on reasons which already independently apply to the subjects of the directives and are relevant to their action in the circumstances covered by the directive. (p. 14)

As Raz notes, the Dependence and Normal Justification Theses are mutually reinforcing:

> If the normal and primary way of justifying the legitimacy of an authority is that it is more likely to act successfully on the reasons which apply to its subjects then it is hard to resist the dependence thesis. It merely claims that authorities should do what they were appointed to do. Conversely, if the dependence[1] thesis is accepted, then the case for the normal justification thesis becomes very strong. It merely states that the normal and primary justification of any authority has to establish that it is qualified to follow with some degree of success the moral principle which should govern the decisions of all authorities. (pp. 20-21)

The Preemption Thesis

> The fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them. (p. 13)

The Preemption Thesis rejects what Dworkin asserts: that the reason for action provided by the obligation to obey the law is a reason to be *added into the balance* of our other reasons when we decide what to do.

As Raz again argues, the Preemption Thesis seems to follow from the Normal Justification and Dependence Theses.

Here its worth stopping to consider the complex structure Raz thinks *reasons* have (which he does not defend explicitly in this paper).

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[1] Raz writes "independence", but this must, of course, be a typo.

Raz on Reasons

- We commonly speak of "the balance of reasons", and talk as if all decisions can be made by simply weighing all the relevant reasons against each other, and seeing which way the "balance of reasons" tips.

- This suggests that all reasons have the same units, so-to-speak: that they may all be weighed against each other.

- But Raz argues (elsewhere) that reasons don't have such a simple, one-tiered structure: the simple account fails to explain our reactions to several important kinds of decisions people make. Rather, different kinds of reasons operate at different levels.

  - *Example: Instructions to a child: parents' reaction when children act against our instructions but do the right thing on the balance of reasons – they did right in one way, and wrong in another. Parents intended their instructions not to be taken as simply another reason to be weighed into the balance, but rather to reflect those reasons, and replace direct consideration of them in the child's reasoning about what to do.*
  - So, reasons aren't all of a kind. The ordinary reasons (e.g., the ones that apply to the child independently of the parents instruction) are adequately represented by the balance metaphor – Raz calls these "first order reasons".
  - But the reason generated by the parents' instructions is a "second-order reason" (Raz defines this as "any reason to act for a reason or refrain from acting for a reason). The instructions are an example of the latter – a reason to refrain from action for other reasons – what Raz calls an "exclusionary reason".
    - There are other examples of exclusionary reasons: Raz thinks authoritative directives, advice, decisions, rules, and promises, for example, can all act as exclusionary reasons. (*Let's think of some examples…)*
  - Unlike first-order reasons, exclusionary reasons are not to be weighed into the balance of reasons when determining what to do, but serve rather to replace all or some of the first-order reasons that form the balance of reasons.

Back to authoritative directives

- The example of the parents' instructions to the child is of course an example of an authoritative directive. Thinking about it more carefully will illustrate how Raz's three theses operate in concert:
  - The parents are legitimate authorities for their child because he is more likely to comply with the reasons that apply to him independently if he follows their instructions that if he acts on his own assessment of his reasons (*NJT*).
  - They shape their instructions to reflect the reasons that apply to the child independently (*DT*).
  - And they want their child to accept their instructions as the final word on the question of whether an action is to be performed, replacing his own conclusions

on the balance of reasons, rather than as an additional reason weighing against the performance of the action in question. (*PT*)

- o Thinking about the function the instructions are supposed to serve makes it clear why the reason they generate should *preempt* (some of) the child's other reasons:
  - (i) If the child counted the instructions as simply another reason (to, say, not open the door to strangers), to be added to his other first-order reasons, he'd be *double-counting* some of those reasons.
  - (ii) If the child counted the instructions as simply another reason to be added to his other first-order reasons, the instructions couldn't serve the function they were designed to serve: to improve, as much as possible, the child's odds of complying with his reasons (*consider Raz's "financial expert" example in the paper we read*).

- Raz thinks the example of the child reflects the role authoritative directives should generally play in our lives. If such directives can be justified along the lines of the *NJT*, then they generate an obligation to obey. But the obligation is limited in a number of ways:

  - We have no reason to obey a law when it *clearly* fails to reflect the balance of independent reasons (e.g., fugitive slave laws, stop sign in desert).
  - We may have no reason to obey the law in circumstances in which unexpected first-order reasons the law clearly could not have forseen are present. (*Examples?*)
  - The reason to obey may be *outweighed* by the presence of *other* reasons the law was not intended to reflect (after all, it preempts consideration only of those reasons on which it depends). *(Examples?)*
  - The obligation to obey that is, on Raz's view, generated by legitimate authoritative directives must be *very checkerboard in nature*, since whether allowing the law, rather than our own assessment of the reasons, to guide our action is going to improve our chances of complying with them will vary from law to law, from person to person, and perhaps even (as the desert case makes clear) from situation to situation.

Questions:

- *Can Raz's account of the obligation to obey the law, given its limited nature, really justify the use of force by the state to ensure obedience?*

  - *Here it may be helpful to consider the role the law plays in solving coordination problems and prisoner's dilemmas, which might expand the number of situations in which obeying the law will be the best way of complying with our independent reasons...*

- *Even when the law does help us comply with our reasons, why think this justifies the state's forcing us to comply? After all, the state isn't generally justified in forcing us to do what we have most reason to do.*

- *Does Raz's account do too little to distinguish* practical *from* theoretical *authorities? Does it implausibly suggest that the government is best seen as in the business of giving advice?*

- *Is Raz right that his account of legitimate authority* does not commit him to the No-Difference Thesis? *When can the law, on Raz's account, make a different in what we may do?*

  - *Raz suggests four ways laws might make a difference:*

    (i)   *the authorities may also act on additional, non-dependent reasons (e.g. reasons of bureaucratic efficiency)*
    (ii)   *the first-order reasons may not uniquely determine what we ought to do, and law may breach the impass (e.g. rule of the road, precise speed limits)*
    (iii)   *the law may establish and sustain valuable conventions (again, rule of the road is a clear example)*
    (iv)   *the law may help break prisoner's dilemmas (e.g. voting law in Australia)*

- *Is Raz right that the normal way of justifying authority – the way of justifying it shapes our understanding of the role of authority – is to point to its beneficial effects, rather than, say, to the manner in which it was adopted (it's "pedigree", to borrow Dworkin's term)? Don't we sometimes consider an authority legitimate if it was democratically elected, even when we think it's laws won't help us conform to our reasons?*

  - *In this context, it may be helpful to think about some of the "deviant" or "secondary" justifications for authority that Raz considers: perhaps pedigree-based justifications are "secondary" in Raz's sense?? (I.e., they have force only because democratic pedigree makes an authority more likely to meet the conditions established by the NJT?)*

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