

RAZIAN AUTHORITY AND LAW

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ABSTRACT:

In this thesis, I will examine the consequences of applying the legal philosophy of Joseph Raz in real world situations. I will argue that if most legal systems actually attempted to adhere to, and accept his theory in all its parts, the legal systems in question would have serious problems. In particular, the legal authorities and officials which represent the legal systems in question would be confused about the extent of their authority. After I prove my claim, I will offer a solution to the problem.

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Introduction

In this thesis, I will examine how the theory of Joseph Raz functions when applied in real world societies. In particular, I will examine how his theory functions when applied to societies he deems ‘typical’. By ‘typical’, Raz means societies that possess certain traits which are normally found in any society one cares to consider. While there are several traits that Raz says are found in typical societies, there are two traits which are of particular importance to this thesis. First and foremost, Raz says that it is the case that in typical societies, legal systems claim to possess comprehensive authority. It is entailed by this claim that the legal systems in question claim to possess authority to regulate any behavior in which their subjects do or could engage in. By making this claim, legal systems are claiming that there is no limitation on the scope of behaviors which they can regulate, and that there is no limitation to their scope of competence.¹ The second claim that Raz says typical legal systems make, is a claim to supremacy, which he says is entailed by the claim to comprehensive authority. When legal systems claim supremacy, they claim that they possess authority to regulate the formation and functions of other institutionalized systems in their respective communities. In other words, they claim authority to prohibit, permit, or regulate the conditions on the operation of all the other normative organizations to which the members of their subject community belong.²

At this point, Raz’s use of the word ‘claim’ might seem puzzling considering that claims require a claimant and legal systems are not people. In order to understand this

¹ Joseph Raz, *Practical Reason and Norms* (Princeton; London: Hutchinson, 1990) at 151

² Joseph Raz, *Practical Reason and Norms* (Princeton; London: Hutchinson, 1990) at 151-152

thesis, it is very important to understand what Raz means when he says the law makes ‘claims’. In the first chapter, I will argue that when Raz says that the legal systems ‘claim’, he means that the legal representatives of those systems make claims and then attribute those claims to their legal system.

In this thesis, I will pay particular attention to Raz’s view on the law’s claim to comprehensive authority. In the first chapter, I will argue that since it is the case that Raz believes typical legal systems, and therefore authorities and officials make this claim, that under his own view, the typical legal systems in question could not accept his normative theory of authority, which he calls the service conception, without serious negative consequences. The negative consequences stem from the fact that one part of the service conception is something Raz refers to as the “independence condition”. The independence condition holds that there are certain matters over which legal systems do not possess legitimate authority to regulate.³ I will argue that since Raz attributes a claim to comprehensive authority to almost all legal systems, and since the claim is made by the authorities and officials of the legal systems in question, it follows that under his view, all legal systems, and therefore authorities and officials, would be claiming the following if they accept the service conception in all its parts: “We believe we possess authority to regulate all behaviors, but our theory of authority, specifically the independence condition, prevents us from possessing authority to regulate all behaviors. In other words, we sincerely believe to possess authority to x , but we do not possess authority to x .” These two claims, as I will argue, are incompatible, and therefore if authorities and

³ Joseph Raz, "The Problem of Authority: Revisiting the Service Conception", at 1014

officials were to make both of these claims simultaneously, it would be the case that they would be confused about the extent of their authority. If I am correct in saying that making these two claims would cause confusion amongst the legal authorities and officials who make them, it follows that Raz's theory has a serious problem. The problem is that under Raz's own view, the authorities and officials he deems typical could never actually accept the service conception in all its parts without being confused. The problem here is that Raz's view implies that most authorities and officials could not accept the service conception without suffering from confusion due to the fact that they claim to possess comprehensive authority. Therefore, they would make the confused and incompatible statement I have offered above. This, I will argue, makes Raz's theory very impractical for use in real world situations.

In the second chapter, I will begin by discussing the relationship between comprehensiveness, the service conception, *and* Raz's views on obligation. I will discuss two problems with Raz's theory that stem from this relationship. First, I will offer a somewhat similar argument to the one offered in the first chapter, which will build upon my claim that accepting and applying Raz's theory in all its parts in real world situations would cause confusion amongst authorities and officials. I will show that legal systems, authorities, and officials which claim comprehensive authority and accept the independence condition would suffer from another type of confusion if they attempted to apply and adhere to Raz's theory in all its parts. This confusion would occur if authorities and officials claim comprehensive authority, accept the service conception, *and also*

adopt Raz's view on obligation. In order to understand this argument, it is important to consider that Raz says the following:

Subjects ought to show "an attitude of respect for law, which expresses itself in a belief that one has a duty to obey the law because it is our law, the law of our country, expresses identification with one's society and is, when such identification is valuable, self-vindicating, that is, that the people who have such an attitude have the duty they believe in... subjects ought to show respect for the law by expressing trust in the government of the society which passed the law. Trust shows one's confidence that one's society and its institutions work together, and that by and large they do so in the right way....trust is expressed in holding oneself bound to obey the law because it is made by the government, without submitting every law and regulation to careful scrutiny to see whether they are the best, or whether they are just, or whether one has reasons to obey or to disobey them. Instead of such case by case scrutiny one accepts the law on trust as binding."⁴

I will argue that Raz's service conception and his notion of comprehensiveness, if applied and accepted by typical legal systems, gives typical authorities and officials who make these two inconsistent claims less of a chance to be trustworthy than if they did not claim comprehensiveness and followed the service conception as well as the rest of Raz's theory. This is because the authorities and officials in question would be confused about the extent of their authority if they held both views, and so could not be trusted to do the right thing in the right way. This is because they themselves are not and cannot be to clear on what it means to do things in the right way. We must be very careful to understand what I am claiming here. I am not arguing that authorities are guaranteed to be free from mistakes if they do not accept the claim to comprehensiveness. Authorities and officials can always make mistakes because they are human, and perhaps this is a reason to cause some distrust amongst subjects. However, as I will argue, the authorities

⁴ Joseph Raz, "Facing Up: A Reply" (1989) 62 Southern California Law Review. 1153-236 at 1197

and officials I am talking about would not be simply making mistakes. Rather, they would be confused about the extent of their authority. Due to this, in the second chapter, I will continue to argue that Raz's theory is impractical for use in real world situations for a second reason. It is impractical because he expects subjects to trust authorities and officials who are severely confused about the extent of their authority to exercise their authority in the right way.

However, in the second half of the second chapter, I will show how Raz can get himself out of the problems I have described. That is to say, his theory can, for the most part, stay intact and be applied in real world situations more easily if he simply modifies his theory in what I consider to be a relatively minor way. All he needs to do is abandon his view on the law's claim to comprehensiveness. If he does this, it leaves the door open for authorities and officials to accept the independence condition without suffering from confusion because they would not be claiming to possess authority to regulate all behaviors. If the authorities and officials in question do not claim to possess comprehensive authority, they could instead claim to only be able to regulate certain behaviors, namely, all behaviors which do not fall under the independence condition. In this case, they would not be making two incompatible claims and therefore would not necessarily suffer from confusion.

In order to understand why exactly I think this modification is a minor one, we need to understand why Raz attributes a claim to comprehensive authority to almost all legal systems. In his view, a claim to comprehensive authority is needed for a claim to supremacy. This, however, does not seem to be the case. I will argue that legal systems

can still be supreme without claiming to possess comprehensive authority. In order to understand my argument in general terms, consider the following example of parents and their children.

It seems to be the case that parents do not need to claim unlimited authority to regulate any and all of their children's behaviors in order to be a supreme guardian of their children. Parents have more authority over their children than do babysitters, teachers, crossing guards, and other individuals. These individuals may have a certain type of authority over the same children at certain times, but parents are still generally considered to have more authority than those individuals overall. It also seems to be the case that parents would be higher authorities and possess more authority over their children than would those other individuals even if the parents in question did not claim to regulate every single behavior their children do or could engage in. Simply put, parents can still possess supreme authority over their children even if they do not claim to possess authority to regulate all of their children's behavior. My reasoning for saying this is as follows. Supreme is officially defined as "highest in rank or authority" and "highest in degree or quality".⁵

There is absolutely nothing embedded in the definition of 'supreme' that suggests that in order to be supreme, the authority who is supreme, or claiming to be supreme, must in fact actually possess, or claim to possess, authority to regulate all the behaviors of their subordinate subjects. Rather, it seems to me that the authorities is question merely

⁵ Merriam-Webster Incorporated. *The Merriam-Webster Dictionary*. Springfield, Massachusetts. Merriam-Webster Incorporated, 1997. p728

need to possess more authority, or at least claim to possess more authority, to regulate more behaviors than other competing authorities who may possess or claim to possess authority over the same subordinate subjects.

When we apply this train of thought to legal systems, we see that legal systems can still claim to be supreme without claiming to regulate every single behavior in which their subjects do or may engage. Rather, they can still claim to be supreme so long as they claim more authority to regulate their subjects than other competing authorities. I will argue that this is a claim legal systems could make instead on comprehensiveness. If they make this claim, they can be supreme without claiming comprehensive authority and they can accept the service conception without necessarily suffering from confusion.

In summary, this thesis will examine the ramifications of applying Raz's current theory to legal systems in the real world. I will argue that when applied, his theory will cause serious confusion amongst authorities and officials. Furthermore, I will argue that his current theory ought to be abandoned in favor of a slightly modified version. If Raz were to adopt this modified version of his theory, then the problems I have illustrated in this thesis would no longer be an issue for him and his theory could be better applied to real world societies.

A Problem for Razian Authority

Joseph Raz's theory of authority comprises three theses about the nature and justification of authority. The first is the "normal justification thesis" (NJT). The NJT holds that "the normal way to establish that a person has legitimate 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."⁶ The NJT comes with a caveat that Raz refers to as the "independence condition."⁷ This caveat holds that there are certain matters with respect to which "it is more important that people should decide by themselves than that they should decide correctly," even if they risk acting contrary to reason by doing so.⁸ Raz claims that the independence condition is a part of his theory of authority for two reasons. The first reason is to take account of "the intrinsic desirability of people conducting their own life by their own lights."⁹ It is intrinsically desirable for subjects to make their own decisions unaided by authority in certain matters because, according to Raz, "[W]e are not fully ourselves if too many of our decisions are not taken by us, but by agents, automata, or superiors."¹⁰ The second reason behind the independence condition derives from "the need to cultivate the ability to be self-reliant, simply because often one has no one else to rely on."¹¹

⁶ Joseph Raz, *The Morality of Freedom* (Oxford; New York: Clarendon Press, 1986), at 53

⁷ Joseph Raz, "The Problem of Authority: Revisiting the Service Conception", at 1014

⁸ Joseph Raz, "Facing Up: A Reply" (1989) 62 Southern California Law Review. 1153-236 at 1180

⁹ Joseph Raz, "Facing Up: A Reply" (1989) 62 Southern California Law Review. 1153-236 at 1180

¹⁰ Raz, "The Problem of Authority: Revisiting the Service Conception", at 1016

¹¹ Ibid, at 1015

Raz also holds that typical legal systems make certain claims about the extent of their authority, one of which is a claim to comprehensiveness. According to this thesis, most legal systems “claim authority to regulate all forms of behaviour.”¹² Furthermore, comprehensiveness entails that almost all legal systems claim to possess legitimate authority to regulate all behaviors of *all subjects* in their subject community.¹³ However, just because the claim is made, it does not follow that the claim is necessarily true. Raz acknowledges that authority is sometimes “more limited than the authority governments claim for themselves”.¹⁴ It is important to note that according to Raz, while legal systems sometimes make insincere claims about the extent of their legitimate authority, they do not typically do so.¹⁵ Therefore, on Raz’s account, most legal systems sincerely claim that there is not a single behavior in their respective societies in which they do not possess legitimate authority to regulate.¹⁶

It is *very* important to note what it means for the law to make claims on Raz’s account, since it may seem awkward to say that legal systems can make claims, considering claims require claimants and legal systems are not people. Raz maintains that the law claims what the organs of government say that it does.¹⁷ As John Gardner observes, Raz “never suggests that law can perform any action that is autonomous, even

¹² Joseph Raz, *Practical Reason and Norms* (Princeton; London: Hutchinson, 1990) at 151.

¹³ Ibid

¹⁴ Raz, *The Morality of Freedom*, at 80

¹⁵ Joseph Raz, *Ethics in the Public Domain* (Oxford; New York: Clarendon Press, 1994), at 216-217

¹⁶ It should be noted why I use ‘most’ and ‘typical’ interchangeably in this paper. When Raz states that typical legal systems claim comprehensiveness, he states that the only legal systems he can think of which do not make this claim are international legal systems. Therefore, since most legal systems are not international ones, I think it’s safe to say Raz believes the vast majority of legal systems claim comprehensiveness. Raz, *Practical Reason and Norms* at 150

¹⁷ Raz, *The Morality of Freedom* at 70

logically autonomous, of the actions of law-applying officials. Law makes claims only insofar as law-applying officials make those very same claims at the very same time and place. The claims of law are identical to certain claims of its officials.”¹⁸ From this we can conclude that on Raz’s account, legal systems claim comprehensiveness when legal officials and authorities claim comprehensiveness and then attribute that claim to their legal system. If officials and authorities did not make this claim and then attribute it to their legal system, then their legal system would not make this claim.¹⁹ Furthermore, if officials and authorities make the claim to comprehensive authority and attribute the claim to their legal system, presumably they must believe the claim to be true in order to make the claim sincerely.²⁰ That is, they must believe it is true that they actually possess legitimate authority to regulate all forms of behavior of all subjects in order to sincerely claim that they possess such authority.

In this paper, I will argue that on Raz’s account, it is the case that for *almost all* societies one cares to consider, there is at least one behavior of one subject which falls under the independence condition. Since this is the case, it follows that *almost no* legal system can actually possess comprehensive authority if the requirements of Raz’s independence condition are accepted in those legal systems. This is because if those who

¹⁸John Gardner, “How Law Claims, What Law Claims,” (2008) Oxford Legal Studies Research Paper No. 44/2008. at 7

¹⁹ Later in the paper I talk about legal systems that claim comprehensiveness and attempt to accept the service conception. This means I am talking about officials and authorities who claim comprehensiveness and attempt to accept the service conception as the basis for their authority. Like Raz, I use the terms legal system, officials, and authorities *interchangeably* when talking about his notion of comprehensiveness.

²⁰ They could be wrong in their belief. They could mistakenly believe that they actually possess authority to regulate all forms of behavior when they actually do not possess such authority. However, if legal bodies sincerely claim to possess comprehensive authority, they must actually believe they possess comprehensive authority. If they did not believe that they possess comprehensive authority, they could not sincerely claim to possess such authority.

claim comprehensiveness decided to accept that there are behaviors in their respective societies which they may not legitimately regulate due to the independence condition, the possibility of actually possessing comprehensive authority is excluded.

Furthermore, I will argue that those who are purported to claim comprehensiveness cannot accept that there are behaviors which they do not possess legitimate authority to regulate due to the independence condition, without being required to accept, at one and the same time, the following two incompatible propositions: “We sincerely claim, and therefore sincerely believe, that we possess legitimate authority to regulate all forms of behavior of all subjects. At the same time, we accept, and therefore believe, that there are behaviors which we cannot legitimately regulate due to the independence condition.”

This thought contains two propositions about the extent of legitimate authority that are incompatible with one another. It does not make sense to say that those who claim comprehensiveness can simultaneously and sincerely claim to possess a certain type of authority while holding that they do not possess the same type of authority. If those who claim comprehensiveness *fully* understood what each proposition entails, then they would know that the two propositions are incompatible, and so they would not be able to sincerely hold both propositions to be compatible with one another.²¹ Therefore, if

²¹ Again, when I say legal systems believe, hold, asserts, or understand x , I mean that officials, authorities, and the other legal representatives which claim comprehensiveness, and then attribute that claim to their legal system, believe or understand x . For the sake of simplicity I say legal systems believe, claim, or understand x . I use legal system, officials, and authorities interchangeably in this discussion like Raz does in his discussion of comprehensiveness. Therefore, when I say that legal systems understand two propositions, I mean the following: Officials, authorities, and other legal representative understand two propositions. I only use anthropomorphic language here because Raz does. It is simply easier to say legal systems understand x than to go through the entire list of everybody who understands x .

both propositions were made simultaneously, it follows that those who made the propositions would suffer from confusion surrounding their beliefs about the extent of their legitimate authority. They would be confused about how much legitimate authority they believe they possess. It follows that they would be confused about how much legitimate authority they *actually do* possess.

If my arguments are correct, Raz's theory as a whole has a serious problem. His attribution of a sincere claim to comprehensiveness to most legal systems, in conjunction with his idea that there is at least one behavior which falls under the independence condition in almost all societies, ensures that all of the elements of his theory of authority cannot be fully held in most legal systems without confusion arising in those systems. This is because on Raz's account, if the independence condition was accepted in most systems, the two incompatible propositions stated above would be found in the systems in question. Due to this, on Raz's very own account, his theory of authority cannot be fully accepted in most legal systems without those who claim comprehensiveness in those systems being confused about the extent of their authority. This makes his theory of authority impractical. I argue that this is a determinant to his theory.²²

This paper proceeds in four parts. In the first section, I offer a more detailed summary of Raz's theory of authority. In the second section, I further explain comprehensiveness. In the third, I further argue that Raz's attribution of comprehensiveness to almost all legal systems ensures that almost all legal systems

²² When I say "those who claim comprehensiveness", it may sound like I believe that legal systems make the claim. I do not wish to argue that here. I use the phrase to denote "those who claim comprehensiveness under Raz's view". I am only talking about legal systems that function as Raz says.

cannot fully accept all of the elements of Raz's theory of authority without being confused about how much authority they actually possess. In the final section, I respond to one possible Razian objection to my argument.

I. Service Conception of Authority

Raz's service conception of authority begins with the understanding that, in order to be justifiable, authority must serve the subject.²³ On the other hand, legitimate authority is still understood as a right to rule, which the law, by its nature, must claim. The theory consists of two theses, each of which independently implies a third.²⁴ The first is the "dependence thesis", which holds that in order to be legitimate, authority must base its directives on reasons that already apply to the subjects of those directives.²⁵ The second is the normal justification thesis, which, as mentioned above, states that authority is normally justified where subjects do better at conforming to reason by following directives than by following their own understanding of the balance of reasons with regard to the matters directed.²⁶ To this thesis Raz adds the "independence condition," holding that the matters being directed by the authority cannot be one in which it is better for subjects to decide for themselves, unaided by authority, even if they risk acting contrary to reason.²⁷

²³ Joseph Raz, *The Morality of Freedom* (Oxford; New York: Clarendon Press, 1986), at 55-56.

²⁴ Joseph Raz, "Authority and Justification" (1985) 14 *Philosophy and Public Affairs* 3-29 at 6.

²⁵ Raz, *The Morality of Freedom*, at 47.

²⁶ Raz, "The Problem of Authority: Revisiting the Service Conception" (2006) 90 *Minnesota Law Review* 1003 at 1014; Raz, *The Morality of Freedom*, at 53.

²⁷ Raz, "The Problem of Authority: Revisiting the Service Conception", at 1014; Raz, "Facing Up: A Reply" (1989) 62 *Southern California Law Review* 1153-236 at 1180

The dependence and the normal justification theses are said to imply a third thesis: the “pre-emptive thesis.” This thesis holds that the fact of the authoritative directive is not simply one reason to be added to the balancing of reasons in determining how to act, but “should exclude and take the place of some of them.”²⁸ Specifically, the authoritative directive preempts “the reasons [against the directive] that the authority was meant to consider in issuing its directives....”²⁹

The dependence thesis implies the pre-emptive thesis in that the authority is already considering the reasons that apply to the subject in issuing its directive. Not to see the directive as pre-emptive would be to count the reasons behind the directed action twice: once in the balancing the subject would have been doing on her own, and again in importing the reason behind the authoritative directive.³⁰ The normal justification thesis implies the pre-emptive thesis in that, where the NJT applies, its success requires that the subject replace the background reasons against the directed action. The whole point of the NJT is that the subject does better at conforming to reason by following the authoritative directive than by acting on her own. If the authoritative directive does not preempt the background reasons leading to her own estimation of how to act, then the authority cannot do its job and get her to conform better to reason.³¹

As previously mentioned, the aspect of the service conception that is particularly important to this paper is the independence condition. We must tread carefully when discussing this feature of the service conception due to the fact that there is significant

²⁸ Raz, *The Morality of Freedom*, at 46; Raz, "The Problem of Authority: Revisiting the Service Conception", at 1019.

²⁹ Raz, "The Problem of Authority: Revisiting the Service Conception", at 1019.

³⁰ Raz, *The Morality of Freedom*, at 58.

³¹ Ibid; Raz, "The Problem of Authority: Revisiting the Service Conception", at 1019.

mystery surrounding it. While Raz maintains that the independence condition is an important aspect of his service conception, and that there is “a need for a substantive account of this category”, he has not yet fully offered such an account.³² Rather, Raz merely offers a few examples of certain matters in which it is sometimes better for subjects to make their own decisions unaided by legal authorities: marriage, the choosing of friends, and the decision of whether or not to undergo certain types of medical treatment.³³ While marriage, the choosing of friends, and certain decisions surrounding medical treatment are behaviors in which subjects ought to make their own decisions unaided by authority in certain societies, or perhaps nearly all societies, Raz is careful to say that these matters *may* fall under the independence condition. He is not committed to saying that the matters in question *actually do* fall under the independence condition in all societies at all times. Since Raz says certain behaviors only *may* fall under the independence condition, we can assume that different behaviors can fall under the independence condition in different societies, and at different times within the same society. This assumption seems to follow from his idea that the law cannot make absolute pre-commitments. The law cannot make such commitments because an absolute pre-commitment “would mean that the commitment is to be adhered to however much circumstances change, whether or not one changes one’s mind, and whether or not one realizes that one made a mistake in making the commitment. Arguably, no valid

³² Joseph Raz, *Introduction* in Joseph Raz (ed.), *Authority*, (New York: New York University Press, 1990), at 6

³³ Raz, "The Problem of Authority: Revisiting the Service Conception", at 1016. Raz, *The Morality of Freedom*, at 47

commitment can be absolute.”³⁴ Therefore, it seems that Raz does not absolutely commit to saying that specific behaviors fall under the independence condition in all societies at all times because societies are different from one another and situations can change in any given society over time. Therefore, on his own account, what falls under the independence condition at certain times in certain societies could very well *not* fall under the independence condition in those societies at other times. Behaviors that are better left decided by subjects, unaided by authorities, at certain times could be better off directed by authorities at other times.

Even though on Raz’s account different behaviors fall under the independence condition in different societies at different times, it would be *deeply* implausible to suggest Raz believes that there are many societies in which there is not even a single behavior that actually does fall under the independence condition. This is due to the fact that he claims one purpose of the independence condition is to take account of “the intrinsic desirability of people conducting their own life by their own lights” in certain matters.³⁵ Since Raz holds that this desirability is intrinsic, it is *highly* likely that he thinks this desirability is found in *almost all* societies, if not all societies.³⁶ It follows that under Raz’s account, there is at least one behavior which actually does fall under the independence condition for at least one subject in at least almost all societies. While it is not perfectly clear what behaviors Raz believes fall under the independence condition in each and every society, he seems to suggest that certain behaviors, such as the choosing

³⁴ Joseph Raz, “Reasoning with Rules”, *Current Legal Problems*, Vol. 54, 2001 at 15.

³⁵ *Ibid*, fn.2

³⁶ The word intrinsic certainly seems to indicate that this desirability exists in every society. However, that is a stronger claim that I do not wish to attribute to Raz in this paper.

of friends and marriage are things that fall under the independence condition in almost all societies.

Since it is likely that on Raz's account there are behaviors which fall under the independence condition in almost all societies, it follows that the legal systems, officials, and authorities in almost all societies could not possibly possess comprehensive legitimate authority to regulate all behaviors of all subjects in almost all societies. I briefly discussed why this is a problem earlier in this paper and I will continue my argument later in this paper. First, however, a more detailed description of law's claim to comprehensiveness is needed.

II. What the Law Claims

As mentioned above, one claim that Raz attributes to most legal systems is a claim to comprehensiveness. According to Raz, it is entailed by this claim that most legal systems claim to possess legitimate authority to regulate all forms of behavior of all subjects in the communities in which they govern.³⁷ Comprehensiveness does not entail that legal systems which make the claim necessarily *do* regulate all forms of behavior. On Raz's account, comprehensiveness entails that legal systems merely claim to possess legitimate authority *to be able to* regulate all behaviors. That is, legal systems either "contain norms which regulate it [behaviors], or norms conferring power to enact norms that if enacted, would regulate it."³⁸ Furthermore, legal systems can regulate behaviors in

³⁷Raz, *Practical Reason and Norms* at 150

³⁸Raz, *Practical Reason and Norms* at 151

one way by permitting them. It follows that liberties granted by things such as constitutional provisions are regulated in one way by being permitted.³⁹

For the purposes of this paper, it is *extremely* important to reiterate how legal systems make claims on Raz's account. Nowhere does he state that legal systems can claim comprehensiveness all by themselves. Rather, he maintains that in order for any legal system to claim comprehensiveness, legal officials, authorities, and other legal representatives must claim comprehensiveness and then attribute that claim to their legal system. When Raz talks about the claims of law, he is quick to point out that he uses the terms state, government, the law, legal system, official, and authority interchangeably.⁴⁰ Since Raz attributes the claim to comprehensiveness to most legal systems, it follows that most legal systems have officials and authorities which claim comprehensiveness and then attribute that claim to their legal system. Therefore, on Raz's account it is the case that there are officials and authorities in almost all legal systems which could not accept that they do not possess authority to regulate due to the independence condition without being confused. This is because the officials and authorities in question sincerely claim, and therefore believe, that they possess legitimate authority to regulate all forms of behavior.

It is clear that since Raz believes that most legal systems claim comprehensiveness, most legal systems have legal officials and authorities which claim to possess authority to regulate all forms of all subjects within their community. It follows that if we understand Raz as holding the extremely plausible view that in almost

³⁹Ibid

⁴⁰Raz, *The Morality of Freedom*, at 70-72

all societies, if not all societies, there is at least one behavior in which at least a single subject ought to make his own decisions unaided by authority due to the independence condition, then the service conception is inadequate to gain and maintain the full comprehensive authority that Raz maintains is claimed by legal systems, officials, and authorities in most societies. In the next section, I will continue my argument that if those who claim comprehensiveness try to use the service conception to justify their authority, they would normally suffer from one of two types of confusion.

III. Two Types of Confusion

As mentioned above, those who sincerely claim comprehensiveness could not accept that there are areas over which they do not possess legitimate authority to regulate due to the independence condition without being confused. I will discuss two types of confusion that may be experienced in legal systems if those who are said to sincerely claim comprehensiveness actually do make the claim and then attempt to accept that there are behaviors which they do not have legitimate authority to regulate due to the independence condition.⁴¹

The first type of confusion entails confusion about what is required by the independence condition. Imagine any legal system that sincerely claims to possess authority to regulate all behaviors of all subjects that is located in a society where, according to Raz, there are behaviors which fall under the independence condition. Now imagine that the independence condition is accepted in the legal system. Even though the legal system still claims to possess legitimate authority to regulate all forms of behavior,

⁴¹ While they *may* experience either one of these two types of confusion, they *will* experience at least one type.

that claim would be false. In a case like this, one reason that those who claim comprehensiveness could still sincerely claim comprehensiveness to be true is if they were confused about the requirements of the independence condition. If they did not understand that accepting the independence condition entails that they do not possess authority to regulate certain behaviors in their society, they could still sincerely claim comprehensiveness. In this case, even if though those who claim comprehensiveness accept to abide by the independence condition, they would be confused about what it entails. If they fully understood the independence condition, they could not possibly sincerely believe to possess comprehensive authority. Simply put, if any legal system, official, authority, or any other legal representative in any society where it is believed that even a single behavior falls under the independence condition found itself sincerely believing to possess comprehensiveness authority while simultaneously accepting the independence condition, that legal body could be confused about the actual requirements of the independence condition.

Since it is *highly* likely that on Raz's account there is at least one behavior which is better off decided by at least some subjects unaided by authority in most societies, it follows that if those who claim comprehensiveness actually do accept the service conception are in any society where it is believed that there is at least one behavior that falls under the independence condition, they cannot legitimately regulate at least one behavior. This is because a part of their accepted theory of authority simply excludes the possibility of possessing authority to regulate all behaviors. If they sincerely claim they possess authority to regulate all forms of behavior of all subjects when their theory of

authority explicitly prohibits them from having this type of authority, they would be accepting the following two incompatible propositions: “We sincerely believe we possess authority to regulate x , but our theory of authority prevents us from possessing authority to regulate x . In other words, we sincerely believe to possess authority to x , but we do not and cannot possess authority to x .” Clearly there is confusion here. If this were to happen, those who make the two propositions would not understand what type of authority they actually possess, and so they would be confused about how much authority their theory of authority does and can grant them.

The second type of confusion involves confusion about what is entailed by comprehensiveness. If those who claim comprehensiveness accept the independence condition and are located in societies in which there is at least one behavior which falls under the independence condition for at least one subject, and *fully understand* what the independence condition entails, they cannot sincerely claim comprehensiveness unless they are confused about what is entailed by the claim. This is because they would be accepting the two following incompatible propositions: We sincerely claim to possess authority of type x , but we also understand that we do not and cannot possess authority of type x .

If these propositions were made, those who make them would not be able to sincerely claim, and therefore sincerely believe, to possess authority of type x if they knew that they do not and cannot possess authority of type x . It follows from this that if they sincerely claim authority of type x , they could be confused and think they actually possess authority of type x . If those who claim comprehensiveness accept and understand

that there is at least one behavior which falls under the independence condition for at least one subject, and *fully understand* that they do not and cannot possess legitimate authority to regulate those matters, it follows that they cannot sincerely claim comprehensiveness if they understand what the claim entails. They could be confused and think that comprehensiveness does not entail a claim to possess authority to regulate all behaviors.⁴² In this case, they could sincerely believe the claim to be true because they do not understand its requirements and so they could think the claim meshes with the independence condition.

In the end, any and every legal system, official, or authority that claims comprehensiveness in any society where behaviors fall under the independence condition does not and cannot possess full comprehensive authority, if they accept the independence condition.⁴³ If those who are purported to sincerely claim comprehensiveness actually do make the claim while at least one behavior falls under the independence condition in their respective societies, they would necessarily suffer from confusion if they attempted to accept and understand the extent their authority via the service conception. On one hand, they could suffer from confusion about their normative theory of authority if they did not understand that at least one behavior falls under the independence condition for at least one subject. On the other hand, if they understood that there are behaviors that fall under the independence condition for certain subjects, they

⁴² There could be other reasons that could lead to their confusion, I only offer one.

⁴³ That is, any society where Raz believes behaviors fall under the independence condition. Whether his belief in the independence condition is justified is not something I wish to argue in this paper. Rather, I merely am claiming that societies in which he *believes* behaviors to fall under the independence condition

could no longer sincerely claim comprehensiveness without being confused about what is entailed by the claim.

Since Raz believes that there are behaviors which fall under the independence condition in at least almost all societies and also believes that most legal systems claim comprehensiveness, it follows that under his own view there would be confusion about the extent of authority in most legal systems *if* those who claim comprehensiveness in those systems actually attempted to accept and understand his theory in *all its details*. Therefore, for Raz to suggest that the service conception is how authorities normally gain and maintain their legitimacy is impractical under his view. This is because on his account, accepting the requirements of service conception would cause deep confusion in most legal systems.

In fact, Raz himself may actually agree that claiming comprehensiveness while accepting the independence condition in societies where it applies would in fact cause deep confusion amongst authorities and officials. There is evidence in his work, which while unclear, might suggest this. In the next section, I will briefly discuss the aspect of his work in question, and argue that it could be interpreted to support my claims.

IV. Service Conception: Normative and Conceptual

Thus far, I have talked about the service conception as a normative theory, and it certainly is normative. However, Raz could be interpreted as arguing that the service conception is a conceptual thesis as well as well as a normative one. Consider that Raz says the following:

“Three theses were presented as part of an explanation of the concept of authority. They are supposed to advance our understanding of the concept by showing how authoritative

action plays a special role in people's practical reasoning. But the theses are also normative ones. They instruct people how to take binding directives. The service conception is a normative doctrine about the conditions under which authority is legitimate and the manner in which authorities should conduct themselves. Is that not a confusion of conceptual analysis and normative argument? The answer is that there is interdependence between conceptual and normative argument.”⁴⁴

Here, we see that Raz seems to suggest that the service conception is not only normative, but also, partly at least, conceptual. He also suggests that there is interdependence between the conceptual and normative in this case. Why is there interdependence? This is because, according to Raz, a legal institution, which presumably includes authorities and officials, are central in structures of authority. Raz states that “their claims and conceptions are formed by and contribute to our concept of authority. It[the service conception] is what it is in part as a result of the claims and conceptions of legal institutions. This answer applies where the legal institutions themselves employ the concept of authority.”⁴⁵ So, we see here that the service conception is partly conceptual because it is formed by concepts that those who employ the service conception (i.e. authorities and officials) hold and also conceptual claims (presumably this includes comprehensiveness) that they make. Therefore, there is interdependence between normative theses on authority and conceptual claims because the former is formed by the latter and vice versa.

What is confusing here is that if authorities and officials employ a certain normative theory of authority, such as the service conception, and that theory is formed by their claims about authority and vice versa, how can their normative theory of

⁴⁴ Joseph Raz, "Authority and Justification" (1985) 14 *Philosophy and Public Affairs* 3-29 at 27

⁴⁵ Joseph Raz, *Ethics In The Public Domain* (Oxford; New York: Clarendon Press, 1986), at

authority be inconsistent, or even worse, incompatible with their claims? If the two are interdependent upon one another, how can one be different from the other? Raz seems to rule out the possibility that the two can be inconsistent, he seems to say that it cannot happen. He clearly states the service conception *is what it is* due to the claims of legal institutions which include authorities and officials, and so the service conception cannot be different. He doesn't explain in depth why the two cannot be different; he just acts as if it is *prima facie* true that the two cannot be different.

However, clearly it is the case that if authorities and officials claim comprehensiveness and accept the service conception their theory of authority is different and inconsistent with their concepts and claims. This is strange because Raz himself seems to say that this would not make any sense. It seems to be the case that the only way the authorities and officials could ever think that the service conception is formed by the claim to comprehensiveness is if they actually believe the two are compatible with one another. In this case, it seems to me that they would be confused if they think this, and Raz might actually agree. Consider that he says the following: "Why cannot legal officials and institutions be conceptually confused? They (authorities and officials) can be occasionally they cannot be systematically confused."⁴⁶ Why does Raz think this? The answer has actually been stated above. He says that we can tell that authorities and officials are not and cannot be conceptually confused about their theory of authority because "[F]or given the centrality of legal institutions in our structures of authority, their claims and conceptions are formed by and contribute to our concept of authority. It is

⁴⁶ Joseph Raz, *Ethics In The Public Domain* (Oxford; New York: Clarendon Press, 1986), at 217

what it is in part as a result of the claims and conceptions of legal institutions.”⁴⁷

Therefore, according to Raz, it seems to be the case that legal authorities are not confused about their theory of authority because it matches up with their conceptual claims and conceptions about authority. Therefore, one way to read Raz here is as him saying that if the claims of authorities and officials do not match up with their theory of authority, then the authorities and officials in question are systematically confused. In the case of authorities and officials in societies he deems typical, when those authorities and officials accept the independence condition, their theory of authority simply does not match up with their claims about authority and so would be systematically confused. Therefore, it could be the case that Raz’s work actually implies my argument that if authorities and officials accept the service conception and comprehensiveness, they could end up being confused because their theory or authority is inconsistent with their claims about authority.

I would like to point out that I am not completely sure I am reading Raz correctly. This is because he is not overly clear on this issue, and perhaps my reading is controversial and not adequately charitable. However, it certainly seems as though my reading is plausible and even if I am wrong in stating that Raz himself is committed to the view that the authorities and officials I have been talking about would be confused, it remains the case that they would still be confused for the reasons I mentioned in the previous section.

⁴⁷ Joseph Raz, *Ethics In The Public Domain* (Oxford; New York: Clarendon Press, 1986), at 217

None of my claims are uncontroversial. Several objections can be anticipated. For example, it could be said that if authorities and officials found themselves in the position I have described, they are merely mistaken about the extent of their authority rather than being confused as I have argued. If the authorities and officials are merely mistaken, then perhaps the problems I have raised are not serious problems for Raz at all. After all, he is willing to admit authorities and officials do make mistakes about the extent of their authority, and besides, no theory can guarantee that humans will not make mistakes, so perhaps Raz's theory isn't any different than any other theory in this respect. In the next section, I will respond to this claim. First, I will show that authorities and officials which found themselves in the position I have described would be confused as opposed to merely mistaken. I will then show that even if I am wrong in using the word confused, there would still be a very serious flaw in the understanding of any authority or official who tried to adhere to the service conception while claiming to possess comprehensive authority in any typical Razian society, and if the flaw is more than merely mistake about the extent of authority that one may find in authorities and officials which adopted some other theory. My point here will be that while someone might disagree with my word choice, there is still a very serious problem with Raz's theory as a practical matter when applied in real world situations no matter what word you use, and it is a more serious problem than similar problems found in other theories.

V. Confused or Mistaken?

In order to understand why authorities and officials that found themselves in the position I have described are making a significant error, we must recall what exactly the

authorities and officials in question would be stating: “we sincerely claim, and therefore sincerely believe, that we possess legitimate authority to regulate all forms of behavior of all subjects. At the same time, we accept, and therefore believe, that there are behaviors which we cannot legitimately regulate due to the independence condition.” It is also important to remember that the authorities and officials would not be following or have access to any theory other than that of Raz. I am examining how authorities and officials followed his theory, and his theory alone, in real world situations that Raz deems typical. If they changed one or both of these propositions, they are no longer typical Razian authorities, and so are no longer the authorities and officials I wish to discuss.

To better understand why this is confusion as opposed to a mistake, let’s contrast the above proposition to another statement that authorities could make: we think the appropriate rate to tax corporations is 40 percent. The authorities in question could very well be mistaken. The appropriate rate at which to tax corporations could be 30 percent or 50 percent. They are mistaken that the appropriate rate is 40 percent, but they are not necessarily confused. This is because they can still understand the claim. They can understand what they are claiming and why they think the tax rate ought to be 40 percent. However, let’s say they added a second part to their proposition about tax rates: we think the appropriate rate to tax corporations is 40 percent, but we do not think the appropriate rate to tax corporations is 40 percent.

It seems to me that this proposition in its new form is very different from its original form. In the first one, they may be wrong about the appropriate rate to tax corporations, but at least they are not contradicting themselves. However, when they say

they believe 40 percent is appropriate, but 40 percent is not appropriate, they are contradicting themselves. Clearly they do not even know what they believe, and this is the difference. When they merely claim the tax rate ought to be 40 percent, they could be wrong, but at least they know what they believe. On the other hand, when they say “we think the appropriate rate to tax corporations is 40 percent, but we do not think the appropriate rate to tax corporations is 40 percent”, they are not even sure of what they believe. Let’s imagine the thought process in this situation. When trying to determine what the tax rate ought to be they are basically saying: “What should the tax rate be? We think it should be 40 percent, but we also believe it should not be 40 percent. We really do not know what we believe in this case.” The answer they come up with in this example cannot be a mistake, like the answer in the first example, because they do not really have an answer. Rather, they are *confused* about what the answer ought to be. They can only be mistaken about their belief if they actually have a belief. In the second example, they really do not have a belief, at least not in any serious sense. Rather, they are trying to determine their belief and are confused about what their belief ought to be.

This train of thought can be applied to the problem with comprehensiveness and the service conception relatively easily. If they say “we sincerely claim, and therefore sincerely believe, that we possess legitimate authority to regulate all forms of behavior of all subjects. At the same time, we accept, and therefore believe, that there are behaviors which we cannot legitimately regulate due to the independence condition.” They do not have an answer to the question “how much authority do we possess”, and so cannot be

mistaken about that answer. They cannot be mistaken about how much authority they possess because they do not know how much authority they possess.

However, let's say I am wrong and the correct term is not "confused". It seems here that no matter what you call this problem it is still a serious problem. No matter whether you want to say that the authorities and officials in this situation are mistaken, confused, perplexed, or bewildered about the extent of their authority, there is still a serious error here. They do not understand how much authority they possess and so are seriously lacking in their thought process.

Another objection can be anticipated. The objection has two parts as follows. No theory can guarantee that authorities and officials will always be completely sure of how much authority they possess, and so perhaps Raz's theory is no different than any other in this regard. Even if the authorities and officials were not unsure about the extent of their authority due to the independence condition or comprehensiveness, they could be unsure due to some other factor. In other words, there is nothing unique in Raz's theory to suggest that authorities and officials are more likely to be confused about the extent of their authority than one would find in any other theory. Authorities and officials are human, so no matter what theory they adhere to, they still can make errors. Furthermore, even if this problem is unique to Raz's theory, is it as serious as I claim? That is to say, even if this is a problem and it does imply serious confusion amongst authorities and officials, is the confusion really as serious as I claim it is, or is it just a minor defect in Raz's theory? In the next section, I will respond to these objections.

VI. A Unique Problem

The first part of the objection can be refuted relatively easily. While it may be true that other theories may lead to confusion amongst authorities and officials about the extent of their authority, does not let Raz off the hook. Just because other theories might have problems of their own, this does not mean that Raz's should be preferred. There is at least one other theory which is less likely to lead to confusion amongst authorities and officials. This theory is Raz's without the claim to comprehensive authority. If authorities and officials do not claim comprehensiveness, they can accept the service conception without making the confused claim I have been talking about. While they could be confused for some other reason, there would be one less possible cause for confusion. It follows that authorities and officials who follow Raz's theory in its current form are more likely to be confused than if they followed a modified Razian theory, because there is one more thing in Raz's current theory that would cause them confusion. The fewer the numbers of things that could cause confusion, the less likely they are to be confused. It follows that abandoning one cause for confusion (comprehensiveness) accomplishes this goal.

The second part of this objection is harder to refute. Before any refutation can be offered, the objections need to be described further. The details of the objection are as follows: there are lots of different types and degrees of error that a government/legal system might make. Some of these might be conceptual, others normative, and all comes in different degrees. Therefore, can the types of possible confusion I have described really be considered as 'serious'? After all, I have mentioned that if there is at least one

behavior that falls under the independence condition in any given society, any legal system that claims to possess comprehensive authority while accepting the independence condition would have law-applying officials that are seriously confused about the extent of their authority. Can it be said that any authority or official legal authority which claims comprehensive authority in a society in which *one* behavior on the part of *one* person is covered by the independence condition can be said to be seriously confused? After all, they are only wrong about one behavior of one subject. Perhaps getting something like this wrong is not that serious of a problem since they are only making a single error.

In order to refute this objection, we need to go back and recall the two types of general confusion I have outlined in this paper. Let us consider them one at a time in order to understand why each one would lead to serious confusion. The first type of confusion I outlined entails confusion about what is required by the independence condition. Here, we must think of a legal system that sincerely claims to possess authority to regulate all behaviors of all subjects that is located in a society where, according to Raz, there are behaviors which fall under the independence condition. I am also supposing that the authorities and officials in these societies actually accept the service conception and the independence condition. Even though the legal system in question still claims to possess legitimate authority to regulate all forms of behavior, that claim would be false. In a case like this, one reason that those who claim comprehensiveness could still sincerely claim comprehensiveness to be true is if they were confused about the requirements of the independence condition. If they did not understand that accepting the independence condition entails that they do not possess

authority to regulate certain behaviors in their society, they could still sincerely claim comprehensiveness. In other words, if any legal system, official, authority, or any other legal representative in any society where it is believed that even a single behavior falls under the independence condition found itself sincerely believing to possess comprehensiveness authority while simultaneously accepting the independence condition, that legal body could be confused about the actual requirements of the independence condition.

Let us say that when they make the confused claim, there is only one behavior on the part of one person that falls under the independence condition. Can it be said that making this one mistake in this case is a serious problem? First, it does not seem to be the case that the numbers of behaviors that fall under the independence condition are of great importance to my claims, nor do they hurt my argument. This is because even if the authorities and officials in question are only wrong about one behavior, they are still claiming to sincerely believe that there are not any behaviors that do not fall under the independence condition, when in fact there are such behaviors. How do they know they are only mistaken about a single behavior? They would not know, and this is the problem. They are not able to determine how many behaviors there are that fall under the independence condition or which ones those are, because they are confused about how much authority they possess. They sincerely believe that they possess authority to regulate all behaviors. Therefore, if they happen to let subjects have freedom in the one area that falls under the independence condition, it is not because they actually know what behaviors do and do not fall under the independence condition. Rather, they just happen

to get lucky in this case, and not regulate the behavior in question. When talking about this first type of the confusion, the number of behaviors that do or do not fall under the independence condition is not the issue. The problem is not that that they are merely mistaken about what behaviors fall under the independence condition. The problem is that they do not understand their theory of authority and are confused. Even if they happen to only be wrong about a single behavior that falls under the condition by chance, the fact does not change that they do not and cannot understand the independence condition. Not understanding and being confused by their theory of authority seems to be a significant problem, not a minor one.

Now that I have dealt with the first type of confusion, I will move on to the second. Recall that the second type of confusion involves confusion about what is entailed by comprehensiveness. If those who claim comprehensiveness accept the independence condition live in societies in which there is at least one behavior which falls under the independence condition for at least one subject, and *fully understand* what the independence condition entails, they cannot sincerely claim comprehensiveness unless they are confused about what is entailed by the claim. This is because they would be accepting the two following incompatible propositions: We sincerely claim to possess authority of type x , but we also understand that we do not and cannot possess authority of type x . If these propositions are made, those who make them would not be able to sincerely claim, and therefore sincerely believe, to possess authority of type x if they knew that they did not and cannot possess authority of type x . It follows from this that if they sincerely claim authority of type x , they could be confused and think they actually

possess authority of type x . If those who claim comprehensiveness accept and understand that there is at least one behavior which falls under the independence condition for at least one subject, and *fully understand* that they do not and cannot possess legitimate authority to regulate those matters, it follows that they cannot sincerely claim comprehensiveness if they understand what the claim entails. They could be confused and think that comprehensiveness does not entail a claim to possess authority to regulate all behaviors. In this case, they could sincerely believe the claim to be true because they do not understand its requirements and so they could think the claim meshes with the independence condition.

In this case, they would understand the independence condition. Therefore, one might like to say that if authorities and officials did suffer from this type of confusion and only made one error about one behavior, then this not a serious problem. This is because since they understand the independence condition, they clearly cannot be confused about it, and so this error is simply a mistake. While this is all true, it does not change the fact that they are confused about the extent of their authority. They are claiming one type of authority while claiming another type of authority. Clearly they are not too sure about what type of authority they possess, and this not just a mistake. They flat out do not know how much authority they are claiming. They do not know that they are claiming authority to regulate all behaviors. They cannot be mistaken about how much authority they possess because they do not know how much authority they possess. Therefore, for the reasons I have stated above in relation to the corporate tax rate, they are confused, and confusion is a serious problem.

Now that I have refuted two objections, there is one more objection that must be refuted. The objection revolves around the Razian notion of permissions. I will conclude this chapter by responding to this objection in the next section.

VII. Objection from Permissions

I will conclude this paper by considering one more objection Raz may make to my argument. The objection is as follows. It may be said that perhaps I am confusing the terms ‘aid’ and ‘regulation’. The independence condition guarantees subjects cannot be legitimately *aided* in certain behaviors, while comprehensiveness entails the claim to possess authority to *regulate* all behaviors. Perhaps behaviors with which it is illegitimate for authority to aid subjects can still be legitimately regulated. If behaviors that fall under the independence condition can be regulated without subjects being aided in them, my argument falls apart. It falls apart because my argument depends on the fact that legal systems, officials, and authorities cannot fully understand comprehensive authority while accepting and understanding that the independence condition excludes that type of authority. If the independence condition does not stop legal systems, officials, and authorities from regulating behaviors which fall under the condition, then there is the possibility that those who claim comprehensiveness could actually possess comprehensive authority. If this is the case, they could understand comprehensiveness and the independence condition at the same time. They could actually be *correct* in believing to possess comprehensive authority while accepting and understanding that there are areas which fall under the independence condition. This is because the independence condition does nothing to prevent them from possessing authority to

regulate all forms of behavior. Rather, the independence condition only prevents them from having authority to *aid* subjects in all forms of behavior. If this were the case, those who claim comprehensiveness could understand both comprehensiveness and the service conception in coordination with one another.

In order for this objection to defeat my argument, it needs to be the case that behaviors can be regulated without those regulations having any type of influence over how subjects act in regards to the behaviors being directed. If the regulations in question have influence over how subjects decide in matters which fall under the independence condition, the condition is violated because subjects would be aided in their decision making in those matters. Some might say that some Razian permissions do not aid subjects in their decision making.⁴⁸ At the same time, Raz holds that behaviors can be regulated through permission. Since Raz allows for the possibility that certain permissions can regulate while not having any type of influence on the decision making of subjects, perhaps those who claim comprehensive authority can realize that authority through the service conception. This is precisely because behaviors excluded from aid via the independence condition can still be regulated via permissions without the independence condition being violated. Thus, Raz might say that the independence condition does nothing to prevent matters which fall under it from being regulated. They can still be regulated via permissions.

In order to refute this objection, the two main types of Razian permissions, strong and weak, need to be understood. According to Raz, a behavior is strongly permitted

⁴⁸ Raz, *Practical Reason and Norms* at 87-95

when the system doing the regulating contains an actual norm permitting the behavior in question, while a behavior is weakly permitted by the mere absence of a norm.⁴⁹ Liberties granted by a constitution can be said to be strongly permitted because they are permitted via a norm. An example of behavior that is weakly permitted is shoe eating. The federal legal system of the USA does not permit me to eat my shoe through a norm, nor do they prohibit me from doing so through a norm. They are simply silent on this matter. Therefore, I am permitted to eat my shoe because there is no norm against doing so, not because there is a norm which explicitly permits me to do so.

Raz could not use his conception of strong permissions as an objection to my claim. The permitted behaviors are permitted via norms which, according to Raz, have normative force. Raz explicitly says that even though strong permissions do not give subjects *direct* reasons to act, they do in fact have normative force and contribute to practical reasoning. In other words, according to Raz, strong permissions give reasons to disregard certain reasons to refrain from engaging in the permitted action, even though they do not ultimately guide behavior by giving conclusive reasons for action (subjects can freely choose if they should ultimately engage in the permitted action or not).⁵⁰ However, because of the fact that strong permissions *give* subjects' reasons to disregard some of their reasons for refraining from engaging in the permitted action, they can still help, or *aid* subjects in deciding whether or not to engage in the permitted action. For example, a strong permission like a constitutional amendment can provide explicit legal ground on which to stand when someone tries to prevent me from engaging in a

⁴⁹ Ibid

⁵⁰ Raz, *Practical Reason and Norms* at 87-95

permitted activity. Take free speech as an example. By giving me the right to speak freely, the legal system of the USA allows me to speak for what I judge to be the right reasons. It does so by expressly forbidding anyone- the legal system included - from stopping me from speaking freely. It gives me an explicit legal ground upon which to stand in launching a complaint if I feel my right to free speech was violated. The first amendment does not give me direct reasons to speak freely. However, it does give me reasons to disregard reasons for refraining in speaking freely. In some societies where free speech is not tolerated, some people may refrain from engaging in free speech for the reason that the government might execute them if they do speak freely. I can disregard the reason in question because the first amendment guarantees I will not be executed for speaking freely. The first amendment can aid me in decision making because I am more likely to decide to speak freely in the USA than I would be in a society where I could be executed for speaking freely. The amendment makes me more comfortable in speaking freely.

It follows that strong permissions do nothing to hurt my claim because they still are aids on Raz's account, and therefore, he cannot claim that strong permissions can legitimately regulate behaviors without subjects being aided in those behaviors. If legal systems and officials tried to regulate behaviors better decided by subjects unaided by authority via strong permission, the independence condition would still be violated because strong permissions aid subjects in those behaviors.

What about weak permissions? Raz says that weak permissions do not guide behavior, nor do they contribute anything to practical reasoning like their strong counterparts.⁵¹ For example, the federal government permits me to eat shoes because there is no norm against it. There is not a norm in the USA which explicitly permits me to eat my shoes. Since Raz believes that weak permissions do not aid subjects, could it be the case that on his account legal systems, officials, and authorities which claim comprehensive authority are in fact capable of possessing the authority they claim even if they accept and understand that there are behaviors which fall under the independence condition? Could the legal bodies in question simply regulate behaviors which fall under the independence condition via weak permissions without violating the same condition? Weak permissions do not aid subjects in decision making and so do not violate the independence condition on Raz's account.

However, Raz clearly states that weak permissions do not regulate.⁵² Therefore, he cannot say that legal bodies can realize full comprehensive authority, which entails the claim to possess authority to *regulate* all forms of behavior, without violating the independence condition, by regulating behaviors which fall under the condition by permitting them in the weak sense. The idea that legal systems can regulate those behaviors through weak permissions is false under Raz's view. Therefore, Raz cannot use his current account of weak permissions to argue that those who claim authority can realize the comprehensive authority they claim even if areas do fall under the independence condition in their respective societies by regulating behaviors which fall

⁵¹ Raz, *Practical Reason and Norms* at 90-91

⁵² Raz, *Practical Reason and Norms* at 150

under the independence condition via weak permissions. This is because weak permissions simply do not regulate on his account.

The objection that Razian permissions can prove my argument false is faulty in itself. Raz's account of strong permissions does not allow him to show that legal systems can actually possess comprehensive authority without violating the independence condition. This is because while strong permissions regulate, they also aid and therefore violate the independence condition. Raz's account of weak permissions cannot help those who claim comprehensiveness realize the claim to possess comprehensive authority, even those which fall under the independence condition, precisely because if the behaviors which fall under the independence condition are only permitted in the weak sense, those behaviors would still not be regulated. It follows that the legal bodies in question cannot say they are capable of possessing authority to regulate behaviors which fall under the independence condition in one way by permitting them weakly. The only Razian permissions that can help legal systems realize comprehensive authority are strong permissions. However, on Raz's account, strong permissions violate the independence condition. Therefore, Raz's views on permissions do nothing to render legal bodies capable of possessing the authority they claim while adhering to the service conception. It follows that my argument still stands.

VIII. Conclusion

According to Raz, most legal systems sincerely claim to possess authority to regulate all forms of behavior of all subjects in their respective communities. Furthermore, on his account, legal systems only claim comprehensiveness if officials and

authorities make the claim and then attribute the claim to their legal systems. At the same time, he holds that there are behaviors which fall under the independence condition in *at least* almost all societies. Due to this, on Raz's account, authorities and officials in most legal systems could not accept the independence condition without there being confusion within the legal systems in question. Raz's attribution of a sincere claim of comprehensiveness to most legal systems and his view that there is *at least* behavior which falls under the independence condition in almost all societies, ensures that there are officials and authorities in most legal systems which cannot accept all the elements of his theory of authority without being confused about how much authority they actually possess. The legal bodies in question would be confused about what is entailed by either the independence condition or comprehensiveness if they did accept the independence condition. Simply put, on Raz's account, officials and authorities in most legal systems cannot accept his theory of authority *in all its parts* without being confused. This makes his theory impractical for use by legal systems, officials, and authorities in the real world.

Political Authority, Comprehensiveness, and Obligation

In the first chapter, I talked about Raz's theory of political authority and comprehensiveness. In this chapter, I wish to discuss the relationship between comprehensiveness, the service conception, *and* Raz's views on obligation. I will discuss two problems for Raz's theory that stem from this relationship. First, I will offer a somewhat similar argument to the one I have offered in the first chapter, which will build upon my claim that accepting and applying Raz's theory in all its parts in real world situations would cause confusion amongst authorities and officials. I will show that legal systems and authorities which claim comprehensive authority and accept the independence condition would suffer from another type of confusion if they attempted to apply and adhere to Raz's theory in all its parts. This confusion would occur if authorities claim comprehensive authority, accept the service conception, *and also* adopt Raz's view on obligation. After I illustrate yet another type of confusion authorities would suffer from if they attempted to apply and accept Raz's theory in all its parts, it should be clear that in practice Raz's theory would cause more confusion amongst officials than is acceptable. The second argument I will offer in this chapter will show that applying Raz's theory in all its parts would not only cause problems for officials, but would also cause problems for subjects. Consider that Raz says the following:

“Subjects ought to show “an attitude of respect for law, which expresses itself in a belief that one has a duty to obey the law because it is our law, the law of our country, expresses identification with one's society and is, when such identification is valuable, self-vindicating, that is, that the people who have such an attitude have the duty they believe in... subjects ought to show respect for the law by expressing trust in the government of the society which passed the law. Trust shows one's confidence that one's society and its institutions work together, and that by and large they do so in the right way.....trust is expressed in holding oneself bound to obey the law because it is made by

the government, without submitting every law and regulation to careful scrutiny to see whether they are the best, or whether they are just, or whether one has reasons to obey or to disobey them. Instead of such case by case scrutiny one accepts the law on trust as binding.”⁵³

I will argue that Raz’s service conception and his notion of comprehensiveness, if applied and accepted by legal systems, gives typical authorities and officials who make these two inconsistent claims, less of a chance to be trustworthy than if they did not claim comprehensiveness while still following the service conception as well as the rest of Raz’s theory. This is because the authorities and officials in question would be confused about the extent of their authority if they claimed to possess comprehensive authority while accepting the service conception. We must be very careful to understand what I am claiming here. I am not arguing that authorities are guaranteed to be free from mistakes if they do not accept the comprehensiveness. Authorities and officials can always make mistakes because they are human, and perhaps this is a reason to cause some distrust amongst subjects. However, as I have stated in the first chapter, the authorities and officials I am talking about would not be simply making mistakes. Rather, they would be confused about the extent of their authority. Due to this, authorities and officials who are typically “Razian” in the sense I have described have a greater probability of issuing legitimate directives than is necessary if they function as Raz currently describes while accepting the service conception. This is because with Raz’s current theory, typical authorities and officials have no way to analyze if all of their directives and all potential directives are actually legitimate because they do not and cannot know how much authority they possess. Therefore, this is another reason why Raz’s theory in its current

⁵³ Joseph Raz, "Facing Up: A Reply" (1989) 62 Southern California Law Review. 1153-236 at 1197

form is impractical for use in the real world. When typical Razian authorities claim to possess comprehensive authority and accept the service conception, they would be confused about the extent of their authority. This would cause them to be less trustworthy than they would be if they were not confused about the extent of their authority. Since Raz puts such emphasis on the trustworthiness of the law, authorities and officials, I will argue that it is a problem that his theory necessarily implies authorities and officials who accept his theory would necessarily be untrustworthy. Furthermore, it seems to be the case that we ought to aim to construct a theory which gives authorities and official the best chance to be trustworthy, and this is something Raz seems to agree with. Simply put, in order to follow Raz's theory, authorities and officials need to accept the independence condition, claim to possess comprehensive authority, and his theory of obligation. My argument in this paper is that they cannot do all three without causing problems for themselves and for subjects.

It is important to note here what I mean when I say that authorities and officials who suffer from the confusion I have described have a greater probability of issuing illegitimate directives than is necessary. They have a greater probability of issuing illegitimate directives than they would if they were not confused about the extent of their authority. Furthermore, there is no reason it is necessary to construct a theory that condemns authorities and officials to be confused as Raz has done. I will argue that the law's claim to comprehensiveness is a needless addition to Raz's theory. If authorities and officials do not make the claim, they could follow the rest of his theory without suffering from the confusion I illustrate. Comprehensiveness adds an unnecessary cause

of confusion to any authority or official in typical Razian societies who accepts the service conception. If we modify Raz's theory by getting rid of comprehensiveness, his theory as a whole can be followed without the confusion I illustrate. Therefore, when I say typical Razian authorities and officials who accept the independence condition have a greater probability of issuing illegitimate directives than is necessary, I mean that it is unnecessary to attribute claims to authorities and officials that cause confusion and increase the chances of illegitimate directives being issued. I will show that Raz's theory in general can stand and be applied in a more practical and palatable manner if he rejects his views on comprehensiveness, which as I will show, is only a slight modification of his theory.

While it is true that authorities and officials who followed the modified version of Raz's theory which does not include comprehensiveness, could still issue illegitimate directives and therefore be untrustworthy for a variety of reasons (perhaps they are immoral or tricksters), no other part of his theory necessarily condemns typical authorities and officials in typical societies who accept the service conception to be untrustworthy quite like comprehensiveness. If they are immoral or tricksters, this is human error on their part; no theorist can guarantee that his theory, if followed, will absolutely prevent human error. However, theorists can form theories which do not necessarily cause confusion in typical cases. It follows from this that typical authorities and officials who follow the modified version of Raz's theory have a better opportunity to be trustworthy because there is nothing in the theory that necessarily forces them to be untrustworthy. It follows that if this confusion is eliminated from Raz's theory, it

increases the likelihood that authorities and officials *can* be more trustworthy if they follow the rest of his theory. It is not necessarily the case that they *will* be more trustworthy, but they have a much better opportunity to be trustworthy because there will not be anything that necessarily forces them to be untrustworthy. It seems that since Raz wants authorities and officials to be trustworthy, he should construct his theory in order to at least give typical authorities and officials a chance to be trustworthy, and removing comprehensiveness from his theory accomplishes that goal.

It is important to note why I say comprehensiveness forces authorities and officials to be untrustworthy. Recall from the passage above that Raz does say that subjects ought to trust the authorities and officials to which they are subject to issue legitimate directives when those legal entities by and large do the right thing in the right way. I will assume here that being totally confused is not the right way of doing things. Typical authorities and officials who follow the current version of Raz's theory are condemned to be confused, and so guaranteed to be prevented from doing things in the right way. Typical authorities and officials who follow the modified version of Raz's theory could still do things the wrong way, but at least nothing in their theory forces them to do so. The modified version of Raz's theory simply gives them a better opportunity to be trustworthy.

Perhaps in order to understand my claim, it is best to look at things from the subject's point of view. Under Raz's current theory, typical authorities and officials would be confused and are doomed to do things the wrong way. Subjects *could never* trust them based on the fact that they are doing things the right way because they cannot

do things the right way. On the other hand, the modified version of Raz's theory gives authorities and officials the opportunity to do things the right way. At least subjects would have a chance to trust them. Again, authorities and officials could still do things the wrong way and so subjects could not to trust them, but at least in the modified version of Raz's theory, subjects could have an opportunity to trust that their authorities and officials are doing things the right way. Simply put, if Raz's theory in current form is accepted and applied it will undermine his notion of trust in typical cases. The modified version of his theory simply gives authorities and officials the opportunity to be trustworthy.

Therefore, my argument in simplest terms is as follows. Raz's current theory is deficient when accepted and applied because it necessarily causes confusion amongst typical authorities and officials and also because it necessarily prevents authorities and officials from being trustworthy and from doing things the right way as Raz suggests they should. If Raz abandoned his view on comprehensiveness, as I think he should, authorities and officials could accept and follow the rest of his theory without the confusion I have illustrated and have a better opportunity to be trustworthy.

In order to prove my arguments, I will use an argument originally put forth by Ronald Dworkin. Dworkin is skeptical about the Razian notion of what the law claims. He offers several arguments against Raz, two of which I will be describing in this chapter. While I believe Raz can respond to Dworkin's criticisms, I also believe that Dworkin's train of thought can be used to formulate an argument to which Raz has no response. This argument in simplest terms is as follows. If Raz is correct in saying that

almost all legal systems claim comprehensiveness, he is committed to the view that the claim is almost always false. Due to this, subjects would have a difficult time trusting what the authorities to whom they are subject say about their authority and which of their directives count as legitimate, or at least it would be more difficult than it would be if authorities and officials did not make this false claim. Therefore, I will claim that Raz's notion of trust would be more palatable if he abandoned his view on comprehensiveness. This is because his theory as a whole would contain one less cause, and no necessary cause, for distrust of officials.

This chapter has two main goals. The first is to drive home the point that claiming comprehensiveness, while accepting the service conception, and adopting Raz's views on obligation, causes confusion amongst authorities and officials. The second goal is to show that comprehensiveness, the service conception, and Raz's theory of obligation also can cause problems for subjects and undermine his notion of trust, which is a part of his theory of obligation. The point here is that if Raz's theory in all its parts, which includes comprehensiveness, the service conception, and his theory of obligation were to be accepted and applied in a real society with a real legal system, one part of his theory is bound to be inconsistent with another part. It follows that as in the last chapter, I am trying to show that Raz's theory is totally impractical for use in the real world. I will begin the chapter by talking about another type of confusion that would be experienced by authorities and officials if they adopted Raz's theory. I will then offer Dworkin's argument, a Razian objection, and criticism of the Razian objection. Then I will further

illustrate why Raz's theory is a problem for subjects as well as officials. To conclude the chapter and this thesis, I will offer a solution to the problems I illustrate in this thesis.

I. The Service Conception, Comprehensiveness, and Obligation

As previously mentioned, the basic idea of Raz's theory of political authority is the Normal Justification Thesis (NJT), which holds that one person is a (practical) authority over another if the second will do better in complying with the reasons that apply to him if he defers to the judgment of the first person, than if he tries to act on his own judgment of what ought to be done.⁵⁴ According to Raz, political authority is simply a special case of practical authority thus understood. Political authority in its most central manifestations involves the government or one of its agents issuing a directive which *claims* to impose a moral obligation to obey. A directive of this kind is, for Raz, the central case of law. The normal way to prove that the claimed obligation actually exists is to show that NJT applies. If it does, the person or persons who fall within the scope of the directive have an obligation to obey the directive. If subjects have an obligation to obey each and every directive which the government issues, then they have a general obligation to obey the law. As this suggests and as Raz has himself stated, the service conception focuses on the "authoritative imposition of duties".⁵⁵ Raz holds that "all the other functions authorities may have are ultimately explained by reference to the imposition of duties."⁵⁶

⁵⁴ Joseph Raz, *The Morality of Freedom* (Oxford; New York: Clarendon Press, 1986), at 77-80

⁵⁵ Joseph Raz, *The Morality of Freedom* (Oxford; New York: Clarendon Press, 1986), at 44

⁵⁶ Ibid

Raz is skeptical about the existence of a general obligation to obey the law. He does not believe that there is a legal system in which the NJT can be shown to apply for every person and for every law which the system has generated. However, he does not deny that in reasonably just legal systems at least some people have an obligation to obey some laws just because they are laws. Here is where trust comes into play. Sometimes, says Raz, subjects ought to follow some laws because they are laws made by authorities which by and large do things in the right way and generally issue legitimate directives. Therefore, subjects ought to trust that any given law is legitimate and obey the law so long as the authorities to whom they are subject are trustworthy.

As is suggested above, Raz does not regard the legitimacy of political authority as an all-or-nothing matter. A government can have partial authority, both in the sense that only some of its laws are ever justified and in the sense that any given law can be justified for some people but not for others. As he writes, “the normal justification thesis invites a piecemeal approach to the authority of governments, which yields the conclusion that the extent of governmental authority varies from individual to individual to individual, and is more limited than the authority governments’ claim for themselves in the case of most people.”⁵⁷ Of course, Raz believes governments usually claim unlimited authority. Raz does not think this is a morally untenable situation because even governments which do not possess the authority they claim, or which only possess partial authority, can do a great deal of moral good.⁵⁸

⁵⁷ Joseph Raz, *The Morality of Freedom* (Oxford; New York: Clarendon Press, 1986), at 86

⁵⁸ Joseph Raz, *The Morality of Freedom* (Oxford; New York: Clarendon Press, 1986), at 77-86

Before going any further, it is important to discuss another dimension of Raz's theory of authority which I have not yet discussed. The dimension I have in mind is as follows. Even though, as a practical matter, Raz holds that almost no legal system possess the full authority that it claims, it must, according to Raz, be *capable* of possessing such authority. If this were not the case, then the officials and institutions which claim authority would be confused, and while they can occasionally be confused they cannot be confused systematically. This is because the claims and conceptions of officials "*are formed by and contribute to*" the concept of authority itself.⁵⁹ In a summarization of Raz's view on this issue, Stephen Perry points out the following:

"Because of the centrality of the concept of authority to the concept of law, those same claims by officials are formed by and contribute to the concept of law. If officials were as confused as they would have to be if they were wrong in thinking that the law is capable of having the full moral authority it claims, then the very idea of law would not make sense. Because the concepts of law and authority are used by officials to describe their own practice of claiming systematically and comprehensively to impose obligations on others, and because those same officials believe that they not only claim to impose obligations in this way but actually succeed in doing so, something would have gone seriously wrong with the concepts if there could not, in fact, be any such systematically obligating practice."⁶⁰

In order for a legal system to be capable of possessing the full authority that is claimed, it must, according to Raz, possess certain non-moral properties such as the property of communication.⁶¹ More importantly for the present purposes, Raz claims it must in principle be capable of possessing the moral property of comprehensively and systematically obligating in just the way that it claims to do.

⁵⁹Joseph Raz, *Ethics In The Public Domain* (Oxford; New York: Clarendon Press, 1986), at 201

⁶⁰ Stephen Perry, "Law and Obligation" 50 *The American Journal of Jurisprudence* 263-95 at 277

⁶¹Joseph Raz, *Ethics In The Public Domain* (Oxford; New York: Clarendon Press, 1986), at 199-204

Raz claims that the NJT can fulfill what I will call the ‘capability’ condition. Although the NJT never justifies all the obligations that the law claims to impose in practice, it shows that, in principle, those obligations are at least capable of being justified. If, implausibly, each and every person would happen to comply better with the reasons that apply to him if he were to obey each and every law on each and every occasion to which it applies, a general obligation to obey would exist. This is enough to show that officials are not confused in making the claims about their practice that they make, and this is so even though they are mistaken, at least to some degree, in making those claims. In principle they could be right, and this is enough to rescue the concept of law from confusion.

The important point for present purposes is that, according to Raz, the law makes a general claim that it is *always*, in *all* types of cases, more likely to get matters right than its subjects are. Of course, as Raz says, this claim is extremely unlikely to be correct as an empirical matter, but it is *conceivable* that it might be correct. If it were correct, then all law would be, according to Raz, obligatory in just the way that it claims to be.⁶²

I am skeptical that the NJT can handle the weight that Raz puts on it when he says it is adequate to fulfill the ‘capability condition’ in the case of *most* legal systems if those legal systems accept the service conception. Recall that it certainly seems to be the case that Raz believes there are matters which fall under the independence condition in most societies. Legal systems in these societies, which claim comprehensiveness, would have to claim that legitimate directives can be issued on any and all matters, and those

⁶² Joseph Raz, *Ethics In The Public Domain* (Oxford; New York: Clarendon Press, 1986), at 199-204

directives will create an obligation to obey if those directives pass the NJT. The NJT does not, however, give them the capability of issuing legitimate directives that create an obligation to obey over *all* matters, which would include matters that fall under the independence condition. The NJT is therefore not sufficient to fulfill the ‘capability condition’ in any society where there are matters that fall under the independence condition and where the service conception is accepted because it could never justify any claim that directives over *all* matters *could be* legitimately regulated, but rather, *only* matters which do not fall under the independence condition could be legitimately regulated. Therefore, in order to adhere to the service conception, legal systems and officials must hold that there are behaviors that they cannot regulate. It follows that any claim to be able to legitimately regulate all behaviors is false, and necessarily so. The service conception explicitly prohibits legal systems from having the authority they claim, and so it necessarily prevents legal systems from being able to discharge their claimed authority. The claimed authority in these societies is therefore not capable of being realized via the NJT.

Recall that the entire point of the independence condition is that subjects can make their own decisions in certain matters unaided by authority, even if they risk acting unreasonably. It follows that even if it were true that subjects would conform better to reason if they followed directives that direct over behaviors which fall under the independence condition, directives on those matters could *still* not be legitimized via the NJT. The entire point of the independence condition is to put a limit on the NJT. It ensures that subjects can have freedom and autonomy and be unaided by authorities in

certain areas even if authorities could help them conform to reason in those areas. It follows that any typical legal systems that accept the service conception in all its parts would not be capable of realizing a claim to comprehensive authority, nor a claim to be able to possess authority to issue obligatory directives over all behaviors via the NJT as Raz suggests. This is because the independence condition explicitly prevents the claimed authority from being realized via the NJT.

We must be very careful to understand which authorities and officials would not be able to realize their authority via the NJT. I am only talking about societies where legal systems claim comprehensive authority and where there are behaviors that, according to Raz, fall under the independence condition. Remember that it seems to be the case that Raz believes there are behaviors that fall under the independence condition in almost all societies. Therefore, if authorities in almost any society accept the service conception, they would not be able to realize any claim to comprehensive authority via the NJT due to the independence condition.

The NJT is only capable of realizing a claim to comprehensive authority in societies where nothing falls under the independence condition. While it is true that there could be societies where nothing falls under the independence condition, these are very few and far between if there are any such societies at all. Therefore, in the vast majority of cases, authorities could never realize their authority through the NJT if they accepted the service conception in its entirety. So while in some strange cases the NJT could be used to realize comprehensiveness authority, these cases are certainly the exceptions and

not the rule, and I only talking about the practical implications of applying Raz's theory, so I will not focus on the exceptions in this chapter.

On a final note on this point, recall something that Perry states:

“Because the concepts of law and authority are used by officials to describe their own practice of claiming systematically and comprehensively to impose obligations on others, and because those same officials believe that they not only claim to impose obligations in this way but actually succeed in doing so, something would have gone seriously wrong with the concepts if there could not, in fact, be any such systematically obligating practice.”

The only way for Raz's theory to avoid the problems Perry describes is to say that although the NJT never justifies all the obligations that the law claims to impose in practice, it shows that, in principle; those obligations are at least capable of being justified. The problem with this answer is that it does not take the independence condition into account. Let's imagine this situation from the perspective of the authorities and officials in question. They are sincerely claiming that they possess comprehensive authority. They are also claiming that if they issued directives over any and all behaviors that each and every directive would be legitimate *if* each and every one passed the NJT. Furthermore, if they did issue directives over all behaviors and each one passed the NJT, there would be a general obligation to obey. However, this is not true. Even if each and every person would happen to comply better with the reasons that apply to them if they were to obey each and every law on each and every occasion to which it applies, some of those laws would still be illegitimate because they violate the independence condition. Here we see that laws can technically pass the NJT and still be illegitimate. This is because while directives can pass the NJT, they can still be rendered illegitimate by the independence condition. In cases such as the ones I have described above, when

authorities try to determine how they can realize a claim to comprehensive authority and how they can create an obligation to obey any directive they care to issue, the answer is not the NJT. They would be confused about how exactly they are supposed to accomplish what they set out to do if all they have is Raz's theory. My point here is that Raz's service conception cannot do all the work Raz claims it can. It cannot realize all the claims Raz says are made by typical authorities in typical societies and this would cause confusion amongst authorities and officials because they have no way to realize their claims. It causes confusion by Raz's own admission because he says that they "are formed by and contribute to" the concept of authority itself.⁶³ If their claims contribute to the concept of authority itself and vice versa, how can their claims be so drastically different from their concept of authority? If authorities and officials are forming their concept of authority based on their claims, they clearly must be doing something seriously wrong to come up with a concept of authority that cannot possibly fulfill their claims. If their concept of authority is dependent on their claims and follows their claims, unless they are doing something wrong, their concept must follow and get their claims.

It should be clear by now that if legal systems make the claims Raz says they do, accept the independence condition, and theory of obligation, not only would the authorities and officials be confused about the extent of their authority, they would be confused about their practice of obligating. Legal systems would claim that they possess authority to regulate any behavior and that they could issue directives over any matter

⁶³Joseph Raz, *Ethics In The Public Domain* (Oxford; New York: Clarendon Press, 1986), at 201

that, if issued, would create an obligation to obey if they fulfilled the requirements of the NJT. However, this claim is wrong and not capable of being true when the service conception is accepted because the independence condition explicitly excludes legal systems from actually possessing the authority they claim. Even if directives that do pass the NJT are issued over matters that fall under the independence condition, those directives are still illegitimate and do not create an obligation to obey. It follows that since most legal systems, and therefore authorities and officials, claim comprehensiveness on Raz's view, his view excludes the possibility of legal systems, authorities, and officials from possessing the authority they claim in regard to comprehensiveness and obligation. Raz's view is therefore impractical for use in the real world for this reason as well as the other reasons I laid out in the first chapter. The authorities and officials would be confused for another reason as well. They would be confused about their practice of obligating.

It should also be clear at this point that attributing a claim to comprehensiveness can cause significant problems for authorities and officials who attempt to accept the service conception, and Raz's theory of obligation, in all its parts. A natural question to ask at this point is, if almost all legal systems make the claim to possess comprehensive authority as Raz suggests. If they do not, we can save law-applying officials from confusion if they attempt to accept and adhere to the service conception. One prominent theorist who doubts that legal systems make the claims that Raz says they do is Ronald Dworkin. In the next section, I will offer Dworkin's arguments followed by a Razian reply. It will be shown that the *only* way for Raz to reply to Dworkin, forces Raz to

undermine his own theory of obligation if it were applied in real life societies. Once this is shown, it will be clear that one part of Raz's theory is bound to be at tension with another part of his theory if his entire theory is found, applied and accepted by any given society one cares to consider. Showing this will lead perfectly into the last section, where I will argue that Raz is better off abandoning his view on comprehensiveness, as Dworkin suggests he should, in order to make his theory stronger, more accurate, and more palatable for application in real world societies.

II. Dworkin's Argument

Dworkin has two arguments against the Razian notion of comprehensiveness, one of which is of particular interest for this chapter. However, each of his arguments builds off the other, so even the one of relatively little importance to my arguments must be mentioned. First, as Dworkin notes, whatever sense is given to Raz's notion of 'claims', it must be consistent with Raz's thesis that claiming moral authority is not the same as having moral authority.⁶⁴ For Raz, a claim has to be capable of being true or false. That is already enough to show that Raz uses the word 'claim' advisedly, intending to invoke at least part of its literal meaning. It is not, for him, a *mere* figure of speech. On the other hand, argues Dworkin, Raz's talk of 'law's claims' must be *partly* a figure of speech. This is because a claim surely requires a claimant, and the law is not a person. This leads Dworkin to believe that we can read 'claims' literally only if we read the attribution of claims to law figuratively. Dworkin eventually backs off the claim because, as I noted in the last chapter, when Raz talks of 'claims' he seems to mean no more and no less than

⁶⁴ Ronald Dworkin, 'Thirty Years On', (2002) *Harvard Law Review* 115 at 1666

claims that authorities advance about the legal system of which they are authorities. This avoids the problem of personification of the law itself.

However, Raz faces a new problem, says Dworkin, and this is the problem that is important to this chapter. According to Dworkin not all authorities and officials make the claims that Raz ascribes to all law. Dworkin gives the example of Oliver Wendell Holmes. He points out that Holmes stated that the law is incapable of creating moral obligations. So he *could not* have believed that law is capable of having moral authority, which is a way of creating moral obligations. He *could not*, as a Justice of the Supreme Court, have joined in with the claims that Raz says law-applying officials must make for law. More fundamentally, says Dworkin, there is nothing that unites the ‘actual beliefs and attitudes’ of law-applying officials such that *any* uniform claim is made by them all alike and could be elliptically ascribed to law.⁶⁵

Raz himself never responded to Dworkin directly on this matter. One of the very few, and probably the best, Razian responses to Dworkin’s claims comes from John Gardner.⁶⁶ Gardner first points out that on Raz’s analysis, claiming that law has moral authority is consistent with believing that it does not. It is also consistent with having no morally favorable attitude towards law. It is consistent with regarding law as a joke or a racket or a scam. This is because, as well as being capable of being true or false, claims

⁶⁵ Ibid, at 1667

⁶⁶ John Gardner, “How Law Claims, What Law Claims”(2009) Oxford Legal Studies Research Paper No. 44/2008

are capable of being sincere or insincere.⁶⁷ For example, a charity worker and a confidence trickster may equally claim to be helping the poor. Perhaps neither of them actually helps the poor; perhaps both of them make a false claim. However, only one of them makes an *insincere* claim. The same distinctions may be drawn where the claims of officials are concerned. This aspect of Raz's theory leads Gardner to believe that it is no objection to Raz's view that Holmes doesn't believe that law ever creates moral obligations, or doesn't have a positive moral attitude towards any law. There is a possibility that Holmes insincerely claims that the law does create such obligations when he sits on the bench, but truly believes otherwise as he suggests in law journals. If asked why he makes insincere claims about obligations when he sits on the bench, he might simply say that is how he gets paid to talk, or that is what the government wants him to say, or some other reason that encourages him to make false claims while on the bench.⁶⁸ There could be many reasons why Holmes could have stated that the law creates a moral obligation while on the bench, but none of the reasons for making the claim commit him to actually believing the claim. Holmes still *could have* made the claims that Raz attributes to law-applying officials even if he did not believe them to be true. He simply could have made the claims insincerely.

There is a second reason to suggest Dworkin is wrong, says Gardner. Holmes *can* claim that the law creates moral obligations without even believing that this is what he is

⁶⁷ Raz, *Practical Reason and Norms* (London 1975), 147-8; Raz, 'Legal Validity' in his *The Authority of Law* (Oxford 1979), 146 at 154-7. John Gardner, "How Law Claims, What Law Claims"(2009) Oxford Legal Studies Research Paper No. 44/2008 at 4

⁶⁸ John Gardner, "How Law Claims, What Law Claims"(2009) Oxford Legal Studies Research Paper No. 44/2008

claiming, never mind whether he believes that what he is claiming is true. Even if sincere, he may be confused. People often claim things without realizing that they are claiming them, because they are not fully aware of the meaning of what they are saying or doing. Therefore, we do not need to necessarily believe that Holmes was insincere in order to admit that he made claims for law that were at odds with his beliefs about law (i.e. claims that attributed to law properties that Holmes believed law not to have).⁶⁹

Gardner is completely correct to point out that Raz's analysis leaves the option open that authorities and officials can make insincere claims about their authority. The key words in Gardner's argument are *could* and *can*. Gardner's main problem with Dworkin's argument seems to be the following. Dworkin states that since Holmes claimed that he did not believe in an obligation to obey in law journals, he *could not* have claimed otherwise while on the bench. Gardner points out that Holmes certainly *could have* claimed otherwise while on the bench, he just would have been confused or insincere while making the claim and really actually believed what he claimed in law journals.

However, while Gardner makes good points against Dworkin, he fails to see the ramifications of attributing false and confused claims to authorities and officials. In fact, this is something Raz overlooks as well. Raz states numerous times that the claims he attributes to all law and therefore to authorities and officials are often false.⁷⁰ If the way for Raz to circumvent Dworkin's objection is to attribute false and confused claims to

⁶⁹ John Gardner, "How Law Claims, What Law Claims"(2009) Oxford Legal Studies Research Paper No. 44/2008 at 4-5

⁷⁰ Joseph Raz, *The Morality of Freedom* (Oxford; New York: Clarendon Press, 1986), at 77-80

legal systems and officials, then there is another serious problem with Raz's theory. In the next section, I will illustrate this problem by responding to Gardner and therefore to Raz as well.

III. A Reply to Gardner and Raz

I believe Gardner places too much emphasis on insincere and confused claims when defending Raz from Dworkin. While he is successful in showing that Holmes and other officials *can* still make the claims Raz attributes to them even though they may not believe those claims to be true, he does not go a step further and look at the consequences of attributing confused false claims to the law, authorities, and officials. As I stated before, there are a limited number of reasons that authorities and officials could be making false claims. They are either confused, mistaken, or making the claims insincerely. If authorities and officials are confused, mistaken or insincere in their claims about the extent of their authority and therefore are confused, mistaken or insincere in their claims concerning what directives create an obligation to obey, there are problems for Raz's theory if it was actually applied in all its parts. Defending Raz from Dworkin this way leaves Raz in trouble.

Let's examine the consequences for Raz's theory as a whole if it is applied and officials are, insincerely, mistaken, and confused about the extent of their authority, and the claims they make. First, we have already ruled out that typical authorities and officials in typical Razian societies and officials who function the way Raz says they do and accept the service conception are merely mistaken or making the claims insincerely, so those two possibilities are ruled out. Therefore, the only reason for false claims about

authority in typical Razian societies where the service conception is accepted is confusion. Let's imagine Holmes was one of the authorities in question. Let's say he accepted the service conception and was located in a society where Raz believes matters do fall under the independence condition. He certainly *could* have claimed that the law creates moral obligations without even believing that this is what he is claiming. He could have been confused and not realized what he was claiming. Similarly, authorities and officials could be confused about the claim to comprehensiveness that Raz attributes to them. However, just because Holmes as well as other authorities and officials can make confused claims, that does not mean they should, especially if they are trying to be trustworthy. We certainly should not attribute false, confused claims if subjects are supposed to take any one of their directives as creating an obligation to obey based on trust if we can help it. There does not seem to be a good reason to suggest that subjects ought to take any particular directive as legitimate and creating an obligation to obey if those who issue the directives are severely confused about their authority, what it takes for directives to be legitimate, and therefore what directives do and would create an obligation to obey. Since Raz attributes the claim to comprehensiveness to all legal systems, and he believes there is at least one behavior in any society one cares to consider, any legal system that accepts the independence condition would have authorities and officials which are confused about the extent of their authority. Recall that the authorities I am talking about would make the following claim: We *sincerely* claim to possess comprehensiveness authority to legitimately regulate *any* form of behavior. At the same time, we claim to not possess authority to regulate any behavior

due to the independence condition. Again, since legal systems claim comprehensive authority *sincerely*, it seems to be the case that they must actually believe that claim to be true. If they did not believe the claim to be true, they could not make the claim sincerely. If they sincerely believe they possess a certain type of authority while simultaneously claiming they do not possess that authority, clearly something is wrong. It seems more unreasonable to suggest that subjects ought to trust authorities who are confused than it would be to suggest subjects ought to trust authorities who are not confused, and it certainly seems unreasonable to suggest subjects to trust authorities and officials who follow a theory that necessarily causes them confusion.

The authorities and officials would be confused about what behaviors they could legitimately regulate, and so would be confused about what directives would in fact create an obligation to obey. If the authorities and officials were as confused as this, there is no good reason to suggest they are doing things in the right way precisely because they do not have a clear understanding of their authority. If legal systems and officials do not have a clear understanding of their authority, or in cases I have outlined above, a severe misunderstanding of their authority, then there is no good reason for subjects to trust that the authorities to which they are subject are competent and will exercise their authority in the right way. This is because the authorities in question do not even know what the right way is.

Furthermore, let's imagine for a moment that authorities and officials are not making false claims out of confusion as I have illustrated above. If they are making false claims, but not out of confusion, they are making the claims insincerely, at least

according to Gardner and Raz. There does not seem to be a good reason to suggest that subjects ought to trust what authorities and officials say about the limits of their authority and what they can and cannot legitimately regulate if those authorities and officials are in the habit of making insincere claims about the limits of their authority, what they can and cannot legitimate regulate, and therefore which of their directives actually do create an obligation to obey.

Let's also assume that I am wrong and there is no tension between comprehensiveness and the independence condition. It is nevertheless the case that Raz states that the claim to comprehensiveness is usually false. Therefore, Raz himself would have to admit that most legal systems, and so the authorities and officials which represent them, are making false claims because they are confused or being insincere in their claims. It follows that it there is no good reason to suggest subjects should bind themselves to an obligation to obey any particular directive coming from authorities based on trust.

It is important to remember that Raz says the following. Subjects ought to show respect for the law by expressing trust in the government of the society which passed the law. Trust shows one's confidence that one's society and that its institutions work together and that by and large they do so in the right way. If authorities make confused claims or insincere claims, it does not seem to be the case that they are 'doing things in the right way'. What Raz suggests subjects are supposed to trust is that authorities are 'doing things in the right way'. Part of doing things the right way is to issue directives that are legitimate and actually do create an obligation to obey. If authorities are seriously

confused about what directives are or would be legitimate, they cannot do things in the right way because they are not wholly clear on how to do things the right way. That is, they are not completely certain what counts as a legitimate directive.

Simply, there does not seem to be a good reason to think that making insincere claims generally counts as 'doing things in the right way'. When subjects bind themselves to trust authorities in the manner Raz describes, they are trusting that the authorities will issue legitimate directives. There does not seem to be a good reason for subjects to trust that the directives of their authorities are legitimate when those authorities are in the habit of making insincere claims about what directives actually count as legitimate. It does not make sense to say subjects ought to believe that authorities will be truthful about which directives are legitimate and which are not when those authorities are in the habit of not being truthful in that regard.

What all this means is that if I am correct in stating that any society that has a legal system which claims comprehensiveness and accepts the independence condition, and where matters actually do fall under the independence condition, would have authorities and officials who are severely confused. It follows that this undermines Raz's view that subjects ought to bind themselves to obey any particular directive based on trust. Luckily for Raz, it is relatively easy to save his theory for the problems I have illustrated in this thesis. If he abandons his views on comprehensiveness, these problems will disappear. In the next section, I will argue that comprehensiveness is a needless addition to Raz's theory and the rest of his theory can stand without it.

IV. Raz without Comprehensiveness

Before beginning my argument about why comprehensiveness is a needless addition to Raz's theory, it needs to be understood that I will not argue that legal systems, authorities, and officials do not typically claim comprehensiveness, but rather, I will argue that there is no good reason to attribute a claim that is usually false to legal systems and therefore to the authorities and officials which represent them. I will explain the goal of comprehensiveness and why it is a part of Raz's theory. I will then show why comprehensiveness is unnecessary to reach the goal Raz sets out to achieve by attributing the claim to all law.

In order to understand law's claim to comprehensiveness, we must first understand law's claim to supremacy, which is another claim Raz attributes to almost all legal systems. Supremacy, says Raz, is entailed by comprehensiveness and elaboration of it. Supremacy entails that legal systems claim authority to regulate the setting up and application of other institutionalized systems in its subject community. In other words, says Raz, legal systems claim authority to permit, prohibit, or impose conditions on the institution and operation of all the normative organizations to which members of their subject-communities belong.⁷¹

Here we see that Raz's theory holds that legal systems claim unlimited authority. They claim to be able to regulate any and all behaviors of all subjects in their subject-community and they claim to regulate the setting up and application of other institutionalized systems in its subject community. This makes sense because in order to

⁷¹ Joseph Raz, *Practical Reason and Norms* (Princeton; London: Hutchinson, 1990) at 150-151

be the supreme institutionalized system in their respective communities they need to possess, or at least claim to possess, more authority than other institutionalized systems in their communities. A natural question to ask at this point is why exactly Raz thinks it is important for legal systems to be the most important authoritative institutions in their societies. While Raz acknowledges that there can be human societies which are not governed by law at all, he believes that if communities are subjected to legal systems, those systems are the most important systems to which to the communities are subjected. Furthermore, the law provides a general framework within which social life takes place. It is a system powerful enough to guide behavior and settle disputes which, according to Raz, no other system can match. The law claims unlimited authority and normally either permits or restricts the creation and practice of other norms in society. By making these claims, the law claims to provide a general framework for the conduct of all aspects of social life and sets itself up as the supreme guardian of society, and this, according to Raz, is something no other institutionalized system does.⁷²

It should be clear enough by now that Raz believes that the law is of the greatest importance in the societies and that legal systems position themselves to be the supreme guardians of society by claiming to possess authority to regulate any and all kinds of behavior and activity. I am skeptical that the claim to supremacy must be entailed by the claim to comprehensiveness. Even if it is the case that the former entails the latter, I see no reason why comprehensiveness is needed for supremacy nor do I believe legal systems need to claim comprehensiveness in order to be the supreme guardian of their

⁷² Ibid, 154

respective societies. My point is this. Legal systems can still be the supreme guardians and most important institutionalized systems in their respective communities and therefore still be supreme in the manner Raz describes without claiming comprehensiveness. I find it difficult to see why one of these two theses necessarily implies the other. The way Raz imagines his theory suggests that in order to be supreme it is necessary to claim comprehensiveness. This does not seem to be the case. In the next section, I will make the argument that Raz can achieve the goal he wishes to achieve via comprehensiveness without actually attributing the claim to comprehensiveness to legal systems. In other words, being the supreme guardian of society can be achieved by legal systems without attributing any claim to comprehensive authority to the legal systems in question.

V. Supremacy without Comprehensiveness

Before I make my argument, it is important to go back and look at Raz's analysis on the independence condition. This will help us understand what exactly a legitimate authority ought to do in Raz's opinion. Recall that the independence condition holds that there are matters in which subjects ought to make their decisions unaided by authority. This condition, says Raz, ensures that subjects can cultivate the ability to be self-reliant in certain matters. As Raz points out, being self-reliant is valuable because often people cannot rely on others to make decisions for them. According to Raz, the clearest case of where authorities ought to let subjects make their own decisions is the way parents should allow their children freedom to decide for themselves on a gradually expanding range of

matters, in spite of knowing that they, the parents, would make a better choice for their children were they to take over deciding on those matters. This is the way children learn how to decide for themselves and become self-reliant.⁷³

It seems to be the case that parents do not need to claim unlimited authority to regulate any and all of their children's behaviors in order to be a supreme guardian of their children. Parents have more authority over their children than do babysitters, teachers, crossing guards, and other individuals. These individuals may have a certain type of authority over the same children at certain times, but parents are still generally considered to have more authority than those individuals overall. It also seems to be the case that parents would be higher authorities and possess more authority over their children than would those other individuals even if the parents in question did not claim to regulate every single behavior their children do or could engage in. Simply put, parents can still possess supreme authority over their children even if they do not claim to possess authority to regulate all of their children's behavior. My reasoning for saying this is as follows. Supreme is normally defined as "highest in rank or authority" and "highest in degree or quality".⁷⁴

There is absolutely nothing embedded in the definition of 'supreme' that suggests that in order to be supreme, the authority who is supreme, or claiming to be supreme, must in fact actually possess, or claim to possess, authority to regulate all the behaviors

⁷³ Raz, "The Problem of Authority: Revisiting the Service Conception", at 1016-1030

⁷⁴ Merriam-Webster Incorporated. *The Merriam-Webster Dictionary*. Springfield, Massachusetts. Merriam-Webster Incorporated, 1997. p728

of their subordinate subjects. Rather, it seems to me that the authorities in question merely need to possess more authority, or at least claim to possess more authority, to regulate more behaviors than other competing authorities who may possess or claim to possess authority over the same subordinate subjects.

In terms of legal systems, this claim can be stated as follows. In order to claim to be supreme, legal systems must claim enough authority in order to be supreme. This may sound circular, but circularity can be avoided. This is because different legal systems in different societies may be able to claim to possess authority to regulate different numbers of behaviors in order to be supreme. In societies where there are no other authorities other than legal systems, those legal systems can claim to possess authority to regulate a very small number of behaviors and still claim supremacy. This is because the legal systems in question would still be the highest authority in their societies. They would still be supreme authorities simply because they would have more authority than anybody else. Therefore, in typical Razian societies where the independence condition is accepted, authorities and officials in those societies could still be supreme if they claimed to possess authority to regulate all behaviors *except* those which fall under the independence condition. This would be sufficient to claim supremacy as long as there are not any other authorities located in these societies which claim authority to regulate more behaviors than the legal authorities and officials.

If Raz accepts my claims in this section, his theory can be free from the confusion I have illustrated in this thesis. However, there is an objection to the modified version I have offered. In the next section, I will illustrate the objection and offer a response.

VI. Competing Authorities

A good question to ask at this point is the following. What happens if there are other competing authorities in the societies where legal authorities and officials claim to have limited authority? Furthermore, what if the other authorities claim to possess more authority than the legal officials and authorities? Let's imagine that legal systems, and therefore authorities and officials, claim to possess authority to regulate all behaviors except those which fall under the independence condition. Now let's imagine that churches in the same societies claim to be able to regulate all behaviors. In this case, it could be said that the legal authorities and officials in question could not claim to be supreme as I have described, because they are not claiming to possess more authority than other authorities and officials in their respective societies. Legal systems in this situation could never claim to possess more authority than they already do without claiming to possess authority to regulate behaviors which fall under the independence condition, and this would lead them to confusion. Furthermore, these legal systems could never claim to possess authority to regulate *more* behaviors than the church in this case because the church is claiming to be able to regulate all behaviors. Therefore, legal systems could only claim to possess authority to regulate as many behaviors as the church.

What needs to be argued here is how legal systems in this situation can prove that they are higher authorities than the churches which claim authority to regulate all behaviors. Remember that I said comprehensiveness was the only part of Raz's theory that needed changing and so I want to work within his theory in order to respond to this

objection. If his theory can handle this objection, then he can adopt my revised version of comprehensiveness without causing any problems with the rest of his theory. Also remember that Raz states legal systems must claim to be supreme, and I do not wish to argue this point. Rather, I need to prove that Raz's theory can make it the case that the legal systems in question can prove themselves to be higher authority than churches.

Luckily, Raz's theory can easily explain exactly how the legal systems in question are higher authorities than churches. Raz claims, rightly in my view, that legal systems are open systems. According to Raz, a legal system is an open system when it contains norms which give binding force to other norms which do not belong to the system itself. Furthermore, says Raz, it is characteristic of legal systems that they support and maintain other forms of social grouping. It is important to note that norms that are recognized by legal systems are not generally part of the legal systems themselves, but rather that legal systems set up, support, and have authority over the norms in question.⁷⁵ We see here that Raz believes that legal systems can support and maintain other groups and organizations which operate in their society. He also believes that legal systems can also restrict the function of groups and organizations.⁷⁶ This is how legal systems that claim the modified version of supremacy I have offered can show that they are higher authorities than churches or other organizations when those organizations claim to possess authority to regulate all behaviors of subjects. The legal systems can simply say that they are higher authorities than churches because they have authority over the churches; they can support the existence of the churches or they can restrict their existence. Since legal systems have

⁷⁵ Joseph Raz, *Practical Reason and Norms* (Princeton; London: Hutchinson, 1990) at 154

⁷⁶ Joseph Raz, *Practical Reason and Norms* (Princeton; London: Hutchinson, 1990) at 154

the authority to regulate the churches and the opposite is not true, it cannot be said that the churches are higher authorities than the legal systems. Therefore, my argument still stands in that accepting my modified version of supremacy fits with Raz's theory and if accepted, will rid his theory from the confusion I have demonstrated.

VIII. Conclusion

In this thesis, I have demonstrated that as a practical matter in societies Raz deems typical, his theory causes significant issues for authorities, officials, and subjects alike. If authorities and officials in these societies function as Raz says they do and claim to possess unlimited authority to regulate any and all behaviors, they could never accept the independence condition as Raz says they ought to do. If the authorities and officials in question attempted to adhere to the independence as Raz says they should, they would be severely confused about the extent of their authority. Not only would they not understand their authority, they would not be capable of ever understanding their authority without abandoning one of their views and stop functioning in the current Razian tradition. Furthermore, if Raz's theory was accepted it would make it impossible for authorities and officials to do things in the right way. This would necessarily prevent subjects from ever trusting their authorities and officials as Raz says they should. Simply put, Raz's theory in current form is impractical in real world situations.

Luckily, it seems to be the case that these problems can be fixed without really abandoning any major part of Raz's theory. Attributing a claim to comprehensive authority to authorities and officials is needless. As previously mentioned, in Raz's view, a claim to comprehensive authority is necessary in order for legal systems to be able to

claim to possess supreme authority. While I do agree that legal systems claim to be supreme, I see no reason why they must claim to possess comprehensive authority in order to claim to be supreme. It seems as though Raz may be using an unusual definition of the word supreme, because there is nothing in the common definition of supreme to suggest that authorities and officials must claim to possess authority to regulate every single behavior in which subjects do or may take part in order to claim supremacy. Rather, it seems that all legal systems, authorities and officials need to do in order to claim supremacy is to show claim that they possess more authority than any other authorities in their societies. It follows that according to my definition, legal systems, authorities, and officials could in fact claim to be supreme not by claiming to possess every single behavior, even those which fall under the independence condition, but rather, they could claim to be supreme as long as they claim to possess authority to regulate more behaviors than any other competing authorities in their respective societies. How many behaviors that they would need to regulate in order to accomplish this could be different in different societies. In certain societies, the legal system may only need to claim to possess authority to regulate a few behaviors because there is not a single other authority in the society in question. In other societies, the legal system may need to claim to possess authority to regulate every single behavior that does not fall under the independence condition. Regardless of how many or how few behaviors legal systems must claim to possess authority to regulate, as long as they claim to possess authority to regulate more behaviors than any other competing authority, those legal systems can claim to be supreme.

It seems that Raz's only goal of adding the claim to comprehensive authority to his theory was to allow legal systems to claim supremacy. However, as I have shown, a claim to comprehensive authority is not necessary in order to claim supremacy. If Raz abandoned his views on comprehensiveness and accepts my view on supremacy, then all the problems I have illustrated in this thesis would disappear and his theory would be more plausible, practical, and palatable when applied to real world situations.

Conclusion

In this thesis, my goal was to prove that the current theory of Joseph Raz is impractical for use in real world situations. My argument had two main parts. The first was that authorities and officials could not, in typical circumstances, accept and adhere to his theory in all its parts without suffering from confusion about the extent of their authority, and about their practice of obligating. The second part of my argument pointed out that not only would authorities and officials who accepted Raz's current theory have problems; subjects in the societies in question would have problems as well. In particular, subjects would not be able to trust the authorities and officials to which they are subject as well as they could if their authorities and officials had a better grasp on the extent of their authority. This is because, according to Raz, subjects ought to trust that their authorities and officials by and large exercise their authority in the 'right way'. I argued that when authorities and officials are confused about the extent of their authority, they are not doing things in the right way. One part of doing things the right way is exercising authority properly, and authorities and officials have a greater chance of exercising authority improperly when they are not sure about the extent of their authority rather than if they had a clear understanding of their authority. This is because they are not sure what behaviors they can and cannot legitimately regulate, and so it would be difficult for subjects to trust that their authorities and officials would not overstep their bounds when it comes to regulating behaviors, and when the authorities and officials do not know what behaviors they can legitimately regulate.

Fortunately for Raz, his theory can be saved from the problems I illustrate if he abandons his view on the law's claim to comprehensiveness. As I have shown, abandoning his views on the law's claim to comprehensiveness is a relatively minor change to his theory, as he can still accomplish the goals of comprehensiveness without actually attributing the claim to authorities and officials. This minor change will make his theory more palatable and practical for use in real world societies.

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