THE PHENOMENON OF POLITICAL AUTHORITY:

An Analysis of Selected Issues Pertaining to its Nature and Limits

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Matthew John Kruger
St Cross College, University of Oxford

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ABSTRACT

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Matthew John Kruger

St Cross College, University of Oxford

In what way must people interact for the phenomenon, as opposed to the concept, of political authority to exist? What are the factual and normative conditions that must be satisfied for rule over others to be political and authoritative? In this thesis, I argue that answering these questions is essential to understanding the nature of the phenomenon of political authority and is analytically prior to any questions about the scope of its exercise and content of its justification. I argue that only when a plurality of persons—as members of a community—exchange conflicting (or incompatible) reasons for action, for the sake of determining how their actions should be regulated, with their conflicting proposals for action then finally resolved through a process of deliberation and decision, can the phenomenon of political authority in fact exist. My account of these factual and normative conditions means that the nature or form of political authority is characterised by practical conflict, deliberation, decision and action. Further, my account of political authority, which I model on an analysis of the nature of 'self-authorship', means that political authority can exist only when it is accompanied by a plurality of autonomous persons. If my account is right, it has implications for two of Joseph Raz's claims about the exercise and justification of political authority. First, legal systems *qua* political authorities do not by nature claim comprehensive authority. Second, for the 'normal justification thesis' to be logically tenable, it must be qualified so that political authority is justified only if its exercise is consistent with the autonomy and equality of its subjects. I conclude with a consideration of why I differ from Raz on these issues, suggesting that the reason for this disagreement is that we have different understandings of the nature of politics.

(296 words)

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If philosophers, despite their necessary estrangement from the everyday life of human affairs, were ever to arrive at a true political philosophy they would have to make the plurality of man, out of which arises the whole realm of human affairs—in its grandeur and misery—the object of their *thaumadzein*.

(Hannah Arendt, *The Promise of Politics*, 38)

I. INTRODUCTION

In *Law as a Leap of Faith*, John Gardner suggests that for the phenomenon of law to exist, people must 'engage' with each other in certain ways.[1] As the title of my thesis indicates my focus is not law but a related phenomenon, namely, the phenomenon of political authority.[2] In particular, I analyse aspects of the nature of political authority, following which I explore some of the limits that its nature or form imposes on its exercise and justification.

The reason that I opened with Gardner's claim is that although it pertains to law, when it is applied to an analysis of political authority, it suggests the following question: 'What *form* of engagement is required for there *to be* political authority?' Whilst I address this question in section (c) of Chapter III, I mention it here because it sits at the heart of one of three main ideas that drive my arguments in this thesis about the nature and limits of political authority. Indeed, much of what precedes that section is exegetical and is aimed at setting the stage for my answer to this question. By way of preview, I argue that political authority is a phenomenon—a fact, or reality—that emerges from the interaction of a plurality of autonomous persons *qua* members of a single community, where this interaction takes the form of a decisive resolution of a practical exchange of reasons (that is, an exchange of reasons for the sake of regulating individual or collective action). I argue that an account of the various factual and normative conditions—the conditions that must be satisfied for

[1] The reason that I say 'suggests' is because in John Gardner, *Law as a Leap of Faith* (OUP, Oxford 2012) 20, 24, 37, 42, 45, 80, 86 and 185, he does not say that this engagement is between people. Rather, he talks of engagement with legal norms. I think, however, that my interpretation follows from the fact that legal norms take the form of communicated 'speech-acts' (57 fn 9) and that law *qua* 'practice' is 'made up of . . . actions and activities' (185). This means that law *qua* 'artefact' or 'genre of artefacts' (178-90) only exists when 'agents [act] individually or collectively' (179), meaning, when they engage with each other in certain ways.

[2] For reasons that I give in Chapter II (b), I follow Joseph Raz, *Between Authority and Interpretation* (OUP, Oxford 2009) 17-46, in distinguishing between the nature of a phenomenon and our concept of that phenomenon.

the phenomenon of political authority to exist—is central to a complete account of the nature of political authority and is also analytically prior to our understanding of the limits that apply to its exercise and justification.

Many of these issues are 'controversial',[3] having occupied and divided the minds of theorists for millennia.[4] In *Between Past and Future*,[5] Hannah Arendt provides a compelling account of the emergence of the *concept* of political authority in Greek and Roman thought, and its later integration into and adaption by Christian doctrine.[6] Despite its intellectual roots in Greece, she argues, the concept was not fully grasped by Plato or Aristotle. In trying to articulate its meaning, they relied on examples from private and public life. In the private realm, they looked at relationships of father and child, master and slave, shepherd and flock, and physician and patient. These examples were inadequate, she says, because these relationships were either violent or persuasive in nature, both of which she claims negate authority. Similarly, the public realm was unable to supply the experience on which the idea of authority could be modelled—domestic and foreign affairs were conducted through persuasion and violence, respectively. Rather, she argues that it is only with the Romans that we find for the first time an adequately articulated concept of authority.[7] The reason they could construct the concept is because their 'reverence' for the 'greatness' of the past meant that they could appeal to 'tradition' in a way that the 'authority of [their] ancestors' was realised in the 'faithful following of a recognized example'.[8]

[3] Joseph Raz, *The Authority of Law* (OUP, Oxford 2009) 3.

[4] Frank Furedi, *Authority: A Sociological History* (CUP, Cambridge 2013).

[5] Hannah Arendt, *Between Past and* Future (Viking Press, New York 1961) 91-141.

[6] On the role of Christianity, see *Arendt* (n 5) 125-8 and *Furedi* (n 4) 70-81 and 95-123.

[7] Cf. Werner Jaeger, *Paideia: The Ideals of Greek Culture: Volume I* (Gilbert Highet tr, 2ed, Basil Blackwell, Oxford 1946) 94.

[8] On these issues, see *Arendt* (n 5) 65-7, 115-28 and 193; Hannah Arendt, *The Human Condition* (University of Chicago Press, Chicago 1958) 28-37; and *Furedi* (n 4) 36-43 and 47-69.

I return to many of these ideas below, but for now I want to emphasise Arendt's claim that we must experience the phenomenon of political authority before we can properly conceptualise the idea of political authority. This is the second main idea driving my account of the nature and limits of political authority. On this issue, though, Arendt is pessimistic for she thinks that the phenomenon and the concept of political authority have disappeared from the world. On the latter, she says that 'the moment we begin to talk and think about [political] authority . . . it is as though we were caught in a maze of abstractions, metaphors, and figures of speech in which everything can be taken and mistaken for something else'. The primary reason for this is that 'we have no reality, either in history or in everyday experience, to which we can unanimously appeal' when trying to articulate the concept.[9] Because we lack the tradition that was essential to Roman life, as well as the religious belief that historically was central to political life, we struggle to articulate a shared and explanatorily adequate concept of political authority.[10]

Even if Arendt is correct about the fate of political authority, however, does this mean that we should surrender the search for some (shared) experience on which to draw when trying to understand its nature? I do not think so. The possibility that there is such an experience, in fact, leads me to the third of the three main ideas that drive my arguments in this thesis.

In philosophy, there may not be any single 'right' or 'wrong' method, but most theorists seem to agree that different methods can be better or worse. Indeed, some of the earliest treatments of rule justify their arguments on this basis.[11] For example, in

[9] *Arendt* (n 5) 136.

[10] See Hannah Arendt, 'Authority in the Twentieth Century' (1956) 18 Review of Politics 403, 403-5 and *Arendt* (n 5) 91-104.

[11] See Aristotle, 'Politics' in Jonathan Barnes (ed), *The Complete Works of Aristotle: The Revised Oxford Translation, Volume 1* (tr. B. Jowett, PUP, Princeton 1984) 1252a9-17.

Plato's *Statesman*, the Stranger says that it is 'a hard thing' to understand 'any of the more important subjects without using models', or examples.[12] Naturally, he explains this with an example. Children, he says, are taught to read by teaching them first to identify letters. After this, they then learn to identify these letters in combinations, after which they compare these combinations with those that they do not know, continuing until they recognise letters and syllables in a variety of forms. Concluding, the Stranger says:

> [W]e come to be using a model when a given thing, which is the same in something different and distinct, is correctly identified there, and having been brought together with the original thing, brings about a single true judgment about each separately and both together.[13]

According to this method, we can analyse a particular object by examining another object, with which it seems to share salient features, but about which more is known. After coming to grips with the nature of this 'model', we apply what we have learned about it to the principal object, allowing for a better grasp of its nature.[14] The method is not mere analogy, where we note 'an imperfect similarity between two things'.[15] The model, rather, functions as a starting point and a point of reference, guiding us in our effort to acquire genuine knowledge about some other phenomenon.

In this thesis, I argue that we can overcome any absence of the phenomenon of political authority, if it is in fact absent, by employing something akin to this Platonic method. In short, I argue that we can learn a great deal about political authority if we

[12] Plato, 'Statesman' in John M. Cooper (ed), *Plato: Complete Works* (tr. CJ Rowe, Hackett Publishing Company, Indianapolis 1997) 258e.

[13] Ibid 277d-278c.

[14] Melissa Lane, *Method and Politics in Plato's Statesman* (CUP, Cambridge 1998) 13-97.

[15] Immanuel Kant, *Prolegomena to Any Future Metaphysics* (tr. and ed. Gary Hatfield, CUP, Cambridge 1997) no. 58.

employ as a *model* the experience of conflicting reasons for action,[16] together with the experience and activity of deliberation, decision and action. An explanation of *how* individuals exercise these practical capacities in the face of conflict—which exercise is sometimes referred to as self-authorship—provides the material that is necessary for an account of the nature of political authority. Indeed, through an extension of my account of the nature of self-authorship to the political realm—by using it as a model—I come to an answer to the question with which I began: 'What form of engagement is required for there to be political authority?'

Having identified the two key issues I explore in this thesis (the nature and limits of political authority) and the three main ideas that drive my account of these issues (plurality, experience, model), I now sketch the outlines of my principal arguments. In doing so, I refer to controversial ideas and arguments; I also use certain technical terms that may be unfamiliar to some readers. Unfortunately, this cannot be avoided, but I do strive throughout the body of this thesis to clarify the ambiguities and justify the points that I make in the following outline.

In Chapter II, I start by outlining two ideas that are central to my analysis of the nature and limits of political authority. In subsection (a), I explain what I mean when I use the terms 'form' or 'nature' in this thesis. In subsection (b), I begin to argue for the idea that the form of a political phenomenon is logically prior to our practical concept of that phenomenon—in the sense that form limits the logically possible uses of these phenomena as means to particular ends. I conclude this chapter by outlining three anticipated objections to my emphasis on form.

The bulk of my analysis of political authority is in Chapters III and IV. Chapter III contains my account of the nature of political authority and it is divided into four

[16] Throughout this thesis, 'conflict' must be read inclusively to capture any situation where reasons demand different actions and individuals cannot conform to all reasons.

sections. In section (a), I consider how to go about identifying the constitutive parts of political authority. I suggest two methods. First, I argue that we should consider prior theoretical accounts of the phenomenon. I consider Joseph Raz's account of the nature of authority, focussing on his argument for why authority can be explained by looking at 'exclusionary reasons'. Second, I outline and then apply what I refer to as a 'technique of estrangement', which aims in a small way to avoid repetition of any mistakes that might lurk in Raz's account.

In section (b), I identify and examine the constitutive parts of the phenomenon of *self-authorship*. I argue that when we make decisions—something that is possible only after we deliberate among conflicting reasons—we create rules for ourselves. These rules by nature exclude practical *re*-consideration of previously considered reasons. When we act on the basis of our decisions we author our lives. Thus, the phenomenon of self-authorship has at least four parts: practical conflict, deliberation, decision and action. In section (c), I use my analysis of self-authorship as a model for the examination of the phenomenon of political authority. I argue that only when a plurality of persons interact for the sake of regulating some action, deliberate and then decide among conflicting proposals for action, which decision effectively binds those persons subject to it, does the phenomenon of political authority exist. I conclude section (c) by replying to the three objections to my reliance on form that I outline at the end of Chapter II. In section (d), I draw on my arguments in Chapter III to argue that it is in the nature of political authority that it only exists when it is accompanied by a plurality of self-authoring individuals.

In Chapter IV, I explore some of the limits that the nature of political authority imposes on its exercise and justification. In section (a), I focus on legal systems. I argue c*ontra* Raz that law *qua* political authority does not by nature claim

comprehensive authority, for this claim is inconsistent with the necessary plurality of authority and the contingent nature of any claim to political authority. In section (b), I examine Raz's normal justification thesis, arguing that there is no logical space for a 'strong version' of the thesis, but that it can be saved if it is weakened to the point of resembling so-called hybrid justifications of authority. I conclude with an analysis of the normative commitments internal to the phenomenon of political authority, to see what these commitments might mean for arguments around the justification of any exercise of political authority.

In Chapter V, after recapitulating some of my arguments and conclusions in this thesis, I briefly examine two issues. First, I look at some of the implications of my method for an analysis of the nature of law. Second, I consider why, despite agreeing with the most important aspect of Raz's account of the nature of political authority—it entails the power to create exclusionary reasons—I disagree with him on a number of other important and related issues. I suggest that one reason for this disagreement might be that Raz works with an understanding of the nature of politics that is very different to the account that I provide in sections (c) and (d) of Chapter III.

II. FORM AS LIMITATION

Before starting my analysis of the nature of the phenomenon of political authority, I want to outline some concepts that are central to my arguments in Chapters III and IV. These ideas are presented in two parts. In subsection (a), I explain what I mean when I refer in this thesis to the form or nature of a phenomenon. In subsection (b), I use this understanding of form to argue for the idea that the form of a phenomenon limits its possible uses as a means or instrument. I conclude by outlining three expected objections to my emphasis on form.

a. Explaining my use of the term 'form' or 'nature'

In *Evaluation and Legal Theory*, Julie Dickson captures what for many is the defining ambition of analytical jurisprudence, namely, to explain the nature of law by isolating and explaining those features that make law into what it is. Any successful theory of law, she says, 'consists of propositions' about the referent phenomenon 'that are necessarily true' and 'adequately explain' its nature.[17] According to one version of this idea—which I adopt in this thesis—to understand the nature of a thing one must know its form.[18] What do I mean when I use the terms 'form' or 'nature'?

According to Ernest Weinrib, the 'principle that makes something what it is and differentiates it from what it is not, is the thing's form'.[19] Form, he says, is what allows us to identify objects as being of the same or different types.[20] Christine Korsgaard, in a little more detail, argues that 'form' refers to the internal organisation

[17] Julie Dickson, *Evaluation and Legal Theory* (Hart Publishing, Oxford 2001) 17-8 and 21.

[18] See HLA Hart, *The Concept of Law* (2ed, Clarendon Press, Oxford 1994) 240; *Raz* (n 3) 104-5; and Christine Korsgaard, *Self-Constitution: Agency, Identity, and Integrity* (OUP, Oxford 2009) 37-41.

[19] Ernest Weinrib, *The Idea of Private Law* (OUP, Oxford 1995) 26.

[20] Ernest Weinrib, 'Legal Formalism: On the Immanent Rationality of the Law' (1988) Yale Law Journal 949, 959-61.

of an object—that is, 'we understand [an object] as a single and unified object by understanding it as internally organized for doing whatever it does'.[21] This particular understanding of form is not to commit to an understanding of phenomena in terms of which they have intrinsic purposes. Rather, the nature of an object refers not only to its structural arrangement—how it is put together—but to its characteristic activity.[22] Speaking in this way might mislead, for the phrase 'characteristic activity' suggests a kind of functionalism when classifying different phenomena,[23] which is not what I mean to capture when I refer to the natures of forms of phenomena. To explain, I will now distinguish two meanings of 'function',[24] with the second capturing what I mean when I refer to 'form' or 'nature'.

First, 'function' may refer to what we think the purpose, role or end of an object might be. Whilst there is much to recommend this classificatory method—it puts us in a position to make claims about the ends that we should pursue with different objects—it does have certain limits. One such limit is that it does not tell us whether a particular object is in fact capable of being used to do the things that we might think it should be used to do.[25] If we limit ourselves to this way of classifying phenomena, we may not learn whether the form of a phenomenon is 'determined proportionately' as a means for the pursuit of a desired end.[26]

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[21] *Korsgaard* (n 18) 38.

[22] See Christine Korsgaard, *The Constitution of Agency: Essays on Practical Reason and Moral Psychology* (OUP, Oxford 2008) 137. See also Leslie Green, 'The Morality in Law' (2013) Oxford Legal Studies Research Paper (No. 12/2013) 33-6 and *Lane* (n 14) 56.

[23] On 'functionalism', see *Arendt* (n 5) 101-3; Leslie Green, *The Authority of the State* (Clarendon Press, Oxford 1988) 68-71; *Weinrib* (n 19) 6-8; and Nick Barber, *The Constitutional State* (OUP, Oxford 2010) 39 and 42-3.

[24] For a similar distinction, see Allan Beever, 'The Law's Function and the Judicial Function' (2003) 20 New Zealand Universities Law Review 299-319.

[25] Cf. *Raz* (n 3) 226 and *Green* (n 23) 21-3 and 68-71.

[26] This is from Aquinas, quoted in Leslie Green, 'Law as a Means' in Peter Cane (ed), *The Hart-Fuller Debate in the Twenty-First Century* (Hart Publishing, Oxford 2010) 172.

Second, following Korsgaard, 'function' can refer 'to the *way* a thing functions or *how* it works, to its function-ing'. She emphasises the words 'way' or 'how', and explains that if 'we use "function" in this sense—"how a thing does what it does"—it will diverge from "purpose", which is simply "what it does"'.[27] To obtain knowledge of this type, we identify the features of an object that allow us to use it as a means in pursuit of a desired end. The focus is on what is necessary, rather than contingent—that is, on those parts whose absence would render the object incapable of being used as a means for achieving particular ends. It is important to know what we should do, but we must also know what means are available to pursue our chosen ends. This knowledge can only be acquired by analysing the nature of a phenomenon—that is, by looking at 'how' or the 'way' it functions.[28]

To sum up: In this thesis I use 'form' and 'nature' interchangeably to refer to the parts of the phenomenon of political authority that allow it to do, or be used to do, different things—that is, the parts that make possible its use as a political instrument. According to this understanding of form, the nature of a phenomenon is essentially limiting, which means explanatory-description is in part an exercise of establishing when we can in fact use political authority as a means in pursuit of some end.

b. The logical priority of form: the limits of form

Analyses of political phenomena like authority that examine their form or nature have been criticised for various reasons. I touch on three expected objections in the final paragraphs of this chapter. In this subsection, however, I want to elaborate upon the idea that form is essentially limiting—for this idea is central both to my analysis of

[27] *Korsgaard* (n 22) 138.

[28] On these issues, see Joseph Raz, *Practical Reason and Norms* (OUP, Oxford 1999) 132-3; *Raz* (n 3) 106; *Gardner* (n 1) 292-3; *Dickson* (n 17) 112 and 138; *Green* (n 22) 31-6; *Weinrib* (n 20) 959-60.

the nature and limits of political authority in Chapters III and IV and to my eventual reply to the criticisms that I outline at the end of this section.

I will start by considering in general terms the relation between the form of phenomena and our concepts of these phenomena. The word 'concept' derives from the Latin 'concipere' and is the root of 'conceive', which means, 'take to oneself, be pregnant, comprehend mentally'.[29] This definition suggests the Kantian idea that at least some of our concepts deal with phenomena that possess the quality of *otherness*, and must therefore be experienced before they can be held in our minds as concepts. Arendt explains that before we are 'put into the possession of the concept', we must be 'struck by [a] phenomenon'.[30] This explanation suggests two related questions. First, in what way or how are we struck by these phenomena? Second, what happens when we are struck by them?

Generally speaking, the way in which we must experience a phenomenon before we are put into possession of a concept can take one of three forms.[31] First, we may perceive a sensible phenomenon that belongs to the world of appearances through our ordinary five senses. Second, we may perceive an 'invisible' by means of our 'inner sense'.[32] Talk of invisibles is not to suggest a world of Forms, or even something not ultimately grounded in sensible experience. Rather, it refers to those experiences that do not by nature 'appear to others'[33] in the form of our five senses. Examples of such

[29] Charles T. Onions (ed), *The Oxford Dictionary of English Etymology* (Clarendon Press, Oxford 1978) 200, for 'concept' and 'conceive'; PGW Glare (ed), *Oxford Latin Dictionary* (Clarendon Press, Oxford 1968) 388-9, for 'concipere'.

[30] Hannah Arendt, 'Thinking and Moral Considerations' (1971) 38 Social Research 417, 419.

[31] For a similar taxonomy, see John Finnis, *Aquinas: Moral, Political, and Legal Theory* (OUP, Oxford, 1998) ('*Finnis: Aquinas*') 20-3 and John Finnis, *Reason in Action: Collected Essays: Volume I* (OUP, Oxford 2011) ('*Finnis: Reason*') 217-8.

[32] John McDowell, *Mind and World* (HUP, Cambridge 1996) 18-23. I use the term 'invisible' instead of 'intelligible' because the latter is sometimes used to mean 'understanding' or 'rationally explicable', both of which occur after we experience invisible and other phenomena.

[33] Hannah Arendt, 'Thinking' in M McCarthy (ed), *The Life of the Mind* (Harcourt, Orlando 1981) 42.

phenomena include the 'mental activities' that occur in the 'life of the mind', such as thinking, willing and judging.[34] Third, we can experience a phenomenon in a 'mixed' way, meaning that the phenomenon is constituted by the sensible and the invisible. Two examples would, first, be the activity of a person who, after an exercise of practical reason, makes a decision and takes steps consistent with that decision; and, second, the interaction of a plurality of persons who act in this first way. These are mixed phenomena because the nature of each activity is structured by multiple facts of different types, both sensible and invisible.[35] Whilst this is all quite abstract, I will argue in Chapter III (b) and (c) that these two examples of mixed phenomena reflect the phenomena of self-authorship and political authority.[36] This must wait. For now, I want to touch on what happens when we do experience an object in one of these three ways—that is, how we come into possession of concepts.

Views on the nature of concepts proliferate. Some people think that they are psychological states; some that they are an ability to distinguish between different things; and others that they are meanings of senses of words.[37] I do not want to get entangled in this debate. Rather, I focus here on what these different views have in common—the process of thinking. Thinking, as distinguished from deliberation and thought-objects, is the activity of reflecting on experience. It is an activity by which we can, in a sense that I deliberately leave vague, 'speak to' or 'talk to' our-selves.[38] Whatever else might be said about this process, it is only by thinking that we

[34] On these issues, see *Arendt* (n 33); *McDowell* (n 32) 36-8; and *Finnis: Aquinas* (n 31) 21.

[35] For similar ideas, from very different sources, see Jean-Paul Sartre, *The Transcendence of the Ego* (tr. Andrew Brown, Routledge, Abingdon 2004) 15; *Finnis: Aquinas* (n 31) 21-2; and *Finnis: Reason* 223-8. This is not realism, but metaphysical or transcendental objectivity: cf. Andrei Marmor, *Positive Law and Objective Values* (OUP, Oxford 2001) 116-9 and 138.

[36] On political authority, see in particular Chapter III (c)(iv) and (v).

[37] Kenneth Himma, 'Reconsidering a Dogma: Conceptual Analysis, the Naturalistic Turn, and Legal Philosophy' in Michael Freeman and Ross Harrison (eds), *Law and Philosophy* (OUP, Oxford 2007) 3.

[38] *Korsgaard* (n 18) 197.

understand or share an understanding of the world—that is, of the phenomena by which we are 'struck'. When we think, at all and about anything, we recollect and reconstitute meaningfully, as concepts, data given to us by the world of appearances and the life of the mind.[39] When we direct our faculty of thought at any object, we engage in an exercise of relational understanding between that object and ourselves. Since understanding entails a 'co-operation between receptivity and spontaneity',[40] our concepts are not immutable or universal, but are perpetually subject to revision.[41]

Does the contingency of our understanding of the world mean that there are no constraints on the content of our concepts? I am inclined to think that constraints do exist, but I do not have to address this question for the purposes of my arguments. Rather, I consider here a different constraint, namely, the constraint that the form of a phenomenon imposes on what we can logically, or in fact, use the phenomenon to do. To explain this idea, imagine a hiker, Rajiv, who encounters an object in the woods. Because the object has particular formal features, Rajiv through his engagement with it can transform it into something in particular. If it is medium-sized and flat, he may 'see' it as a seat or a table. If he is particularly quixotic, it might become a spacecraft. Such is the power of imagination. No matter how he conceives of the object, though, its formal qualities establish limits on the various ends that he can pursue with his use of it—that is, on his use of this object as a means.[42] No matter the content of his

[39] On these and related issues, see *Arendt* (n 33) 57-86 and 166-93; *McDowell* (n 32) 11-2 and 28-9; and *Himma* (n 37) 4-5.

[40] *McDowell* (n 32) 9. See also Bernard Williams, *Ethics and the Limits of Philosophy* (Routledge, Abingdon 2006) 139-41.

[41] This might overstate the point, for it suggests a kind of conceptual solipsism, whereas in fact many of our concepts are to some extent shared with others. On these issues, see *Raz* (n 2) 62-7; *Marmor* (n 35) 73-8 and Nick Barber, 'The Significance of the Common Understanding in Legal Theory' (2015) Oxford Journal of Legal Studies 1, 3-6.

[42] See *Raz* (n 2) 18-26 and John Finnis, 'On Hart's Ways: Law as Reason and as Fact' in Matthew Kramer et al (eds.), *The Legacy of H.L.A. Hart: Legal, Political, and Moral Philosophy* (OUP, Oxford 2008) 17-9.

contingent thoughts about the object—no matter what he thinks desirable—the object will never fly him to the moon.

This rather obvious point is essential to my analysis of the nature and limits of political authority. In Chapter III (c)(v), I defend my claim that the phenomenon of political authority is mixed in nature—that is, constituted by the world of appearances and the life of the mind. My example of Rajiv makes clear that the forms of sensible phenomena limit what we can use these phenomena to do. An important premise of my arguments in Chapters III and IV, albeit one that I cannot defend in this thesis, is that whilst the invisible parts of mixed phenomena do not meet 'the resistance of matter', they are still limited by the 'basic rule' of the '*form* of thinking', that is, the 'axiom of non-contradiction'.[43] If political authority is constrained in this way, its form is prior to any view about how we 'truly should decide'[44] to use or exercise political authority in a given case. In this narrow 'means-end' sense, the nature of political authority is logically prior to our concept of this phenomenon—that is, form imposes limits on what we can in fact do with this phenomenon.[45]

The way that I have framed these issues ignores much controversy. A critic of my arguments about the importance of form might say that even if all that I have said is correct, when describing the nature of political phenomena I must still at the 'pre-interpretative stage'[46] select which features count; this selection is determined by my moral evaluation about what we truly should do.[47] Another critic might accept these

[43] *Arendt* (n 33) 44, 86-7 and 122.

[44] See John Finnis, 'Law and what I truly should decide' (2003) 48 American Journal of Jurisprudence 107-29.

[45] See Robert Hanna, *Kant and the Foundations of Analytic Philosophy* (OUP, Oxford 2001) 196-9.

[46] See Ronald Dworkin, *Law's Empire* (HUP, Cambridge 1986) 65-6.

[47] On these issues, see John Finnis, *Natural Law and Natural Rights* (2ed, OUP, Oxford 1980) 3-19; *Finnis* (n 44); *Finnis: Aquinas* (n 31) 29-34; and Grégoire Webber, 'Asking why in the study of human affairs' (last accessed at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2596943, 30 July 2015).

arguments insofar as they apply to sensible phenomena, but insist that because phenomena like authority are not 'naturally given',[48] but emerge from our thinking, there is simply no independent referent phenomenon at all. He might say that these phenomena are constituted by thought alone and, therefore, are only ever concepts. As such, form has immanent intelligibility, which means that it does not make sense to say that form has logical priority over so-called ought-questions.[49] A third critic might argue that because our political phenomena are 'hostage to changing human ends and purposes', they either have no necessary and essential form at all, or there is just no point in analysing the transient forms that they might have.[50]

These three critics broadly correspond to the powerful arguments that have been made by John Finnis, Weinrib and Brian Leiter, when criticising different aspects of explanatory-descriptions of political phenomena. Despite the fact that each objection is premised on an important insight, I think that they all ultimately miss their mark. In Chapter III (c)(v), I will rely on my various arguments about the nature of political authority in that chapter to explain why I think that they miss their mark. For now, however, I start my analysis of the nature of the phenomenon of political authority.

[48] *Finnis* (n 44) 119.

[49] On these ideas, see *Weinrib* (n 20) 961-2 and Ernest Weinrib, 'Law as a Kantian Idea of Reason' (1987) 87 Columbia Law Review 472-508.

[50] For these arguments, see Brian Leiter, 'The Demarcation Problem in Jurisprudence: A New Case for Scepticism' (2011) 31 Oxford Journal of Legal Studies 663, 666-70; Brian Leiter, *Naturalizing Jurisprudence: Essays on American Legal Realism and Naturalism in Legal Philosophy* (OUP, Oxford 2007) 121-99.

III. THE NATURE OF POLITICAL AUTHORITY

a. Jurisprudence as detective work

Analytical jurisprudence, Scott Shapiro has observed, is 'a kind of detective work',[51] with theorists using any tool at their disposal when searching for clues as to what is constitutive of particular political phenomena.[52] Different phenomena may call for different tools or techniques. In this thesis, I use two techniques that are related in their outlook and could, I think, be applied to exercises of explanatory-description of a variety of political phenomena. Both look for shared understandings of what a particular phenomenon's characteristic features may be, whilst the second also aims to alert us to any mistakes that may have crept into these understandings.

i. Shared understandings: Raz and exclusionary reasons

The concept of political authority owes its existence, at least in part, to the shared self-understanding of different people.[53] It may be, however, that none of our particular concepts accurately reflect the referent phenomenon. People may not only be mistaken with respect to detail, but the concept we possess may be almost entirely at odds with the form of its referent object.[54] There are nonetheless good reasons to start with an examination of existing concepts or understandings. In doing so we may see, or at least get a glimpse of, what *experience* other people have sought to capture in the concept. By starting in this way I am not employing a 'statistical typicality criterion', in terms of which I consider the self-understanding of as many people as

[51] Scott Shapiro, *Legality* (HUP, Cambridge 2011) 13.

[52] *Raz* (n 3) 106.

[53] Joseph Raz, 'Authority, Law and Morality' in Joseph Raz (ed), *Ethics in the Public Domain* (Clarendon Press, Oxford 1994) 235-7.

[54] *Raz* (n 2) 27 and 36-41.

possible.[55] Moreover, I consider the work of previous theorists not because what they have to say is necessarily correct, but because their thoughts are the result of their best efforts to identify and describe their experiences of a particular phenomenon.[56] In Kantian language, examining the thoughts of these theorists allows me to 'enlarge' my own nascent thoughts on a complex issue.[57] Past understandings of this type, therefore, at best provide me with clues.

I focus here on a familiar definition of authority, which largely tracks what Raz has said about the issue, but which is favoured in one way or another by many.[58] Authority, says Raz, 'is an ability to perform certain kinds of action',[59] that is, the power to issue directives that bind others, thereby imposing on them a duty to obey.[60] These are not necessarily 'all-things-considered duties', though sometimes these can be created by authorities.[61] To have authority is to have the normative power to require action.[62] What is essential, though, is to understand *how* someone who exercises this power manages to require action of others. An order that is backed by threats, such that subjects act in a particular way for fear of what will follow if they do not comply—and only act because of the threat—is not an exercise of authority.

[55] *Finnis* (n 44) 121.

[56] *Shapiro* (n 51) 15-6.

[57] See Hannah Arendt, *Lectures on Kant's Political Philosophy* (University of Chicago Press, Chicago 1989) 42-4.

[58] For a variety of examples, see *Finnis* (n 47) 233-7; *Green* (n 23) 36-51; Nicole Roughan, *Authorities: Conflicts, Cooperation, and Transnational Legal Theory* (OUP, Oxford 2013) 19-27; Daniel Viehoff, 'Democratic Authority and Political Equality' (2014) 42(4) Philosophy & Public Affairs 337, 340-1; Robert Wolff, *In Defense of Anarchism* (University of California Press, Berkley 1970); *Arendt* (n 5) 91-141.

[59] *Raz* (n 3) 7.

[60] Joseph Raz, 'The Problem of Authority: Revisiting the Service Conception' (2006) 90 Minnesota Law Review 1003, 1012.

[61] Joseph Raz, *The Morality of Freedom* (Clarendon Press, Oxford 1988) 24. On this issue, see John Searle, 'Prima Facie Obligations' in Joseph Raz (ed), *Practical Reasoning* (OUP, Oxford 1978) 81-90 and Gilbert Harman, 'Reasons' (1975) 21 Critica 3-17.

[62] *Raz* (n 3) 7 and 16-9 and *Raz* (n 28) 101.

Nor is advising or persuading an exercise of authority. As Frank Furedi puts it, 'authority stands between persuasion and the use of force'.[63] What is it that distinguishes authority from coercion and advice or persuasion? Persuasion, advice and threats, says Raz, do not affect the practical reasoning of the persons at whom they are directed in the appropriate way. None act as 'second-order' reasons for action, but rather create or identify first-order reasons for action.[64] To see fully how key this insight is to Raz's account of authority, I must briefly explain the concepts of first- and second-order reasons.

First-order reasons are reasons that we directly consider when determining how to act. For example, when a student is deciding whether to continue working in the library or instead visit friends, she will engage in a deliberative exercise whereby she assesses the relative strength of the conflicting reasons for and against each option—such as the fact that she has a paper due and the fact that she would enjoy seeing her friends. In doing so, she determines what the balance of reasons demand.

Second-order reasons are more complicated and have generated tremendous scholarly debate. This debate is in part due to some ambiguities and tensions in what Raz says about these reasons.[65] For the moment, I want to avoid this debate and instead introduce in simple terms the idea of a second-order reason, by restating what Raz more recently has said about the nature of such reasons. Second-order reasons, he says, are not weighed up alongside first-order reasons. Rather, they are reasons for

[63] *Furedi* (n 4) 29. For the idea that when persuasion or force is used, authority disappears , see Jean-Jacques Rousseau, *The Social Contract* (tr. Christopher Betts, OUP, Oxford 1999) 18; Hannah Arendt, *On Revolution* (Penguin Books, London 2006) 8; and *Arendt* (n 5) 92-3.

[64] *Raz* (n 3) 11 and *Raz* (n 28) 162.

[65] See, for example, Michael Moore, 'Authority, Law, and Razian Reasons' (1988) 62 Southern California Law Review 827, 849-58; Joseph Raz, 'Facing Up: A Reply' (1988) 62 Southern California Law Review 1153, 1156-64; Christopher Essert, 'A Dilemma for Protected Reasons' (2012) 31 Law and Philosophy 49, 59-72; and Antony Hatzistavrou, 'Motivation, Reconsideration and Exclusionary Reasons' (2012) Ratio Juris 318-42.

or reasons for not acting on relevant first-order reasons. Thus, they can be either positive (reasons for acting on first-order reasons) or negative (reasons for not acting on first-order reasons) in nature. He calls negative second-order reasons 'exclusionary reasons'; it is these reasons that are central to his account of the nature of authority. Exclusionary reasons, to repeat, are 'reasons for not acting on certain considerations'. Thus, when an exclusionary reason confronts a conflicting first-order reason, whilst it will defeat its first-order counterpart it does not outweigh it. Rather, it excludes it from the entire process of practical deliberation.[66]

What is the significance of exclusionary reasons to Raz's account of the nature of authority? An analysis of the concept of authority, says Raz, must explain what one *has* when one has authority. At least part of his answer is that someone has authority if they have the power to create exclusionary reasons that exert normative force on others.[67] Part of the appeal of this account is that it seems to situate the phenomenon of authority between force and persuasion. Whilst persuasion and force identify and create first-order reasons, an exercise of authority creates different types of reasons. Despite its appeal, there are problems with this account. Most important, it seems to me, is that his account of the formal conditions that must be satisfied for a person to have authority is incomplete, which means that his *concept* of the nature of the *phenomenon* of political authority is incomplete. Explaining the ways in which it is incomplete is the focus of sections (b) and (c). Before defending this allegation, in the remainder of this section I outline and apply a modest but effective method for testing received conceptual understandings of the type provided by Raz.

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[66] See, for example, Joseph Raz, 'Reasons for Action, Decisions and Norms' (1975) Mind 481, 482-8; Raz (n 28) 31 and 39-40; *Raz* (n 65) 1157; *Raz* (n 3) 7, 16-9 and 24; *Raz* (n 60) 1019-22.

[67] In addition to his account of exclusionary reasons, which forms part of his 'preemption thesis', Raz's service conception includes the dependence and the normal justification theses (Raz (n 61) 38-69). I do not consider these—though, see Chapter IV (b)—as they concern the question of justification, not the nature of the phenomenon.

ii. Testing received understandings: technique of estrangement

Political phenomena do not lend themselves to unanimity of understanding. Even if unanimity were possible, we would not be bound to any particular understanding. Whilst it may be the case that we must be minimally faithful to our shared concepts, if only for the sake of being able to talk to each other, analytical jurisprudence is an exercise of distilling truths from existing understandings. So, how can we go about disabusing ourselves of any mistakes that hide in our concepts? In other words, how can we detect the ways in which our concepts might distort or fail to capture the true nature of the phenomena to which they refer? There are probably many ways, but I consider here only one. It is a technique more familiar to non-legal philosophers and literary theorists, but is also sometimes employed by jurisprudes.[68] In what follows, I refer to it as a 'technique of estrangement'.

When we talk to the same people, about the same things, using the same words, our dialogue can become formulaic. As a tool that we use to create meaning, language is central to how we understand the world. As our words become familiar and our use of them becomes habituated, it becomes more difficult to articulate meaningfully as concepts our experience of the phenomena that in part constitute our lives.[69] Awareness of the dangers of such 'idle talk'[70] inspired much of Arendt's own unique methodological style;[71] and it also underlies Roscoe Pound's rejection of a so-

[68] See, for example, Victor Erlich, 'Russian Formalism' (1973) 34 Journal of the History of Ideas 627; Lawrence Crawford, 'Viktor Shklovskij: *Differance* in Defamiliarization' (1984) 36 Comparative Literature 209; *Lane* (n 14) 63-5; Marie Louise Knott, *Unlearning with Hannah Arendt* (Granta Publications, London 2013); and Peter Birks, 'The Concept of a Civil Wrong' in David Owen, *Philosophical Foundations of Tort Law* (Clarendon, Oxford 1995) 31-51.

[69] See Viktor Shklovsky, 'Art as Device' in *A Theory of Prose* (tr. Benjamin Sher, Dalkey Archive Press, Elmwood Park 1925) 1-14.

[70] Martin Heidegger, *Being and Time* (trs. John Macquarrie & Edward Robinson, Blackwell Publishers, Oxford 1962) 211-4.

[71] For example, see *Arendt* (n 63) 25-31. On this aspect of her writing, see *Knott* (n 68).

called ‘jurisprudence of conceptions’ in favour of a so-called ‘jurisprudence of ends’. Pound says that the ‘nadir of mechanical jurisprudence is reached when conceptions are used, not as premises from which to reason, but as ultimate solutions’. So used, he argues, ‘they cease to be conceptions and become empty words’.[72]

Given this tendency towards automation, there is value in sometimes considering from a new perspective the ways in which we act and the words that we use when articulating our experiences. There is much to be said for us testing our received understandings by looking at the words that we use to describe our experiences. Especially, we may consider the ways that our ancestors—who as the originators of many of our political concepts may have been less trapped by the familiar—sought to express their own experiences. As Ralph Waldo Emerson said: ‘Every word was once a poem . . . [and] though the origin of most of our words is forgotten, each word was at first a stroke of genius, and obtained currency because for the moment it symbolized the world to the first speaker and to the hearer.’[73] Or, if this is thought to be opaque, a similar idea is expressed in JL Austin’s claim that ‘our common stock of words embodies all the distinctions men have found worth drawing, and the connexions they have found worth marking, in the lifetimes of many generations’.[74] By way of a kind of deliberate estrangement, therefore, we may come to understand what was once better known; or even something entirely new.[75]

By starting in this way, I am not advocating ‘linguistic’ or ‘semantic’ approach to jurisprudence, for I do not suppose the existence of ‘solving words’,[76] or imagine

[72] Roscoe Pound, ‘Mechanical Jurisprudence’ (1908) Columbia Law Review 605, 611 and 620-1.

[73] Ralph Waldo Emerson, ‘The Poet’ in Brooks Atkinson (ed), *The Complete Essays and Other Writings of Ralph Waldo Emerson* (Random House, New York 1950) 327 and 329.

[74] JL Austin, ‘A Plea for Excuses’ (1956-7) 57 Proceedings of the Aristotelian Society 1, 8.

[75] *Shklovsky* (n 69) 6-14 and *Knott* (n 68) 60.

[76] *Pound* (n 72) 621.

that the meaning of words is static. Indeed, I agree that this would be 'absurd', for the content of our concepts cannot be determined by shunning the theoretical or normative for the empirical.[77] Rather, in the investigative spirit of Shapiro, I look only for the clues that may have been left in our language,[78] in the hope that what I find will 'throw its light' in such a way that what it illuminates might allow me to see a little more clearly.[79]

iii. Conceptual hierarchy: authority and self-authorship

It is often observed that 'authority' comes from the Latin 'auctoritas', but when we look at its etymological lineage we also find, not too surprisingly, that it is related to 'author'. Both derive from 'auctor' and 'augēre', which mean 'to enlarge, found, master, lead' and 'to increase, promote, originate'.[80]

What is the relevance of this etymology? According to Austin, 'a word never—well, hardly ever—shakes off its etymology and its formation. In spite of all changes in and extensions of and additions to its meanings, and indeed rather pervading and governing these, there will still persist the old idea'.[81] Similarly, Lewis and Sandra Hinchmann explain: 'Recapturing the original experience preserved in etymology allows us to step outside of our accustomed interpretation of being and see it in a new light'.[82] If there is merit in this idea, what experiences might be captured by *auctor* and *augēre*? At least three seem to be 'creation', 'rule' and 'maintenance'. True, this

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[77] *Dworkin* (n 46) 31-7. See also *Hart* (n 18) 13-7 and 240-1; Joseph Raz, 'The Problem about the Nature of the Law' in *Raz* (n 53) 195-8 and 206-7; *Finnis* (n 47) 5-6; and *Shapiro* (n 51) 7-8.

[78] *Plato* (n 12) 430e.

[79] *Arendt* (n 5) 7.

[80] *Onions* (n 29) 62, for 'author' and 'authority'. On the history of these words, see *Arendt* (n 5) 120-8.

[81] *Austin* (n 74) 27-8.

[82] Lewis Hinchman and Sandra Hinchman, 'In Heidegger's Shadow: Hannah Arendt's Phenomenological Humanism' 1984 (46) Review of Politics 183, 194.

simplified treatment of these words has its limits,[83] but it is nonetheless reassuring and potentially illuminating. It is reassuring because it seems to corroborate the idea that authority is a normative power to create exclusionary reasons—to create rules.[84] It may be illuminating because it hints at the possibility that we can learn about the nature of political authority if we consider what it means for a person to be an author. What does it mean, though, to say in a sense that is relevant to my thesis that people can be authors? Well, many argue that it is important that people be provided with the space to construct their own moral worlds; that people should control their lives by planning projects, by making something of themselves. Raz, for example, argues that we do not 'live as autonomous persons if we do not decide for ourselves', unless we create demands for ourselves.[85] Daniel Viehoff sums this up as follows: 'Personal autonomy requires that agents give shape to their own life—exercise authorship over it—by forming judgments and acting on them'.[86]

The overlap between how we talk about political authority and our individual lives is often observed. Indeed, our language—the etymological kinship between the words 'authority' and 'author'—is testament to this fact. The evidential significance of this fact, however, is often discounted. Both Raz and Green, for example, quickly dismiss it, arguing that the concept of interpersonal authority—that is, authority we exercise over others—is basic, with the idea that a person can have 'authority over himself' being 'parasitic' or 'degenerate'. This concept is an 'extension by analogy from' the concept of interpersonal authority, little more.[87]

[83] For a discussion of these issues, see *Furedi* (n 4) 59-63.

[84] See section (b)(iv), where I discuss the relevance of 'maintenance'.

[85] *Raz* (n 61) 385-90.

[86] *Viehoff* (n 58) 350.

[87] *Green* (n 23) 40-2 and *Raz* (n 3) 19-21.

On what grounds do Raz and Green justify this conceptual hierarchy? Raz is not entirely clear, but he seems to rely on the supposed empirical fact that whilst we might talk of self-authorship when people grant themselves powers or permissions, we do not talk in this way when people undertake voluntary obligations.[88] Because our concept of self-authorship does not include this kind of rule-making, he seems to be saying, it cannot be a central case of our concept of authority. Green, somewhat more analytically, relies on the fact that authority is 'a triadic . . . relation among a superior, a subject, and a range of action'.[89] This relation, he seems to think, is absent when people act, including when we undertake voluntary obligations, because there is no meaningful sense in which we act as both ruler and subject.

Perhaps it is too much to say that modern political theorists perform their 'task . . . in Roman costume and with Roman phrases',[90] but given how much of our political language is borrowed from the Romans and the extent to which our own conceptual framework is steeped in their thought,[91] Raz and Green's almost summary judgment of the relationship between self-authorship and authority is surprising. The judgment, I think, is also mistaken. In section (b), I argue that self-authorship has precisely this triadic structure and that we can provide an account of its nature—which includes our power to undertake voluntary obligations—without relying on any idea of political authority. In fact, I argue in section (c) that we can articulate much about the nature of political authority by analysing self-authorship. Relying on self-authorship as a model, I argue that whilst the phenomenon of political authority does involve the creation of exclusionary reasons, this is only one part of a much larger story.

[88] *Raz* (n 3) 19.

[89] *Green* (n 23) 40-2.

[90] This quote is from Marx's *The Eighteenth Brumaire* of *Louis Bonaparte*, quoted in *Furedi* (n 4) 76.

[91] See *Furedi* (n 4) 47-148, for a detailed analysis of the influence of Roman concepts, categories and words.

b. The phenomenon of self-authorship

In this section, I adopt a method of analysing the phenomenon of self-authorship that is, to some extent at least, captured by Finnis' description of the Thomist method:

> [This method] attends . . . to data which in this case are the data of one's own experience (and in this sense it can be called 'introspective'), the experience of someone who has made deliberate choices, and who knows of other people's deliberations, motives, and choices.[92]

When reflecting on such experiences, I adopt the 'internal point of view', in the sense used by Aquinas and contemplated by Stuart Hampshire and Hart,[93] of someone who deliberately acts. In doing so, I identify and describe the phenomenological facts that structure *any* person's experience of action. Because 'inner experience' of this type speaks to each of us '*from within* . . . as parties and possessors of the fact',[94] I take it that it is 'sufficient testimony [of] the reality of the phenomenon'.[95] In other words, in this thesis I suppose that this type of analysis allows for the acquisition of so-called 'practical' knowledge.[96]

Whilst some may be frustrated by phenomenological language of this type, I do not have the space to clarify these ideas. The nature of my method, however, will become clearer as I develop my account of self-authorship. At this stage, it is more important to note that my aim in this section is not to defend every aspect of every argument that I make about the phenomenon of self-authorship. Naturally, much is

[92] *Finnis: Aquinas* (n 31) 62.

[93] Stuart Hampshire and HLA Hart, 'Decision, Intention and Certainty' (1958) Mind 1-12.

[94] Ralph Waldo Emerson, 'The Over-Soul' in *Emerson* (n 73) 272.

[95] Hannah Arendt, 'Willing' in *Arendt* (n 33) 5 and 132.

[96] Veronica Rodriguez-Blanco, *Law and Authority under the Guise of the Good* (Hart Publishing, Oxford 2014) 47-52 and 86.

controversial. Rather, I argue for one general idea. I argue that the experiences and the activities of practical conflict, deliberation and decision, when they work together and are unified in action, are constitutive of the phenomenon of self-authorship. Whilst my arguments fit best within the Thomist and Kantian traditions—given my emphasis on practical reason, action and freedom—it may be that the general idea is one that more people would accept than the various particular arguments that I make would otherwise suggest.

i. Self-consciousness as 'space'

Before making the case for this general idea, it is important for me to explain briefly how reason, deliberation, decision and action are possible at all. This requires me to gesture at the idea of self-consciousness. I do not try to explain its nature. Rather, I only want to outline the way in which it seems to make possible a variety of practical experiences. For this very limited purpose, the idea of self-consciousness is usefully captured, as I will now discuss, by the metaphor of 'space'.[97]

I begin with Korsgaard's discussion of one of the ways in which we differ from other animals.[98] After she suggests that self-consciousness is probably possessed by different creatures in different degrees, she says that people 'are self-conscious in a particular way: we are conscious of the grounds on which we act, and therefore are in control of them'. Because of this, we are 'essentially reflective'[99] beings, meaning that 'we are each faced with the task of constructing a peculiar, individual kind of identity—personal or practical identity—that the other animals lack'. Thus, she

[97] Better metaphors may be 'total emptiness' (Jean-Paul Sartre, *Being and Nothingness: An Essay on Phenomenological Ontology* (tr. Hazel E. Barnes, Methuen, London 1958) lvi) or 'void' (*Arendt* (n 33) 197-202), but for my purposes I can skip over these differences.

[98] For similar ideas, see Roger Scruton, *The Soul of the World* (PUP, Oxford 2014) 36-8 and *Weinrib* (n 49) 481-5 and 489-90.

[99] Christine Korsgaard, *The Sources of Normativity* (CUP, Cambridge 1996) 92.

argues that rational activity is made possible by the fact that each of us can see the grounds on which we act. She continues:

> We are aware, not only *that* we desire or fear certain things, but also that we are inclined to act in certain ways on the basis of these desires or fears. We are conscious of the potential grounds of our actions, the principles on which our actions are based, as *potential grounds*.[100]

When we become aware of why we are inclined to act in a particular way, we often say that we *see* the reasons for so acting. As Korsgaard puts it, we are able to 'locate' ourselves in what she refers to as a 'mental space'. We have the capacity 'to locate [ourselves] with respect to [our] own thoughts and emotions . . . to know them as [our] own. This is what we more commonly think of as self-consciousness, a reflective awareness of our mental states as such'. It is our awareness of the fact that our beliefs exert force on our actions that gives us control over their influence—our awareness allows us to question whether these beliefs are in fact reasons for acting in the way that they appear to require.[101]

Self-consciousness, then, 'opens up' a 'space' between the forces that are exerted on us by the world and our responses to them. In this space we are able to reflect on these forces and it is the necessity of this reflection that transforms them into what we experience as reasons for and against different actions. Whilst our instincts may be the source of what we experience as reasons, they do not '*determine* how we respond to' them. It is within this space, therefore, that 'reason is born'.[102]

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[100] *Korsgaard* (n 18) 19-20 and 115.

[101] Ibid 115-6.

[102] Id. See also *Korsgaard* (n 99) 92-4. It may be important to note that my arguments in this thesis do not presuppose the Korsgaardian view that reasons for action are grounded in the nature of agency: cf. David Enoch, 'Agency, Shmagency: Why Normativity Won't Come from What Is Constitutive of Action' (2006) 115 Philosophical Review 169, 194 fn 55.

ii. Practical reason: reasons, reasoning and reason

Up to this point, I have used the word 'reason' vaguely. When I say that 'reason is born' in the space of self-consciousness, for example, this can refer to a number of ideas. In this subsection, I distinguish three possible meanings of the word.

First, something can be 'a reason' in that it provides a ground for or justification for an action.[103] Reasons in this sense can be normative or explanatory in nature. Normative reasons include facts about the world, moral principles and desires. These are reasons that actually support the adoption of a plan of action. Explanatory reasons by contrast specify what a person *thinks*, rightly or wrongly, is actually a reason for action. These reasons are parasitic on normative reasons because it is, for example, the belief that promises actually should be kept that a person takes as justifying her action.[104]

Second, 'reason' may refer to 'practical reasoning'. As noted, our capacity to see the grounds on which we act transforms, for us, facts to reasons. Practical rationality demands that each person act reasonably to identify as many practically relevant first-order reasons as possible. They may be known to us immediately, due to habituation or through socialisation. We may identify them though theoretical investigation, moral reflection, imagination or so-called 'situational appreciation'.[105] After we identify possible reasons, we must then reflect on their merits to determine whether they are actual reasons for action.[106] After reflecting in this way, we will often be left with reasons that demand different actions, meaning we will have to

[103] *Korsgaard* (n 99) 93.

[104] See *Raz* (n 28) 15-9; Joseph Raz, 'Introduction' in *Raz* (n 61) 2-5; *Korsgaard* (99) 94-6; and *Rodriguez-Blanco* (n 96) 41-58.

[105] David Wiggins, 'Deliberation and Practical Reason' (1975) 76 Proceedings of the Aristotelian Society 29, 48.

[106] See *Gardner* (n 1) 152 and Bernard Williams, *Problems of Self* (CUP, Cambridge 1999) 177-9.

determine which action is supported by the balance of reasons. To do this, we adopt a 'deliberative standpoint',[107] which standpoint is dialectical in structure, meaning that we engage in an inner dialogue—possible within the 'space' of self-consciousness—and in doing so we deliberate with ourselves about what ought to be done.[108] This process entails an exercise of scheduling, where we prioritise the order or degree to which we will conform to the conflicting reasons, and weighing, where we determine the relative significance of these reasons. This process of identification and evaluation of conflicting first-order reasons does not have to be exhaustive in nature, but must meet the threshold of reasonableness.

Finally, I outline a third meaning of 'reason'. After a person reasons in the way just discussed, she will often decide that she should all-things-considered act in a particular way. This is not to say that other proposals for action were not favoured by reasons or that these other reasons are now extinguished. Indeed, when we cannot conform to all relevant reasons we often experience regret. Rather, it means that one of the options is favoured by a unique set of undefeated reasons.[109] After adopting the deliberative standpoint and arriving at an all-things-considered 'deliberative should', the person decides that she is required 'by reason' to act a certain way.[110]

These three meanings of reason are related, collectively constituting the idea of 'practical reason'. I hope it is clear from my sketch of the nature of practical reason that all three meanings of 'reason' are essentially related to decision and action. In subsections (iii) and (iv), I examine, first, the nature and normativity of decisions and, second, how practical reason and decision relates to action.

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[107] *Korsgaard* (n 99) 100.

[108] *Wiggins* (n 105) 46. See also Aurel Kolnai, 'Deliberation is of Ends' (1962) Suppl. Vol. 62 Proceedings of the Aristotelian Society 195.

[109] *Raz* (n 104) 11-5.

[110] *Korsgaard* (n 18) 49-52 and *Williams* (n 106) 184-6.

iii. The nature and normativity of decisions

In section (a)(i), I briefly outlined Raz's account of the nature of the relation between authority and exclusionary reasons. Mandatory norms, Raz says, which are created through an exercise of authority, exclude relevant first-order reasons from an agent's practical evaluation of what the balance of reasons demands. Is this correct? If so, do our decisions work in a similar way? In this subsection, I consider the nature and the normativity of decisions, delaying until section (c)(iv) my discussion of the nature of mandatory norms.

I will start with an example. Imagine that a young professional, Jacob, who enjoys cooking. One Saturday night the possibility of preparing a meal for his friends the next day occurs to him. He thinks over the possibility, taking into account the reasons for and against doing so, as well as the reasons for and against making certain dishes. He then decides to cook a curry. The next day, however, after recalling his decision and without anything in the world having changed, he reconsiders these various reasons and decides against cooking. What can be said about the fact that he now disregards his decision? When we make a decision we declare an intention—we commit—to take steps necessary to achieve the contemplated end. When we express this intention in words, we often say: 'I *will* do X',[111] not in the sense of predicting a future event, but of determining ourselves to pursue a particular course of action.[112] We *will* it. Relying on Augustine, Arendt has made the point that one of the powers of the 'will' is 'to command'.[113] This is another way of saying that to decide is to create a rule, which binds the decision-maker. When Jacob reopens deliberation he

[111] GH von Wright, 'On So-Called Practical Inference' (1972) 15(1) Acta Sociologica 39, 41-50.

[112] *Finnis* (n 42) 8-12.

[113] Hannah Arendt, 'Freedom and Politics' (1960) Chicago Review 28, 37 fn 4.

not only undermines his decision—something that occurs when he opens himself up to the possibility of reconsideration—he abandons it: he ignores his own command.[114] Thus, decisions operate in a way that tracks what Raz says about exclusionary reasons. If right, part of what it means to make a decision is *to exclude* further deliberation about what should be done. Unless our resolutions exclude in this way, therefore, we have not really made a decision.[115]

Of course, this is not novel, for it largely recapitulates what Raz has said about decisions. It may be asked, though, why decisions bind us at all? Why will Jacob ordinarily 'believe that his decision is a reason for him to disregard further reasons for or against' performing some or other action?[116] This is a question about the normativity of decisions. Any answer to this question will probably be controversial. Korsgaard, however, provides one that is convincing and consistent with my account of decisions so far. Like Raz,[117] she describes our experience of the normativity of our own decisions as involving 'a kind of struggle' that we have with ourselves. She describes the normative force as 'psychological' in nature, such that our actions are experienced as necessitated.[118] Decisions, however, do not necessitate action in the sense that we lack choice over what we do, for they are normative, not merely causal in nature.[119] Rather, the necessitating force of our decisions is something that we 'face',[120] a necessary truth in Raz's terms,[121] because we are autonomous.

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[114] *Raz* (n 28) 67-8.

[115] See *Raz* (n 61) 39-40; *Raz* (n 28) 72; and *Hatzistavrou* (n 65) 322.

[116] *Raz* (n 66) 491-3.

[117] Cf. *Raz* (n 28) 41. In *Arendt* (n 95) 63-73, phenomenological descriptions of this type are traced to Romans 7:15-7:23, where Paul the Apostle laments the fact that the law of his 'mind' is often defeated by the law of his 'body'.

[118] *Korsgaard* (n 18) 3 and 7.

[119] *Korsgaard* (n 99) 136-8.

[120] *Korsgaard* (n 18) 1.

What does Korsgaard mean by all this? In *Self-Constitution*, she says: 'Human beings are *condemned* to [decision] and action'.[122] This has an existentialist flavour, reminiscent of Sartre, who said that man is 'condemned, because he did not create himself, yet nonetheless free, because once cast into the world, he is responsible for everything he does'.[123] Like Korsgaard, he thinks autonomy and action are related. For Korsgaard, this relation also explains the normativity of decisions. To see why, we must distinguish between two ideas of 'action'. Action may refer to any voluntary movement, or it may be limited to deeds or words that follow our making a decision. When Korsgaard says that we are condemned to action, she means it in this second sense. Whilst this makes the link between decision and action obvious, explaining its nature is central to understanding the normativity of decisions.

Since we are confronted by a world of conflicting first-order reasons for action, before we can act in this Korsgaardian sense, we must resolve through an exercise of practical reason to pursue just one course of action. Only by making a decision can we move from a world of practical conflict to a world in which we act. To make this move, we must unify or bind together our opposing parts: we must make up our minds. The source of the normativity of decisions is to be found in *how* we make up our minds. When we decide, we think that some action is required by a unique set of undefeated reasons.[124] In other words, after we decide to act in some or other way we have in our minds determined what action is required by reason. We can only decide, therefore, if we believe with an 'inner certainty',[125] however transient or resilient and

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[121] *Raz* (n 66) 491.

[122] *Korsgaard* (n 18) 1.

[123] Jean-Paul Sartre, *Existentialism is a Humanism* (YUP, New Haven 2007) 29.

[124] See *Raz* (n 61) 159-60 and *Gardner* (n 1) 158-61.

[125] Friedrich Nietzsche, *Beyond Good and Evil* (tr. Judith Norman, CUP, Cambridge 2001) § 19.

however right or wrong this certainty may turn out to be, that we have resolved a first-order practical conflict. After deciding, this belief is for us a practical truth, so 'inescapably real' that it 'compels the mind' in its later practical deliberations.[126] Like morality, therefore, the normativity of decisions is an 'inescapable part of being rational'.[127] In other words, our decisions bind in this way because this is just what it means for a person to decide. The exclusionary normative force of decisions is a fact; or as Raz puts it, a necessary truth.[128]

In this section, I have explained why decisions are explanatorily normative, not whether and, if so, why they are actually normative. My account is of 'how we reason' not 'of what reasons we have'.[129] My limited focus, I think, is consistent with my analysis of the phenomenon of political authority—that is, my analysis on what is, albeit a normative is, rather than what ought to be.[130]

In some respects, what I have said in this section conflicts with Raz's account of exclusionary reasons, at least insofar as it concerns decisions. For example, when he describes exclusionary reasons as reasons 'for not acting on certain considerations', this might mislead.[131] Decisions *qua* exclusionary reasons are not reasons not to act for relevant first-order reasons, nor are they reasons not to consider further—that is, previously unidentified or unexamined—first-order reasons.[132] Decisions do not

[126] Henry Aiken, *The Age of Ideology* (New English Library, London 1956) 39 and *Arendt* (n 5) 107.

[127] *Gardner* (n 1) 150.

[128] Raz (n 66) 491.

[129] *Essert* (n 65) 68.

[130] My narrow focus means that I avoid criticisms of the type advanced by theorists like David Enoch against this type of explanations, namely, whether the fact of the normativity of decisions is something that we should 'care about'. See *Enoch* (n 102) and David Enoch, 'Shmagency Revisited' in Michael Brady (ed), *New Waves in Metaethics* (Palgrave MacMillan, London 2011) 208-33.

[131] *Raz* (n 65) 1157.

[132] Cf. *Raz* (n 28) 31 and 39 and *Raz* (n 60) 1019 and 1022. Whilst excessive deliberation can be irrational and whilst we can have reasons not to act in ways, or to consider or be motivated by reasons,

extinguish first-order reasons, but are reasons not to *re*consider previously considered first-order reasons.[133] We experience decisions in this way because after we decide we think, rightly or wrongly, that reconsideration of these reasons would be pointless. Perhaps more importantly, my arguments suggest *contra* Raz's that his practical principle 'P1', according to which one should always act on the balance of first-order reasons, adequately explains two of the examples in *Practical Reason and Norms* that he gives in defence of his account: Ann's refusal to decide and the command directed at Jeremy.[134] I briefly consider here the example of Ann, saving for section (c)(iv) my discussion of the exclusionary nature of commands.

In short, Raz tells us that Ann, who is interested in investing, is informed of such an opportunity, but in circumstances when she is not well-positioned to examine its merits. What must be stressed is that although her rational faculties are diminished, she still makes a decision. She decides not to examine the merits of the investment. On the balance of reasons for and against making a *second decision* about whether the investment is worth pursuing, she decides not to commit to the exercise of practical reason that would be necessary to make this second decision. After making this *first decision*, she commits to a particular action. This first decision, as I have explained, excludes practical reconsideration of the reasons relevant to it. Whilst she does not thereafter practically examine the facts relevant to the investment, which facts would otherwise have been reasons for and against investing, these reasons are not excluded. Rather, provided her decision effectively shapes her subsequent practical deliberation, these reasons are rendered practically irrelevant by the first decision. If my analysis

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if this would undermine a decision or lead to an undesirable outcome of some kind, these types of reasons, as noted in DS Clarke, 'Exclusionary Reasons' (1977) 86 Mind 252, are first-order in nature.

[133] See *Hatzistavrou* (n 65) 331-42, for a similar account of this 'reconsideration model'.

[134] *Raz* (n 28) 35-40.

is correct, it seems to me that my explanation of how Ann reasons is fully captured by the idea that one should always act on the balance of first-order reasons—that is, her deliberations are consistent with practical principle 'P1'.

Nothing that I have said means that we can never rationally speaking reconsider reasons after we decide. In short, this is because our decisions do not always generate *actual* reasons not to reconsider previously considered reasons. This is because our belief that we have arrived at a practical truth will not always reflect the facts on which they are meant to be based.[135] Of course, if a person never realises that she erred, she will continue to experience the decision as exclusionary because she will believe that she has in fact determined what reason demands. This is why Raz is right that correct and mistaken 'decisions are equally binding' and that someone only has authority if they have 'the power to err'.[136] If a person realises their error, however, their belief will accurately reflect the underlying fact on which it is meant to be based, meaning the exclusionary force of their decision will be cancelled.

iv. The manifestation of self-authorship in action

In section (a)(iii) above, I referred to the moral idea that self-authorship entails not only being free to decide, but being free to act as decided. This suggests that action is a fourth constitutive feature of self-authorship.[137] This seems right, given the fact that ontologically-speaking action is at the centre of practical conflict, deliberation and decision, in that it is always contemplated by these experiences and activities.

If correct, sense can now be made of the fact that the notion of 'maintenance', together with 'creation' and 'rule', is suggested by the words *auctor* and *augēre*. The

[135] *Raz* (n 28)198.

[136] *Raz* (n 61) 159.

[137] On this connection, see *Rodriguez-Blanco* (n 96) 126-7.

creation of a rule, by the making of a decision, is not enough for a person to exercise authority. She must *maintain* her decision, which she does by acting consistently with it. She may fail in this regard for a variety of reasons. After deciding, she may doubt her conclusion, suffer from a weakness of the will, or be prevented by an external force from acting as decided. If so, she does not author her life. This is not to accuse her of a moral failing. My point is that action, through word or deed, is constitutive of self-authorship. In action, she *unifies* the purely mental activities of deliberation and decision with the world of appearances, which is to say, the phenomenon of self-authorship only manifests, or *comes into being*, when the 'I-will and the I-can' are realised in the 'I-do'.[138] Unless she follows through, her exercise of normative power is stillborn—she does not have nor has she exercised authority.

If I am right that the phenomenon of self-authorship only comes into being when we act, this means that self-authorship is not a state or condition, but is an activity. It only exists when the power to create rules together with the freedom to act as decided is in fact exercised. Existence and exercise are coextensive. Existentially speaking, therefore, the phenomenon of self-authorship is never a mere potential, but is always an actualised reality.[139] This means that it is a member of that group of phenomena that 'never outlast the moment of their realization'.[140] In other words, we only have authority over our lives if we exercise such authority.

A point of clarification: To author our lives we do not have to act *just as* decided. Rather, our decisions must affect our practical deliberation as exclusionary reasons and our actions must be based on our own decisions. So, if Jacob wakes up with flu

[138] *Arendt* (n 5) 160 and *Arendt* (n 95) 37. It is because self-authorship only comes into being when we act that this phenomenon is mixed in nature—it is initiated in the life of the mind when we perceive practical conflict, deliberate and decide, and it is realised in the world of appearances when we act.

[139] *Korsgaard* (n 18) 41-4.

[140] *Arendt* (n 5) 44.

on Sunday he may now decide not to cook. If illness was not considered when he first decided to cook and provided he does not now reconsider previously considered reasons—that is, he does not now reweigh and reschedule these 'old' reasons relative to each other—his ultimate action will entail an exercise of self-authorship and his first decision will in fact be effective as an exclusionary reason. Thus, in cases of this type, both the initial and the later decisions will go towards constituting Jacob as an authority over his own life; both decisions will be part of any explanatory-description of this particular instantiation of the phenomenon of self-authorship.

v. Conceptual hierarchy: replying analytically

In section (c), I look to extend my conclusions about the nature of self-authorship to an analysis of the phenomenon of political authority. Before doing so, however, I want to conclude my analysis of the phenomenon of self-authorship by returning to Raz and Green's claim that the concept of self-authorship is parasitic on the concept of interpersonal authority. In section (a)(iii), I raised some doubt about this claim, but I did not resolve it—I am now in a position to do so.

It will be recalled that in support of this claim Raz cites his own observation that when we talk about people having authority over themselves we have in mind people being able to give themselves powers and permissions, rather than the undertaking of voluntary obligations. Green provides a more analytical reason for his claim, namely, the triadic structure of authority—it is characterised by a ruler, a subject and a rule. He seems to think that this triadic relation is missing from self-authorship. Initially, I resisted Raz and Green's conceptual hierarchy by citing the etymological kinship between authority and author—that is, *auctor* and *augēre*. I am now is a position to reject this conceptual hierarchy for more so-called analytical reasons.

Raz and Green seem to overlook the fact people are by nature two-in-one.[141] As I have explained, our self-consciousness opens up a space between the forces that are exerted on us by the world and our responses to them. In the life of the mind that exists within this space we can think, deliberate and will. These mental activities involve an internal dialogue, where we talk to our-selves—where we can command our-selves. As Nietzsche explains, in terms that conflict with Raz's supposition that we do not talk in this way, when we voluntarily commit to the performance of an action we are 'the one who commands *and* the one who obeys'.[142] When the fact of our duality is coupled with the exclusionary nature of our decisions—the fact that our decisions operate as rules—it is clear that self-authorship is triadic in structure and that our idea of it is not necessarily parasitic on interpersonal authority. Concluding in this way means I finally dispense with what may have been an obstacle to my use of self-authorship as a model for analysing the nature of political authority.

c. The phenomenon of political authority

We may now recall Plato's method outlined in the Introduction. There, I explained that after identifying the nature of 'a given thing', the method directs us to apply this knowledge to what is 'different and distinct', but appears to be 'the same'. In doing this, Plato's Stranger argues, we come to a 'true judgment about each separately and both together'.[143] In section (b), I demonstrated that self-authorship has the same triadic structure that Green attributes to political authority. Thus, in this respect, they are the same. In this section, I extend my conclusions in section (b)—using them as a model, or point of reference—to an analysis of the nature of political authority.

[141] *Arendt* (n 33) 179-93.

[142] *Nietzsche* (n 125) § 19.

[143] *Plato* (n 12) 277d-278c.

i. The *polis*: a space of plural interaction

My account of self-authorship began with the idea of self-consciousness opening up a space that allows, ultimately, for the exercise of self-authorship. If my method is to hold, therefore, I must locate the political equivalent of this space and explain how it is necessary for the existence of political authority. In this section, I locate it in the concept of the *polis*. When regard is given to the fact that the word is etymologically related to the political concepts of citizenship, constitution, and civic body or government,[144] the claim by Francis Wolff that political philosophy was 'born in the *polis* as a reflection on the *polis* itself' seems right.[145]

Despite its importance, the content of the concept of the *polis* is disputed. Wolff argues that the struggle to capture its meaning is in part due to the fact that it refers to a political experience that was unique to the Greeks.[146] Even the Greeks, however, if we are to follow Aristotle, were aware of the ambiguity of the concept of the *polis*.[147] This suggests that it would be sensible to employ an inclusive term, like 'political community', but even this is problematic, for the modern notion of 'political' may be such that it does not capture every meaning of the concept. Fred Miller, for example, argues that Aristotle used it to include the idea of a multitude of interacting people and groups, such that they form a collaborative whole.[148] Kostas Vlassopoulos, moreover, has questioned the historical reality of Aristotle's *polis* and the idea that

[144] See Aristotle, *Politics* (Ernest Baker tr, OUP, Oxford 2009) 100 and *Hansen* (n 145) 80.

[145] Francis Wolff, 'Polis' in Barbara Cassin *et al* (eds), *Dictionary of Untranslatables: A Philosophical Lexicon* (PUP, Princeton 2014) 801 (quotations omitted). On the significance of this concept to Greek political thought, see Mogens Hansen, 'Introduction' in Mogens Hansen and Thomas Nielsen (eds), *An Inventory of Archaic and Classical Poleis* (OUP, Oxford 2004) 12-4.

[146] *Wolff* (n 145) 801-2.

[147] *Aristotle* (n 11) 1276a17-b4. See also Kostas Vlassopoulos, *Unthinking the Greek Polis: Ancient Greek History beyond Eurocentrism* (CUP, Cambridge 2007) 71-7 and Fred Miller, 'The State and the Community in Aristotle's Politics' (1974) Reason Papers 61, 65.

[148] *Miller* (n 147).

poleis were unique to Greek communities. In doing so, he argues against what he refers to as the distorting 'homogenising picture' of a single *polis*, as opposed to a multitude of different types and formations of *poleis*.[149] Similarly, Werner Jaeger has made the point that 'the Greek political ideal was not uniform' in nature,[150] meaning it is unlikely that all Greek *poleis* had the same form. Despite these difficulties in defining the concept of the *polis*, there are at least three features of the concept that can be identified. For a *polis* to exist there must at least be a plurality of persons,[151] who occupy a shared public space,[152] and who are in some sense self-governing.[153] For now, I want to focus on the second feature.

Whilst it is true that Aristotle suggests that territory as such does not constitute a *polis*, this means that it is not a sufficient condition for there to be a *polis*.[154] Also, he 'does not represent the *communis opinio* of ancient Greeks'.[155] Claudia Zatta argues, for example, that for many Greeks the *polis* 'comprised . . . the political community and the diversified space it inhabits'. Because space 'structures a community and its life' and since people are not just observers but are 'users of the space they inhabit', she says that when the people of a particular *polis* were separated from their city-space their identity underwent a corresponding change.[156] Fortunately, for my sake, I do not have to resolve this dispute. Thus, I do not have to commit to the stronger

[149] See *Vlassopoulos* (n 147) 77-97 and *Hansen* (n 145) 53-4 and 80-5.

[150] *Jaeger* (7) 79.

[151] See *Aristotle* (n 11) 1252a24-b9 and 1274b38-41 and *Jaeger* (n 7) 108. On Aristotle's distinctions, see *Vlassopoulos* (n 147) 86-8, and on the plurality of *poleis*, see *Hansen* (n 145) 139.

[152] See the comments in *Hansen* (n 145) 16-20, 39-40 and 138-42 and Claudia Zatta, 'Conflict, People, and City-Space: Some Exempla from Thucydides' *History*' (2011) 30(2) Classical Antiquity 318, 322, 331-5 and 342-4.

[153] *Vlassopoulos* (n 147) 80-1 and *Hansen* (n 145) 17-20.

[154] *Aristotle* (n 11) 1276a25-26.

[155] *Vlassopoulos* (n 147) 68.

[156] *Zatta* (n 152) 322-5 and 344-8.

thesis that a particular physical space is necessary for the *polis* to exist. Rather, in this thesis I adopt the less demanding requirement that there must be a 'normative' space[157] that is both public and shared in which people interact with each other. Only when a normative space of this type exists can a plurality of people identify and, therefore, act as members of a political community. If people do not conceive of each other in this particular way what happens can never be experienced by or bind a plurality of persons individually or collectively as a single political whole.[158]

When we understand the *polis* as having this essentially existential function, we can begin to make sense of the idea that it is not only the birthplace of politics, it is its only home. Since only that which occurs inside the *polis* is political,[159] phenomena like political authority can only exist when people interact in particular ways.

ii. Politics as the practical exchange of reasons

In the previous subsection I explained that people must interact in particular ways for the *polis* to form. Moreover, political phenomena can only exist within the normative space that is created by this form of interaction. Whilst this space is necessary for there to be political phenomena like authority, it is not a sufficient condition. What is also required—though, I will argue, this too is not sufficient—is a particular form of political interaction. In this section, I examine this form.

As I indicated in the Introduction, it is not only failed-states that lack political authority. In Homer's 'aristocratic' polities, for example, people interacted as equals,

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[157] Jeremy Waldron, 'Arendt's Constitutional Politics' in Dana Villa (ed), *Cambridge Companion to Hannah Arendt* (CUP, Cambridge 2000) 204.

[158] For an illustration of the pedigree of this idea—that is, the idea that there must be some way in which all people are understood by others to be equal for the state or *polis* to exist—see the fascinating speech by the sophist, Protagoras, early on in the dialogue in Plato, *Protagoras* (tr. WKC Guthrie, Penguin Books, Harmondsworth 1956) 320d-328d.

[159] *Arendt* (n 113) 34-5.

in the sense that this means 'neither to rule nor to be ruled'.[160] Whilst there were leaders, they were *primus inter pares*.[161] This state of affairs was possible because citizens were heads of households—masters of land and people—which meant they wanted for nothing. In the *polis*, competition and conflict thrived. Inspired by a 'passion for distinction' and desire for immortality,[162] they strived through the *sheer performance* of word and deed to show that they were 'the best of all';[163] the prize for this was the honour of 'imperishable fame'.[164] This interaction, though political, did not generate authoritative rules. Since each citizen was liberated from necessity they were 'carefree', meaning they did not find it necessary to interact with each other for the sake of creating authoritative rules imposed by the political whole.[165]

This world, ideal or real, has long since faded away. The form of politics in most modern communities is different from that which characterised Homer's *poleis*. Whilst our public realm is also constituted by a plurality of 'single deeds and acts', this realm does not exist as an attempt to 'overcome the mortality of human life and the futility of human deeds'.[166] Rather, the public realm in the form of 'the state' is conceived of as a collective concern, with the coordination of members, promotion of the common good, protection of liberties, and production, distribution and resolution of disputes over resources, considered to be some of its characteristic functions. It is the plurality of conflicting interests that is thought to require some form of collective

[160] See *Jaeger* (n 7) 15-56 and *Arendt* (n 8) 3.

[161] *Jaeger* (n 7) 10.

[162] *Arendt* (n 63) 69. This is well illustrated by the different accounts of Eros in Plato, *The Symposium* (W. Hamilton tr, Hunt Barnard, Aylesbury 1951).

[163] Hannah Arendt, *The Promise of Politics* (Schocken Books, New York 2005) 16 and *Arendt* (n 8) 192-206.

[164] *Jaeger* (n 7) 7, 13 and 120.

[165] See *Jaeger* (n 7) 57 and *Arendt* (n 8) 25-49 and 63. As the discussion of Agamemnon and Thersites in *Furedi* (n 4) 16-30 suggests, this might even have been the case for matters of war.

[166] *Arendt* (n 5) 71 and 85.

body to regulate, *for the sake of certain further ends*, the actions of people. This brief tale of the transformation of the form of politics—from action *qua* sheer performance to action *qua* means-end[167]—allows me to transition from my inclusive but non-specific explanation of the *polis* as a shared public space, to a shared public space in which the political equivalent of practical reason is born.

In subsection (i), I discussed the idea that politics can only exist when people identify as members of a single political whole—this allows for the formation of a political space in which political phenomena can exist. A similar point, specifically in the context of political rule, is made by Arendt when she says: 'The only trait that all . . . forms [of political rule] have in common is the simple fact of their genesis, that is, that at some moment in time and for some reason a group of people must have come to think of themselves as a "We."'[168] The nature of this 'We' and the particular form that rule will take can vary. I do not want to discuss these varieties, but instead focus on the form that this 'We' must take for the phenomenon of political authority to exist—that is, the form that allows for the making of political decisions.

In section (b), I explained that decisions can only be made when there is practical conflict and this conflict is resolved through a process of deliberation. Since practical conflict is necessary for the making of political decisions, the form that a 'relation of belonging'[169] (interaction) must take is one where the plurality of members who constitute the 'We' commit to a practical exchange of reasons—that is, an exchange of reasons that is for the sake of regulating individual and collective action. Members

[167] The characteristic feature of action *qua* sheer performance is that its end is not *also* a means to a further or higher end. The final end of the action is realised in the action itself.

[168] *Arendt* (n 95) 202. It may be important to note that nothing in my argument commits me to 'ethical republicanism', where politics is characterised by a 'substantively integrated ethical community' (see Jürgen Habermas, 'Three Normative Models of Democracy' (1994) Constellations 1, 4). Rather, the 'We' that is necessary for there to be political authority must form 'for some reason', but this reason need not be ethical—juxtaposed by Habermas, following Kant, to moral—in nature.

[169] *Scruton* (n 98) 14.

must address each other as normative agents with whom they are willing to and in fact do exchange practically relevant reasons. When people interact in this way, this does not mean that each person will directly participate in political decision-making, or that the community will necessarily be characterised by democratic institutions. Rather, it means that members adopt a normative standpoint in relation to each other that bears on how they regulate their actions.[170] Once this practical form of belonging is internalised by a plurality of persons, political reasons are born—that is, people will experience the reasons given, explicitly or implicitly, by other members as relevant to how each of them, individually and together, should in fact act.[171]

The presence of a plurality of persons who commit to the practical exchange of reasons, therefore, is a necessary existential condition of the phenomenon of political authority. To borrow from Kelsen, it functions as 'the starting point of [any political] norm-creating process'.[172] This form of interaction is the origin of the power that is necessary for the exercise of political authority, which means it both precedes and lies beyond the control of functionaries who happen to exercise this power.[173] Perhaps this is how to understand Raz's push for us to examine 'the way a culture understands its own practices and institutions',[174] and his claim that it 'is a major task of legal theory to advance our understanding of society by helping us to understand how people understand themselves'.[175] Unless people consider themselves to be members

[170] On collective agency of this type, see *Raz* (n 2) 101-3, *Gardner* (n 1) 62-5, Richard Ekins, *The Nature of Legislative Intent* (OUP, Oxford 2012) 47-76; and Richard Ekins, 'How to Be a Free People' (2013) American Journal of Jurisprudence 163-82.

[171] Following Stephen Darwall, *The Second-person Standpoint: Morality, Respect, and Accountability* (HUP, London 2006) 20-5 and 74-9, this internalisation is a 'normative felicity condition' or necessary 'presupposition' of ''second-personal address'.

[172] Hans Kelsen, *The General Theory of Law and State* (HUP, Cambridge 1949) 110-122.

[173] On these ideas, see *Arendt* (n 5) 97-9, 111 and 141

[174] *Raz* (n 2) 96.

[175] *Raz* (n 53) 273. Probably not, though, given the comments in *Raz* (n 60) 1041-4.

of a single polity and commit to the practical exchange of reasons, the phenomenon of political authority simply cannot exist.

iii. Legislatures *qua* political decision-makers

Whilst necessary, a plurality's commitment to the practical exchange of reasons is not sufficient to constitute the phenomenon of political authority. This is because, as I noted in section (b), decisions by their nature are only possible in the face of practical conflict. If everyone agreed about everything, political authority simply *would not* exist.[176] Thus, the exchange of reasons must generate conflict about what ought to be done. This is not surprising, since politics itself rests on some initial disagreement or conflict.[177] But, the reverse is equally true, for interminable disagreement is also anathema to authority—that is, political authority can only exist if this plurality moves beyond practical disagreement. We must unify in the face of conflict. If my model of self-authorship is sound, this means that I must now identify the political equivalents of deliberation and decision.

In my search for the political equivalents of deliberation and decision, I will now consider the nature of legislatures in democratic communities. Someone might ask why I am examining law-creating, rather than law-applying or law-enforcing institutions. Someone else may query the fact that I limit my analysis to democratic communities. Is my focus here on democratic legislatures consistent with my formal method? I think that it is, for at least two reasons. First, the reason that I focus on legislatures is because they quite clearly function in a deliberative and decisive way. According to my account, however, the nature of political authority—whether it is

[176] Similar points are made in *Finnis* (n 47) 248 and *Viehoff* (n 58) 371 fn 48.

[177] On the politics as conflict, see *Rousseau* (n 63) 66 fn 1; Carl Schmitt, *The Concept of the Political* (tr. George Schwab, University of Chicago Press, London 2007) 25-37; *Arendt* (n 63) 93; Jeremy Waldron, *Law and Disagreement* (OUP, Oxford 1999) 15-6; and *Raz* (n 65) 1156

exercised by law-applying or law-enforcing institutions; even when it is customary in origin—is characterised by practical and decisive deliberation in a way that is similar to legislatures. Second, I argue in Chapter IV (b)(iii), the normative commitments that are internal to the phenomenon of political authority are similar to the egalitarian values typically relied on by theorists when advocating democratic forms of rule. Thus, my narrow focus is consistent with my formal analysis of political authority—or so it seems to me.

Turning to the nature of legislatures, I draw primarily from Jeremy Waldron and Richard Ekins. Admittedly, their methods and aims differ. Rather than 'theorizing about justice, rights, and the common good', Waldron focuses on structural issues, which is to say, the 'ways in which communities act when their members disagree', and the *sui generis* character of the activity or process of law-making.[178] Ekins, by contrast, argues that we understand the nature of the legislature by 'understanding its objects—that for which it acts', which is promoting the common good.[179] Their accounts of the nature of the legislature, however, overlap in many respects—this suggests that they are at least more right than wrong in their description of its nature.

Legislatures are typically large assemblies, structured to reflect the disagreement inevitable in large communities, so that laws well 'up from those who are subject to it, rather than being handed down to them from on high'.[180] This makes it more likely that a multiplicity of interests shape the law's content, which is consistent with its duty to act for the sake of the political community as a whole. Part of its function is to introduce, amend or repeal particular norms. In doing so, it it must be 'fully open to reason', meaning that it must be 'open to whatever is relevant to the good of

[178] *Waldron* (n 177) 4 and 29.

[179] *Ekins* (n 170) 118.

[180] *Waldron* (n 177) 56.

the community, including moral argument, empirical findings, and the interests of various members of the community'.[181] Stocked with relevant facts and reasons for action, legislators then select from different alternatives, with their collective decision settling what is to be done in any given case.

In the face of these alternatives, there is genuine disagreement among legislators. For the legislature to act, therefore, this disagreement must be resolved. This requires deliberation as to the merits of the proposed action, with deliberation then terminated by the making of a decision. Thus, necessary features of legislatures are that they have the capacity to deliberate and the capacity to decide. Deliberation is not just an idle conversation amongst friends, in which parties strive for consensus. Rather, it is a contestation of firmly held beliefs. It involves 'an array of contributions' that 'stand in a dialectical relation to whatever is eventually enacted'.[182] Although legislative deliberation is active, adversarial and diverse, it is pursued in good faith rather than in cunning. The point of this deliberation 'is to form, reflect on and refine proposals for legislative action'. Deliberation puts legislators in a position to decide 'well what should be done', albeit that any particular decision reflects what the legislators think best, not what is necessarily best.[183]

The 'circumstances of politics',[184] together with the diversity of the legislature, means that consensus is rare. Thus, decisions unify not the opinion of this plurality of legislators, but their 'public-political judgment'.[185] Voting mechanisms are therefore needed for decisions to be reached. Having majority support as a threshold for the

[181] *Ekins* (n 170) 122 and 125.

[182] *Waldron* (n 177) 40.

[183] *Ekins* (n 170) 112.

[184] *Waldron* (n 177) 101-6.

[185] Gerald Postema, 'Law's Autonomy and Public Practical Reason' in Robert George (ed.), *The Autonomy of Law: Essays on Legal Positivism* (OUP, Oxford 1999) 80 and 89-91.

adoption of a proposal for action is not just non-arbitrary, but it also complements the structurally implied equality of each member of a legislature and those they represent. It aims to resolve, in a way consistent with the reason-giving nature of deliberation, the good faith disagreement that accompanies collective decision-making. Thus, like deliberation, voting is a 'central moment' of the law-making process,[186] where the community manifests its approval or disapproval of a proposed action. In voting, legislators decide to adopt a proposed action, which is in the form of a Bill, with this decision expressed in the form of an Act of Parliament.

I now sum up these heavily condensed insights of Waldron and Ekins about the nature of the legislature: Legislatures are large deliberative bodies, with legislators promoting the conflicting rights, interests and concerns of those they represent. They do this by creating rules, the content of which is determined by majority-vote. Once this definition of the legislature is dissolved into its various but essential constitutive parts, it becomes clear that legislatures *qua* political decision-makers are defined by a trio of qualities: practical conflict (competing viewpoints or interests), deliberation (legislative debate) and decision (voting).

iv. Political authority: intentional, exclusionary and effective

In this chapter I have argued that the phenomenon of political authority is in three ways constitutively similar to the phenomenon of self-authorship. Both emerge from a unified form of self-identity: *me* or *us*. Both are characterised by internal conflict amongst the plurality that constitute this whole. And, for both, this internal conflict is resolved by means of deliberation and decision. In this section, I now conclude my comparison of these two phenomena by making three related points. In making these

[186] *Ekins* (n 170) 168.

points, I arrive at what Plato's Stranger referred to as 'a single true judgment about each [phenomenon] separately and both together'.[187]

First, my account of the explanatory normativity of decisions in section (b) demonstrated that their exclusionary force rests on the belief that they reflect the balance of reasons and, therefore, are compelling 'practical truths'. If I am right, self-authorship is an intentional power, for we cannot make decisions or arrive at practical truths accidentally. If this is extended to the political realm, it means that political authority is not an accidental power where authoritative norms are the side-effects of political action.[188] Rather, political authority is deliberate normative power that by its nature is *aimed at* creating exclusionary reasons for action.

Second, for a directive to be authoritative it must affect the practical reasoning of subjects as an exclusionary reason. This follows from my account of the nature of decisions. How is this possible? Consistent with my analysis of the *polis* and my account of politics as the practical exchange of reasons, it is possible because the way that a political community is constituted—members internalise a common identity—means that political decisions can in fact be experienced by each subject as his or her *own* decisions. Thus, some legal rules will exert normative force in the same way as decisions made by individuals themselves—that is, by excluding reconsideration of the reasons 'on the basis of which the law itself was determined'.[189]

If right, this means that it is not quite right to say that 'we sometimes think . . . it is not for us to act on the ordinary reasons which apply to the case'.[190] Rather, we sometimes think it is not for us *qua* individuals to determine, practically speaking,

[187] *Plato* (n 12) 277d-278c.

[188] See David Estlund, *Democratic Authority: A Philosophical Framework* (PUP, Princeton 2008) 143 and Joseph Raz, 'On Respect, Authority, and Neutrality: A Response' (2010) 120 Ethics 279, 292.

[189] *Raz* (n 65) 1169.

[190] Ibid 1165.

what reason demands. As members of the community we will have internalised the belief that political decisions reflect practical truths about what should be done.[191] We might privately think that a particular political directive does not reflect right reason, but provided this belief does not affect our practical reasoning about what ought to be done in the circumstances contemplated by the directive—we might think our belief practically irrelevant—the directive will exert force as an exclusionary reason. It is in this narrow sense, therefore, that an effective exercise of political authority entails 'unquestioning obedience' to the 'say-so' of those persons who issue political directives.[192] Further, it is this practical belief that explains why political authority lies between persuasion and coercion: whilst directives 'compel' obedience 'with the force of necessity', this compulsion takes the form of speech and it always stays within 'the limitations of rational intercourse'.[193]

Third, political directives must be effective for them to be authoritative. This follows from the nature of authority.[194] I argued above that only when a decision effectively shapes an agent's practical reasoning can she author her life. Similarly, only when political directives effectively shape the practical reasoning of subjects does the issuer have political authority. It is not that we must follow directives for them to exist.[195] Once issued, they exist as facts. Rather, as a relational phenomenon that is the 'product of action', political authority depends for its 'continued existence

[191] If this seems too strong, I think that this is evidence of the idea that political authority has vanished from many polities (*Arendt* (n 5) 91-104). Indeed, the necessity of the belief that a directive reflects practical truth is what legality, charisma and tradition (Max Weber, 'Politics as Vocation' in David Owen and Tracey Strong (eds), *The Vocation Lectures* (Hackett Publishing Company, Indiana 2004) 34), all identified by Weber as sources of authority, have in common. This is especially clear with charisma and tradition, for those with power are 'sanctified' by the grace of God, their own greatness or the passage of time—their directives are simply beyond question.

[192] Hannah Arendt, *On Violence* (HBJ Publishers, London 1969) 45 and *Raz* (n 60) 1012.

[193] *Arendt* (n 33) 60 and 119 and *Arendt* (n 95) 116.

[194] Cf. *Raz* (n 61) 56, who says that this follows as a matter of 'normative justification'.

[195] Cf. *Rodriguez-Blanco* (n 96) 72.

upon acting men'.[196] Subjects must follow directives for the issuer to be politically authoritative. Like self-authorship, political authority only *comes into being* when directives are reflected in the actions of those subject to them. Thus, also like self-authorship, the phenomenon of political authority is mixed in nature.[197] It is mixed because whilst it is initiated in the minds of the plurality of persons who constitute the *polis* when each experiences practical conflict, it is finally realised in the world of appearances when the subjects of directives act on the basis of political decisions.

v. Three objections and a reply

In the final paragraphs of Chapter II, I flagged three expected objections to my focus on the form of the phenomenon of political authority. First, we cannot analyse political phenomena without making moral evaluations and, therefore, we cannot separate analysis of form and concept (Finnis). Second, because political phenomena are only thought-objects, it does not make sense to argue that form has priority when analysing the nature of these phenomena (Weinrib). Third, because these phenomena are hostage to our changing ends and purposes they do not have essential features at all (Leiter).[198] I did not respond to these objections, but I said that whilst they reflect important insights, they ultimately miss their targets. I also said that after analysing the nature of political authority I would explain why they miss their targets. Having completed my analysis, it is time for me to make good on this promise—or, at least it is time for me to outline my reply to each objection.

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[196] *Arendt* (n 5) 153.

[197] See my brief discussion of sensible, invisible and mixed phenomena in Chapter II (b).

[198] Though hypothetical, these objections have been reconstructed on the basis of similar arguments by Finnis, Weinrib and Leiter, when dealing with law. I have assumed that the same or similar criticisms will be leveled against my analysis. My assumption is based on my belief—partly justified in Chapter V—that law is a political phenomenon that emerges from particular forms of interaction. If right, this means that my method could also be applied to an analysis of its nature.

According to Finnis, explanatory-description is always from a practical point of view, since 'intrinsic to the constitution, and hence to the descriptive understanding' of these phenomena is their 'point or function'.[199] In this section I have come to a similar conclusion, for I have argued that essential to understanding the nature of political authority is the fact that it emerges from a particular form of interaction—that is, from interaction that has the regulation of action as its end. This fact about the nature of political phenomena is the truth in Finnis' why-methodology. It is also the truth in Leiter's objection to analytical jurisprudence's ambition to find the essential features of political phenomena. Leiter is right that if our purposes or ends change, so do our political phenomena—I have argued that if the way that we interact changes, the phenomenon of political authority will not exist at all.

Finnis and Leiter resemble each other in another respect. Both recognise that the particular aims of action are inherently contingent; both think that this is a problem for explanatory-description, since it is ultimately concerned with what is 'necessary'. Their solutions to this perceived problem, however, are very different. According to Finnis, to solve this 'problem' we must determine, at the outset of any analysis, what we truly should do. The answer that we give to this question provides the ends that we should pursue, which in turn determines the natures of our political phenomena.[200] According to Leiter, however, the inherent contingency of the ends that we choose to pursue means that political phenomena have no essential forms at all.

It seems to me that Finnis and Leiter are guilty of excess. Their emphasis on contingency, though correct as an observation about action, comes at the expense of the fact that different forms of action have their own essential features, regardless of

[199] *Finnis* (n 47) 3-5.

[200] For a recent and clear articulation of this idea, see *Webber* (n 47).

the ends that we might pursue when we do act in these ways. In Chapter II (a), I explained that the form of a phenomenon corresponds to the 'way' that it functions. If I am correct that political phenomena are constituted by different ways of acting, their natures *are* these ways of acting. If we identify the way that we act, we also identify the nature of the corresponding phenomenon. Thus, whilst Leiter is correct that if we act in a different way, the political phenomenon undergoes a corresponding change, this does not mean that we cannot identify the various ways that we do or can act. Similarly, Finnis is right that we must always decide what to do. But, this does not mean that we must decide before identifying the ways in which we do or can act. In other words, whilst moral judgments are necessary to decide whether we should act politically and authoritatively, such judgments are not necessary to describe the formal conditions that must be present—practical conflict, deliberation, decision and action—for political authority to exist at all.

Some of these arguments resemble Weinrib's emphasis on the importance of transcending the particular to enable analysis of the abstract. Like Finnis and Leiter, though, I think that he is guilty of excess—he emphasises transcendence at the expense of other facts about political phenomena. In doing this, he ascends to a realm of ideas; he neglects the fact that these phenomena are the products of plural human interaction, not of reason alone. They emerge from the conditions that constitute the realm of human affairs, not only from the life of the mind. In the language of Chapter II (b), Weinrib's ascension means that he mistakes the invisible parts of political phenomena for their only parts; he mistakes mixed phenomena for invisible ones. Since the phenomenon of political authority is only realised in action, it manifests in the world of appearances and, thus, has a reality independent of our conceptual grasp of it; independent of the mind. Indeed, we can interact as members of a community

in such a way that we resolve practical conflict by making decisions—that is, political authority can exist—without any person or group having previously 'self-consciously reflected on' and thus possessing the concept of political authority.[201]

I conclude my analysis of the nature of political authority by making an obvious but important point. Whilst it is in the nature of criticism to identify the weaknesses and flaws in the arguments of others, an equally important part is to identify the truths that inspired these arguments. We must resist simplistic characterisations of the problems in their work as 'logical non sequiturs' or 'elementary flaws' that for some unknown reason escaped their notice; errors of this type are 'rare in the history of philosophy'.[202] In dismissing the methodological objections of Finnis, Weinrib and Leiter, I have tried to identify the ways in which each goes wrong *and* the truths that inspired them. In doing so, this chapter of my thesis can be read as a sustained but implicit argument for a particular method for analysing political phenomena—that is, an argument for a transcendental and normative jurisprudence.

d. The necessity of plural self-authorship

In anticipation of Chapter IV, where I analyse the limits that the nature of political authority imposes on its exercise (meaning, use) and justification, in this final section I want to recall and emphasise a particular fact about political authority. This fact is not always observed when theorists explore issues pertaining to use and justification. In Chapter IV, however, I will argue that a failure to take this fact into account might be disastrous to arguments about such issues. The fact that I want to emphasise and further explore is the necessity of *plurality* and *self-authorship* to the existence of the phenomenon of political authority.

[201] *Furedi* (n 4) 70.

[202] *Arendt* (n 33) 45.

To begin, I return to my account in section (b) of the nature of self-authorship. In that section, I explained that by nature we are confronted by a world of conflicting reasons. I argued that within the space created by self-consciousness we can schedule and weigh these reasons, for the sake of determining what we should do—that is, we can deliberate. Following this practical deliberation, we will often reach a conclusion about what we ought to do and determine that we will act in that way—that is, we can decide. After deciding, we often take steps in the form of words or deeds that are consistent with our decisions—that is, we can act. When we act in this way, I argued, we exercise 'self-authorship'. Why is this précis relevant? To explain, let me now summarise my account of the genesis of political authority. First, I located in the concept of the *polis* the political equivalent of self-consciousness. I explained that the *polis* is a normative space—public and shared—arguing that it has an essentially existential function. It is not just birthplace of politics; it is also its only home. Essential to this idea is that politics only exists when a plurality of persons engage each other in certain ways. I then explained that the *polis* is a necessary but not sufficient condition for political authority to exist. I argued that people can engage each other in political but non-authoritative ways (as we saw with Homer's aristocratic polities). For the political phenomenon of authority to exist, people must commit to the practical exchange of reasons and then resolve the resulting conflict through deliberation and decision. It is engagement of this type that is necessary for the phenomenon of political to authority exist.

The point of this recapitulation is that the practical nature of this interaction means that the plurality of persons must be interacting as self-authoring individuals. Only if the members of this plurality of persons are acting in a way that is consistent with my basic account of the nature of self-authorship can the *polis* exist. If right, the

existence of a plurality of self-authoring individuals is a necessary precondition to the existence of political phenomena like authority.

Why can a plurality of people who go about their lives in a way that does not satisfy my definition of self-authorship not constitute a *polis*? The plausibility of this question, if any, may be due to my use of the slightly technical term 'self-authorship'. In section (a)(iii), however, I made clear that by 'self-authorship' I mean what people typically refer to as personal autonomy—that is, the power to form judgments and act on them. So, whilst people can act in non-autonomous ways—say, by giving in to their instincts—we ordinarily contrast these movements, even if we classify them as voluntary, with intentional action.[203] Personal autonomy is what gives behaviour its normative status. Since the phenomenon of politics, either as sheer performance or as means-end,[204] is initiated in the mind—through thinking, willing and judging—it is in this respect a normative phenomenon. Mere behaviour, therefore, is essentially non-political, meaning interpersonal engagement without self-authorship cannot constitute the *polis* and it cannot generate political phenomena.

Since the *polis* is at least a normative space,[205] it belongs to that group of phenomena that 'never outlast the moment of their realization'.[206] Its very existence is characterised by a perpetual state of appearance, disappearance and reappearance. Thus, a plurality of self-authoring persons is necessary for the initial constitution of the *polis* and it is necessary to sustain it. In other words, the continued existence of *polis* depends on the continuation of the form of interaction that brought it into being in the first place. Thus, whilst people may cease to author their lives after initially

[203] See *Rodriguez-Blanco* (n 96) 41-2 and 54-8 and section (b)(iii).

[204] For this distinction, see section (c)(ii).

[205] In section (c)(i), I left open the possibility as to whether a particular physical space is necessary.

[206] *Arendt* (n 5) 44.

constituting the *polis*, this cessation would extinguish the *polis* along with any political phenomena that might inhabit this space.

The ephemerality of political phenomena is significant, for it imposes constraints on how the parties to an authority-relation can, logically speaking, act. Since political phenomena must respect the factual and the normative conditions that make their existence possible,[207] no political authority can act in a way or claim to have the power to act in a way that frustrates totally the exercise of the self-authorial powers of its subjects. Thus, when we are subject to the authority of others, this is only because we remain subjects who are free to act on our own decisions. This is why Arendt is right that under the condition of human plurality authoritative power 'can never amount to omnipotence, and laws residing on human power can never be absolute'.[208] The idea of an absolute authority is in fact conceptually incoherent. Such a ruler is not an authority, but exists in totalitarian form.

In Chapter IV, I will argue *inter alia* that the fact of plural self-authorship has important implications for the types of claims that can logically be made by those who exercise political authority and also for the types of arguments that are available to those persons who wish to justify its exercise.

[207] *Korsgaard* (n 18) 97.

[208] *Arendt* (n 63) 39.

IV. THE LIMITS OF POLITICAL AUTHORITY

In Chapter II, I referred to the fact that some theorists think that the forms of political phenomena have immanent intelligibility. Others reject this idea, sometimes denying form any independent role in the analysis of phenomena. In Chapter III, I argued that the truth lies in between these two positions. Form constrains, that is all. The world of appearances and the life of the mind impose limits on what we can do with these phenomena, but to determine how we should use them we must look to our values, practices and beliefs. Arguments about how and when we should use phenomena as means, therefore, must stay within the limits of form, both sensible and rational. For phenomena like political authority, arguments must be consistent with the factual and normative conditions—discussed in Chapter III—that make the existence of this phenomenon possible at all.

In this chapter, I begin to probe some of the limits that the nature or form of the phenomenon of political authority imposes on its exercise and justification. First, in section (a), I examine the limits on its exercise, focussing on the idea that legal systems *qua* political authorities by nature claim comprehensive authority. Second, in section (b), I examine the way in which arguments about when an exercise of political authority is justified are limited by form. Whilst my analysis is primarily a critique of Raz's normal justification thesis, I conclude by drawing on the normative commitments internal to political authority for the purpose of making some modest claims about when the exercise of political authority will (and can) be justified.

a. Exercising political authority, or the instrument of political authority

In Chapter III (d), I argued that the phenomenon of political authority is always accompanied by a plurality of self-authoring individuals—a plurality of autonomous

subjects. What limit does this fact impose on any exercise of political authority—meaning, what limit does it impose on the use of political authority as a means in pursuit some end? At a minimum, no ruler can use its powers in a way or by nature claim the power to use its power in a way that is inconsistent with this fact. In this section, I explore the implications of this idea. In subsection (i), I outline Raz's thesis that law by nature claims comprehensive and supreme authority. Then, in subsection (ii), I identify the jurisdictional limits that the form of political authority imposes on its exercise or use. Finally, I return in subsection (iii) to the idea that law by nature claims comprehensive authority, to see if it is consistent with the fact of plural self-authorship and with my conclusions in subsection (ii).

i. Legal systems *qua* political authorities

Legal systems *qua* political authorities, says Raz, are characterised by the spheres of activities that they regulate, or at least claim authority to regulate. These features, he says, are as a matter of logic characteristic of the phenomenon of law—they reflect its nature. In this subsection I outline two characteristics identified by Raz, namely, their claim to comprehensive authority and their claim to supreme authority.

When Raz says that legal systems by nature claim comprehensive authority, what does he mean? He means they 'claim authority to regulate any type of behaviour' and 'do not acknowledge any limitation of the spheres of behaviour which they claim authority to regulate'. A norm regulates acts that it 'requires or permits or which it turns into the exercise of a power'. As regards permissions, a 'normative system regulates all the acts permitted by norms of the system which grant exclusionary permissions' but 'a system does not regulate acts which are merely weakly permitted by it'. An act is weakly permitted if 'permitted merely because of the absence of a

norm requiring their omission'.[209] In short, law by nature claims 'authority to interfere with any kind of activity'.[210] To this initial characterisation, Raz adds what appear to be explanatory caveats. First, he says that the claim to comprehensive authority does not mean that legal systems '*have* and other systems do not have authority to regulate every kind of behaviour'. Rather, legal systems '*claim* such an authority whereas other systems do not', meaning they understand themselves as having 'unlimited authority' to regulate any behaviour. This claim, however, need not be reflected in practice—subjects may resist or otherwise deny the claim to such authority. Second, authority is claimed to regulate the 'behaviour of a certain community', rather than 'the behaviour of everybody'. Third, legal systems claim authority 'to regulate behaviour in some way but not necessarily in every way'. In communities where power is constitutionally limited, therefore, law still by nature claims regulatory authority, if only by permission.[211]

Turning to the characteristic of 'supremacy', Raz says the fact that legal systems claim supreme authority is entailed by their claim of comprehensive authority. Law claims 'authority to regulate the setting up and application of other institutionalized systems by its subject-community'. Further, it claims 'authority to prohibit, permit or impose conditions on the institution and operation of all the normative organizations to which members of its subject-community belong'. Thus, whilst legal systems 'may permit some normative systems to apply to its subject-community', they do not 'acknowledge any claim to supremacy over the same community . . . made by another legal system'.[212] Green adds that states *qua* legal systems refuse 'to recognize

[209] *Raz* (n 28) 149-154.

[210] *Raz* (n 3) 121.

[211] *Raz* (n 28) 149-154.

[212] Id.

competing claims as legitimate or at least [refuse] to concede that their legitimacy has any independent foundation'. Further, a legal system by its nature 'recognizes no appeal from its own authority to any other source', meaning it 'purports to pre-empt all other authorities' in all areas of behaviour.[213]

ii. Jurisdiction: distinguishing three forms of action

Before interrogating Raz's arguments, I want to distinguish three different forms of action: political, social and private. This taxonomy is for the sake of demarcating the jurisdiction of those who have political power and wish to exercise it authoritatively. Identifying the jurisdictional competence of political authorities, I argue in subsection (iii), has important implications for the idea that law claims comprehensive authority. Whilst I do not have the space to develop a full argument in favour of my proposed taxonomy, what follows provides the outline for such an argument.

I start with a distinction that is common to many theorists, from Aquinas to Kant and Mill—that is, the distinction between so-called self-regarding (or, private) and other-regarding (or, public) forms of action. These and other theorists have mounted powerful moral arguments as to why political authorities ought not to attempt to regulate or otherwise interfere with private forms of action.[214] In this subsection, I put aside moral arguments in support of this type of distinction, looking rather for a formal explanation as to why an exercise of political authority is jurisdictionally limited to certain forms of action.

Starting with public action, I distinguish two forms of such action. In section (c)(i) of Chapter III, I argued that a *polis* emerges when a plurality of persons interact

[213] *Green* (n 23) 82-3.

[214] For a recent articulation of this idea, see Steven Darwall, 'Authority and Second-Personal Reasons for Acting' in David Sobel and Steven Wall (eds), *Reasons for Action* (CUP, Cambridge 2009).

in some way as members of a unified whole. If right, this suggests that public action is characterised by this form of interaction. People, however, interact in other ways. There is interpersonal life outside of the *polis*. People form clubs, go to church, play games and get married; they trade goods, form companies and provide services; parents have children, instil in them values and see to their education; people protest, debate and go to war. They interact, together and in opposition, in a great variety of ways. Some of this will be political in nature. Others not, and I shall refer to these as 'social'. In what way do these two forms of public action differ? Since politics exists only when people conceive of each other as equal and conflicting parts of a unified whole, it may be that social action is characterised by a strictly self-interested form of conflict, in which parties are not unified by a common identity, but are in some way isolated or atomised in their relations. Finally, since public action is characterised by interaction, we can identify a third form of action—which I call 'private action'—that is distinguished by the fact it does not implicate others at all.

Perhaps some examples will help to clarify this rather abstract taxonomy. If this taxonomy is correct, it seems to me that in many communities a person's decision what to eat for lunch, the purely self-interested negotiation of a contract of sale that involves, say, the butcher and baker, and a determination by a plurality of people of the content of their own constitution, will be examples of private, social and political forms of action, respectively. In the case of what to eat for lunch, a person's decision to eat an apple rather than a banana seems to be a paradigmatic example of private action that does not affect others. For the butcher and baker, since they are acting not from their benevolence but from naked self-interest, it seems that their interaction is not characterised by any kind of shared identity. And, as for the constitution-makers, their interaction is premised on the idea that they have a shared identity, in the sense

that their future interaction will be regulated by the same set of institutions and will be overseen by the same officials.

These particular examples, however, will not hold for all communities. Rather, their proper classification will depend on the self-understanding of the members that constitute a community.[215] Thus, self-understanding not only constitutes the *polis*, it also determines the regulatory jurisdiction of the *polis*. The self-understanding of the community—whatever it may be and however we might establish its content—need not be explicitly articulated or self-consciously reflected upon by any person or group of persons. It may be reflected in the commitments, practices, institutions, beliefs and values that are characteristic of the community. As such, we cannot determine in advance what forms of action are private, social or political. In a community that does not recognise the right to private property, for example, many exchanges of goods will likely not be social in nature. Rather, these exchanges might be something akin to gift-giving between friends—and, if Aristotle is right that politics is a kind of friendship, an exchange of this type might be a political action.[216] Similarly, if people believe that some foods are sacred, the eating of which affects other people in that community, our lunch-time decisions might actually be political.[217]

Even if my arguments and taxonomy are not sound, other arguments will have to be made and some other taxonomy constructed.[218] This is essential to our being able

[215] I avoid the question of how to characterise action when people have different understandings of its nature—say, if one thinks it is social and another political. Perhaps it will be both, depending on the perspective taken; it might better be characterised in a fourth way; or we might admit its 'problematic credentials . . . enumerate [its] similarities and dissimilarities to the typical cases, and leave it at that' (*Raz* (n 28) 150).

[216] See the discussion in Bernard Yack, *The Problems of a Political Animal* (University of California Press, London 1993) 109-18.

[217] Or, if we think that unhealthy 'lifestyles' impact others by placing demands on the healthcare system, we might come to think that these decisions are properly the subject of political regulation.

[218] For similar distinctions, see *Schmitt* (n 177); *Arendt* (n 8) 22-78; and *Finnis: Aquinas* (n 31) 219-52.

to demarcate the phenomenal limits on the exercise of political authority. When a political ruler acts *ultra vires*, by purporting to regulate authoritatively private or social action, it is not simply that the effort is unjustified. Rather, it misfires and it is not an exercise of political authority at all. Much like the hiker Rajiv who in Chapter II wanted to fly to the moon, the ruler in such cases is trying to use the instrument of political authority in a way that is, as a matter of form, logically impossible.

Why is the exercise of political authority limited to political forms of action? In short, it is limited because the phenomenon of political authority can only exist when people interact in a particular way. Political authority is existentially dependent on and related to this form of action. Thus, if a political ruler ventures beyond this particular 'company of . . . men'[219] and tries to regulate other 'action systems',[220] she is powerless to act. In the language of Chapter III (c)(i), because politics only has life inside of the *polis*, political authority cannot act outside of it, which is precisely where private and social action takes place. Indeed, this is why Raz is correct that the outcome of jurisprudential analysis turns so much on how 'a culture understands its own practices and institutions',[221] and it is also for this reason that legal theory aims 'to advance our understanding of society by helping us to understand how people understand themselves'.[222] How we understand ourselves will as a matter of fact determine the jurisdiction of all political power.[223]

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[219] *Arendt* (n 192) 67-8.

[220] *Habermas* (n 168) 10.

[221] *Raz* (n 2) 96.

[222] *Raz* (n 53) 273.

[223] This contingency is why separation of the political and social does not entail—*contra* Johan van der Walt, 'Law and the Space of Appearance in Arendt's Thought' in Marco Goldoni and Christopher McCorkindale (eds), *Hannah Arendt and the Law* (Hart Publishing, Oxford 2012) 72-6—a separation of politics and the 'social question'. Political forms of action can, if we choose, address issues of inequality and poverty.

Of course, it is a different question whether we *should* consider particular forms of action to be political, social or private. It is also a separate question whether an exercise of authoritative political power—rather than, say, persuasive power—is in a particular case morally justified. Whilst I cannot in this thesis examine the first of these two questions, in section (b) I explore some of the issues relating to the second question, namely, the conditions that must be satisfied for an exercise of political authority to be morally justified.

iii. The logical impossibility of comprehensive authority

Is there 'logical space' for Raz's argument that law by nature claims comprehensive authority?[224] Can such a claim—that is, the claim that legal systems by nature can be used as a means for interfering with any kind of behaviour—be reconciled with the fact that law *qua* political authority is by nature always accompanied by a plurality of self-authoring individuals? Moreover, can this claim be reconciled with the fact that the regulatory jurisdiction of all political authorities is limited to political forms of action? In an effort to answer these questions, I now consider the following issues: (a) the relation between authority and supremacy; (b) the fact that subjects must recognise another as an authority for any directive that it issues to be authoritative in nature; and (c) the scope of Raz's explanatory caveats.

Starting with the relation between authority and supremacy, does a person who has the power to create rules, but whilst subject to comprehensive regulation of the type contemplated by Raz, have authority? If she does, it may be logically consistent to characterise law as by nature claiming comprehensive authority whilst accepting the necessary existence of plural self-authorship. So, what does it mean for someone

[224] See *Raz* (n 53) 217 and *Gardner* (n 1) 125-34.

to claim supreme authority? As noted in subsection (i), according to Raz and Green the supremacy of legal systems means that they: (a) do not recognise appeals from the exercise of their authority to others; (b) do not recognise other claims to authority as legitimate or as having independent foundation; and (c) purport to preempt all other authorities. I now consider each of these aspects of a claim to supremacy to see if they are correct and, if so, whether they reconcile a claim of comprehensive authority with the necessity of plural self-authorship.

Dealing first with (a), which concerns appeals, I look first at the nature of self-authorship. As I argued in Chapter III (b)(iii), decisions exert exclusionary normative force because one can only make a decision if one believes that one has determined what the balance of reasons demands—that is, after arriving at a practical truth. This belief, however, is inconsistent with the decision-maker being open to her decision being altered in a way that is *rationally justified*. If she were open to normative reversal in this way, by herself or another, her resolution would *not* be a decision. Since we cannot exercise self-authorship without deciding, this means self-authorship does not recognise appeals to others. Given my argument in Chapter III (c)(iv) about the normativity of political directives—that is, the fact that their exclusionary force rests on the belief by subjects that they reflect practical truths—it seems that political authorities also do not recognise appeals, meaning (a) is correct.[225]

Turning to (b), which concerns independence and legitimacy, I argued in Chapter III (d) that the existence of political authority is always accompanied by the fact of plural self-authorship. If right, legal systems cannot by nature deny the independence and legitimacy of this basic power of their subjects. Sense can be made of (b), however, if the authority claimed by any particular authority is in respect of a limited

[225] Indeed, when the power to create political rules is subject to others—say, on appeal to higher courts—we refer to persons exercising this power as a 'subordinate', 'lower' or 'delegated'.

domain of behaviour—that is, in respect of different forms of action. In respect of these different matters—private, social and political—both legal systems and those subject to their directives claim independent foundation for the exercise of their relative authoritative powers, whilst denying that other claims over that same forms of action are independent and legitimate. If this is right, legal systems insofar as they do have authority claim (b). This claim is possible, to repeat, only if legal systems by nature do not claim authority to interfere with any kind of activity.

Finally, I consider (c), which concerns preemption. In short, authority by its nature is such that all persons who have it purport, in respect of at least some forms of actions, to preempt others in their exercise of a similar power. This follows from the fact that authority is plural and from the fact that an authority does not recognise appeals to other sources. The absence of appeal means that once a decision is made no other party can reverse that decision. If an authority did not claim some domain over which others have no authoritative power at all, its existence would be contingent on other parties not deciding on particular courses of action. Such contingency, however, is inconsistent with the necessary plurality of self-authorship. Thus, legal systems insofar as they do claim authoritative power do by nature purport to preempt all other authorities; this claim only extends to those forms of action over which they in fact have jurisdiction. Thus, whilst law does claim supreme authority, this characteristic is incompatible with law claiming comprehensive authority.

What of the second question, namely, whether the fact that subjects must recognise the authority of another for a particular directive to be authoritative secures the necessity of plural self-authorship?[226] Does a plurality of individuals who recognise law as having comprehensive authority exercise self-authorship in the act

[226] On these issues, see *Raz* (n 61) 25-6 and *Marmor* (n 35) 106.

of recognition? I will return to this possibility in section (b)(ii), but for the moment I think that for the following reasons this question can be side-stepped.

It must be recalled that according to Raz the nature of a thing cannot change—it is necessary and universal. Thus, if law by nature claims comprehensive authority, it makes this claim 'wherever and whenever' it exists.[227] In subsection (ii), however, I explained that the jurisdiction of all political authorities, including legal systems, is never determined in advance. It always depends on the contingent self-understanding of a particular community. The jurisdiction of law—that is, the various kinds of activity that it claims authority to regulate—depends on what a plurality of persons recognise a legal system as having the authority to regulate. Rather than claiming comprehensive authority, law only claims the authority contingently afforded to it by the members that constitute the community. These people might understand law *qua* political authority as claiming comprehensive authority, but they might not. Since the scope of its claim to authority is contingent in this way, law cannot by its nature claim comprehensive authority to 'regulate any form of behaviour', nor does it deny 'limitation' in respect of its 'scope of competence'.[228]

Thus, this potential escape for the idea that law claims comprehensive authority can be side-stepped because the fact on which it relies in support of the idea that the claim is consistent with the necessary plurality of self-authorship—the recognition of authority—in fact goes to show that law *qua* political authority does not by nature claim comprehensive authority.

In this subsection, I have so far concluded that the relation between authority and supremacy and the necessity of recognition does not saved the characterisation of law

[227] *Raz* (n 2) 17-46 and 91-9.

[228] *Raz* (n 28) 151. Someone might object to my claim that political phenomena emerge in the way I have argued. If so, my objections to Raz's characterisation of law will not convince. On this issue, see my discussion of law and its relation to politics in Chapter V.

as claiming comprehensive authority from logical contradiction. Thus, unless there is another way to reconcile the plurality of self-authorship and the necessarily limited jurisdiction of political power with the idea that law claims comprehensive authority, Raz's characterisation of law must be abandoned.

What of Raz's explanatory caveats? Do they limit Raz's characterisation of the law as claiming comprehensive authority in a way that provides the space for plural self-authorship and does not exclude the possibility of the fact that political authority is by nature limited? Of the caveats outlined in subsection (i), only two seem to me to be possibly relevant. The first possibly relevant caveat is the idea that law claims authority 'to regulate behaviour in some way but not necessarily in every way'. On closer inspection, it is clear that Raz means that legal systems *may* limit themselves in the types of behaviour that they regulate; he does not mean that they necessarily are limited in this way. As I explained in subsection (ii), the jurisdictional competence of political authority precedes and lies beyond those functionaries who exercise power; also, I explained in Chapter III (d), plural self-authorship is a necessary, not a contingent, fact that accompanies the existence of political authority. It is because the limitation contemplated by Raz is self-imposed and contingent that this caveat does not save the claim of comprehensive authority from logical contradiction.

The second caveat that might be relevant is the distinction that Raz draws between the 'behaviour of everybody' and the 'behaviour of a certain community'. It seems to me that this distinction is open to two possible interpretations. First, Raz may mean to limit the claim to those forms of action that have, in one way or another, a public dimension. If so, both plural self-authorship and the jurisdictional limits of political authority would be saved. Such an interpretation of this caveat, however, is difficult to reconcile with Raz's otherwise clear characterisation of the nature of this

claim to authority. Indeed, it is impossible to reconcile with the idea that legal systems claim 'supreme authority to interfere with any kind of activity'.[229] Thus, the second interpretation remains, according to which law does not claim authority to regulate the behaviour of all people but only members of a particular community. Interpreted this way, however, the caveat clearly does not carve out the space that is necessary for the exercise of self-authorship.

In conclusion, in response to my own question, I do not think that there is logical space for Raz's argument that law by nature claims comprehensive authority. There is no space for such a claim because it can never be true; law *qua* political authority is 'conceptually incapable'[230] of having unlimited authority. What this idea neglects is the fact, or perhaps just its implications, that human plurality goes to the heart of the phenomenon of political authority. When coupled with the fact that authority is by nature supreme, the fact of plurality means that no authority can logically claim that it can use its power in a comprehensive way. This claim is impossible for two reasons. First, an exercise of comprehensive power would in fact extinguish the phenomena of autonomous 'men', replacing them with 'man',[231] now alone in the world and with no *others* over whom he could exercise authority. As I tried to explain in Chapter III (d), political authority would in this world be replaced by a kind of totalitarian rule. Second, the jurisdiction of political authority is by nature contingent—dependent on the self-understanding of a particular community—which means law cannot by nature claim unlimited authority.

[229] *Raz* (n 3) 121.

[230] *Gardner* (n 1) 125-33.

[231] *Arendt* (n 63) 29.

b. Justifying the exercise or use of political authority

In this section I examine the limits that the nature of political authority imposes on arguments about when its exercise is morally justified—that is, arguments about when the use of political authority as a means is morally justified. This section has three parts. First, in subsection (i), I outline Raz's normal justification thesis, as well as two standard objections to this thesis. In subsection (ii), I then examine whether the normal justification thesis respects the fact that political authority exists under conditions of plural self-authorship. In subsection (iii), I consider what the normative commitments internal to the phenomenon of political authority might mean for the justification of political authority.

i. Three types of justifications

Broadly speaking, justifications of political authority may be substantive, procedural or hybrid in nature.[232] In this subsection, I focus on Raz's normal justification thesis, but I sketch the outlines of proceduralist objection to this substantive thesis and I conclude with a comment on the nature of hybrid accounts.

The normal justification thesis forms part of a more comprehensive account of the nature of authority. Together with the dependence and pre-emption theses, they constitute Raz's 'service conception of authority'. In *The Morality of Freedom*, Raz outlines the normal justification thesis as follows:

> [T]he normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with . . . reasons which apply to him . . . if he accepts the directives of the

[232] For a helpful introduction to these types of justifications, see *Roughan* (n 58) 29-42.

> alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly.[233]

Thus, a directive will bind a subject if his accepting it as authoritative will enable him better to act in accordance with those reasons that already apply to him. This means that the greater the 'expertise' of the ruler, relative to the subject, the wider its scope of authority will normally be.

This brings me to the dependence thesis, according to which 'all authoritative directives should be based on reasons which already independently apply to the subjects of the directives and are relevant to their action in the circumstances covered by the directive'. Thus, the reasons relevant to the justification of authority will vary. Whilst 'knowledge, strength of will [and] reliability in various aspects of life' are relevant in determining the justified scope of authority, since reasons are 'general' and 'precede the will', there are some reasons that bind all people. Further, 'reasons' is used in its normative sense, which means that what matters for the purposes of justification is conformity to reasons that actually apply to a person. Finally, according to the pre-emption thesis, directives that are issued by a ruler replace the reasons on which persons should otherwise act and on which these rulers ought to base their particular decisions—that is, political directives will exert exclusionary normative force on those subject to them.[234]

Whilst the service conception is meant to be an account of all forms of authority, Raz does not argue that it legitimates claims made by even reasonably just political authorities. This is because people have varying types and degrees of technical skills, practical expertise and reasoning abilities, which means that if conformity with reason

[233] *Raz* (n 61) 53.

[234] See *Raz* (n 61) 47, 73-4 and 78-80 and *Raz* (n 4) 58-9.

exhausts the normative justification of political authority we may have reason to conclude that many political directives are unjustified.[235] To avoid this, he explores two secondary or supplementary justificatory grounds. First, he considers consent, which he says 'entails a promise to obey' an authority, meaning it 'is an undertaking of an obligation'. Since acts of consent have normative consequences, whether they are valid depends on whether 'there is a non-will-based reason why it should' be valid. He thinks that certain non-instrumental justifications, such as the role of authority in a reasonably just society in facilitating or assisting the development of valuable relationships or projects, may justify such acts. Second, whilst consent is sometimes an expression of an attitude of 'identification with the society, an attitude of belonging and sharing in its collective life', such expression is possible in other ways. When in a reasonably just society people respect the law and believe that they have an obligation to obey the law, political authority will be as valid as it would be had the subject consented. What justifies political authority in these circumstances is the belief that the authority is in fact legitimate.[236]

What of Raz's critics? Whereas Raz thinks that 'the role of authority' is to 'help subjects conform to reason', Scott Hershovitz observes, we 'might think . . . that well-constructed democracies can claim legitimacy on other grounds' and that 'making decisions together is often more important than getting them right'. The resolution of 'conflict through democratic procedures', it is thought, expresses and respects our status as political equals and it also respects our interest in autonomously controlling our own lives. The challenge of the proceduralist is essentially against the idea that the 'primary purpose' and legitimacy of political authority depends on the extent to

[235] See Joseph Raz, 'Comments and Responses' in Lukas Meyer et al (eds), *Rights, Culture, and the Law: Themes From the Legal and Political Philosophy of Joseph Raz* (OUP, Oxford 2003) 262-3 and *Raz* (n 61) 78.

[236] See *Raz* (n 61) 79-99 and *Raz* (n 60) 1037-41.

which it helps subjects conform to reason.[237] What matters is that people have control over the making of political decisions and that political decisions are the outcome of egalitarian procedures.[238]

Others prefer a hybrid justification. For example, Samantha Besson points to the fact that political authority by its nature has a public dimension. Its public character means that any justification of its exercise should be grounded in arguments that have both 'procedural and substantive dimensions'.[239] Thomas Christiano advances a similar 'dualistic' account, arguing that both procedure and outcome are relevant to the justification of political authority. Like Besson, he emphasises the public character of political authority, arguing that this fact requires conflicting interests and conceptions of the good to be recognised publicly as worthy of equal consideration—this, he says, can only properly be done through democratic procedures.[240]

What does my analysis of the nature of the phenomenon of political authority add to the debate about the circumstances in which an exercise of political authority will be justified? In the remainder of this section I explore possible implications that it may have, focussing first on Raz's normal justification thesis, and then on how the normative commitments internal to political authority resemble the values that inspire procedural justifications of political authority.

ii. The impermissibility of a tyranny of reason

In this subsection, I will focus on the normal justification thesis. To start, I suggest an interpretation of Raz's thesis, which I will call the 'strong version'. According to

[237] Scott Hershovitz, *The Role of Authority* (2011) Philosopher's Imprint 1, 1-4 and fn 19.

[238] *Viehoff* (n 58) 358.

[239] Samantha Besson, 'Review Article: Democracy, Law and Authority' (2005) Journal of Moral Philosophy 89, 92 and 99. See also Jeremy Waldron, 'Authority for Officials' in *Meyer* (n 235) 59-66.

[240] Thomas Christiano, 'The Authority of Democracy' (2005) Journal of Political Philosophy 266-90.

this version, it could be justifiable for a 'wise philosophic monarch[241] or 'expert'[242] to determine in advance, once and for all, for every member of a community what action in any given case is required by reason. This expert, armed with conclusive reasons for action, could then issue directives that exclude all first-order reasons from later practical deliberation, with subjects left only to act as decided for them. If the strong version is correct as an interpretation of Raz's thesis, can it be sustained in light of the fact that the phenomenon of political authority can only exist when the subjects over whom it is exercised are autonomous—that is, self-authoring—agents? In answering this question, I will consider two issues. First, do situations of practical conflict that do not lend themselves to the identification of a single set of undefeated reasons for action provide space for the existence of plural self-authorship? Second, does the fact that the subjects of a ruler have to recognise that ruler as an authority for the ruler to in fact be an authority, secure the necessity of plural self-authorship?

Before addressing these issues, I briefly consider whether the strong version is an accurate interpretation of Raz's thesis. I consider two possible objections. First, do Raz's secondary justifications of political authority, which I outlined in subsection (i), preserve space for the exercise self-authorship, thereby precluding a 'tyranny of reason'[243]? Plausibly, consent or the expression of an 'attitude of respect' by their nature exclude rule of a type that would eliminate self-authorship,[244] on the basis that such acts of consent or attitudes would not be normatively justifiable—their validity, we must recall, depends on whether there is a non-will-based reason why they should be valid. Raz, however, does not think that either consent or attitude is *necessary* for

[241] A.E. Taylor, *Plato* (Archibald Constable, London 1908) 135.

[242] *Raz* (n 61) 75.

[243] *Arendt* (n 5) 108.

[244] *Raz* (n 61) 99.

the justification of political authority. They are examined because the experts that he thinks should exercise political authority are insufficiently wise. If they were wiser, the normal justification thesis would alone be sufficient to justify political authority. Thus, it seems to me that these secondary justifications do not challenge the proposed interpretation of the normal justification thesis.

A second objection to the strong version interpretation might be located in Raz's recent addition to his service conception of authority of an 'independence condition' that must be satisfied before an exercise of political authority will be justified.[245] According to this condition, when determining the issue of justification, we must take into account the fact that an individual being free to make decisions unhindered by others may be as important as conforming to reason.

Whilst the condition appears to concede much to proceduralist objections, in one respect it is more apparent than real, for Raz thinks that the value of free decision-making rests on its successful exercise. Even insofar as he thinks that success is not all that matters, such that there are 'reasons for decision'[246] that conflict with the reasons that support the normal justification thesis, these reasons are not conceptually unique.[247] In other words, the reasons for decision may be excluded by an exercise of authority,[248] meaning that whilst it is a separate condition,[249] in that its normative underpinnings are different, it is not a necessary condition that must be satisfied for an exercise of political authority to be justified.[250] Thus, since it is conceivable on Raz's account of the independence condition that the reasons for decision may on any

[245] *Raz* (n 60) 1014.

[246] *Roughan* (n 58) 111-4.

[247] *Raz* (n 60) 1015-8 and 1027.

[248] See *Raz* (n 60) 1019 fn 19 and *Raz* (n 61) 57.

[249] *Roughan* (n 58) 39-40.

[250] See Joseph Raz, 'Government by Consent' in *Raz* (n 53) 365-6 and *Roughan* (n 58) 126-7.

occasion be defeated by reasons for conformity, the condition as characterised by Raz does not challenge the strong version interpretation of his thesis.

Going forward, I will assume that the strong version interpretation is correct (though, I do consider a 'weak' version of the thesis at the end of this subsection and in subsection (iii)). A comprehensive application of this thesis, however, would mean that subjects of political authority would never decide—after all, everything has been decided for them. If these subjects never decide, does this mean that self-authorship is extinguished? Does the thesis, therefore, contradict the conditions that make the existence of political authority possible? In this subsection I will consider two ways to escape this charge.

Many theorists, Raz included,[251] think that people are sometimes faced with conflicting proposals for action that are incommensurable, incomparable or equally weighted. These may concern trivial issues, like picking between two identical apples, or life-defining, such as choosing between one of two offers from Oxford or Cambridge. In both cases, despite the absence of a *single* set of undefeated reasons, the individual still has a reason to select one of the options—if she does not, she will either fail to satiate her hunger or the offers will be withdrawn. This means that *ceteris paribus* she must pick one. If such cases do exist, it would be permissible for a person to pursue either action, without failing to conform to the demands of reason. Thus, the normal justification thesis would not apply here, since the idea of a person 'better' conforming to reasons would be unintelligible. If political authority would not be justified in these cases, would subjects not then be free to exercise the power of self-authorship? Does practical indeterminacy save the normal justification from the charge of logical contradiction?

[251] *Raz* (n 61) 321-45.

When someone selects in these cases are they 'deciding' in the sense examined in Chapter III—are they creating a rule? I do not think so and I will explain why by way of an example. Imagine a student, Rachel, who is deciding whether she should accept an offer to pursue her doctorate at Oxford and Cambridge. She considers each option in full, identifying all relevant reasons for and against the options and evaluating them in as thorough a manner as possible. After doing so, she cannot identify a single set of undefeated reasons for selecting one rather than the other. Despite the absence of a single set of undefeated reasons, however, she still has reason to pick one or the other. So, through the exercise of her faculty of choice—*liberum arbitrium*—she chooses Cambridge. Before sending off her acceptance and rejection letters, however, she has a change of heart, so she edits the letters and sends an acceptance letter to Oxford and a rejection letter to Cambridge.

If compared to Jacob, who decided to cook a curry for his friends, but then changed his mind, there is an important difference. Unlike Jacob, who believed that he identified a practical truth, Rachel acts on a 'spontaneous preference';[252] choices of this type by nature carry within them 'an element of complete arbitrariness'.[253] In choosing, Rachel leaves the domain of practical reason and wills a particular end.[254] Such is the power of the will, for in its executive capacity as the 'spring of action',[255] the faculty of the will empowers us to choose in those cases where we simply have reason to act in one way or another. Whereas decisions entail the selection of an option that is thought to be supported by a single set of undefeated reasons, choices as I have defined them are by their nature made in circumstances when individuals think

[252] *Kolnai* (n 108) 213.

[253] *Arendt* (n 95) 207.

[254] For a similar idea, see *Raz* (n 61) 48-9.

[255] *Arendt* (n 95) 6.

that such reasons are absent.[256] In their absence, Rachel will not *believe* her choice reflects *the* practical truth and it will therefore not exert exclusionary normative force. If my analysis of the nature of political authority is correct, therefore, choosing in situations of practical indeterminacy is not sufficient for constituting the phenomenon of self-authorship. Thus, the possibility of indeterminacy does not rescue the strong version of the normal justification thesis from logical contradiction.

Perhaps someone wishing to defend the strong version might argue that plural self-authorship is secured by the very act of following directives. When following the directives of a wise expert, someone might argue, we decide and therefore exercise self-authorship. In a recent discussion of his thesis Raz makes a similar point. When one follows authority, he says, 'one's ultimate self-reliance is preserved, for it is one's own judgment which directs one to recognize the authority of another'.[257] The success of this argument, I think, turns on the type of 'recognition' that is required for political directives to be authoritative.

According to Timothy Endicott, recognition of authority is only justified after 'a complex exercise in evaluative and normative reasoning' that results in a decision to obey.[258] Perhaps this is right. But, is recognition of this type also necessary before directives can exert exclusionary normative force on subjects? Sometimes, after all, we recognise the authority of our parents long after reaching adulthood, for no reason other than the fact that they are our parents. This explains why we obey, but it does not mean that we have decided to obey. Does bare recognition of this type satisfy the necessary condition of plural self-authorship? I do not think so. In Chapter III (c)(ii),

[256] On these ideas, see *Finnis: Reason* (n 31) 223-8.

[257] *Raz* (n 60) 1018. A similar point is made in *Viehoff* (n 58) 343-4.

[258] Timothy Endicott, 'Interpretation, Jurisdiction, and the Authority of Law' (2007) 6 American Philosophical Association Newsletter 14.

I argued that a necessary condition for there to be political authority is that a plurality of persons come to think of themselves as a 'We'. In Chapter III (d), I explained that this plurality must interact as self-authoring or autonomous individuals. If I am right, this means that only an Endicott-style of recognition is sufficient for the *polis* to exist—and, therefore, for the phenomenon of political authority to have the space within which it can exist.

I thus conclude with a narrow claim about Raz's thesis, namely, that for it to be logically tenable the strong version must be qualified by a requirement of 'deliberate recognition'. This might seem a relatively small point—perhaps one acknowledged by Raz. But, it has important implications for arguments about when an exercise of political authority will be justified. At the very least, it means that the nature of political authority is incompatible with a philosophical or political outlook that would permit a true tyranny of reason.[259] A defender of the normal justification thesis might accept this conclusion. If so, it seems to me that they would then have to abandon the strong version interpretation, adopting rather a weaker version according to which the exercise of political authority can be justified only if it promotes conformity to reason *and* its use is consistent with the fact that subjects are self-authors (or, autonomous). This 'weak' version, I think, essentially captures the hybrid justifications of authority outlined in section (b)(i). I return in the last paragraphs of subsection (iii) to the possibility that Raz's thesis qualified in this way collapses into a hybrid justification. First, however, I consider the normative commitments internal to the phenomenon of political authority to establish what their relevance, if any, is to the debate around the justification of political authority.

[259] On the tension between philosophy's characteristics of 'necessity' and 'unity' and politics' characteristics of 'contingency' and 'plurality', see *Arendt* (n 163) 5-39.

iii. The normative commitments internal to political authority

In subsection (i), I referred to the fact that justifications of political authority may be categorised as substantive, procedural or hybrid in nature. In this section, I focused on one substantive justification—Raz's normal justification thesis. I concluded in the previous subsection that a weak version of this thesis, according to which an exercise of authority will be justified if it promotes conformity with reason and is not inconsistent with the fact that subjects of political authority are autonomous agents, does not fall foul of a charge of logical contradiction. In this subsection I examine the second part of this weak version of the normal justification thesis—that is, the part according to which the use of political authority as a means in pursuit of an end must be consistent with the autonomy of the subjects of this authority.

In subsection (i), I outlined a proceduralist objection to the normal justification thesis. According to one version of this objection, 'well-constructed democracies can claim legitimacy' on grounds other than the extent to which they ensure conformity to reason, since the resolution of 'conflict through democratic procedures . . . expresses and respects our status as political equals as well as our interest in autonomously controlling our own lives.'[260] Because we are autonomous and equal, an exercise of political authority might only be justified if subjects have control over decisions, or if decisions are the outcome of egalitarian procedures. In short, objections of this kind to Raz's thesis are premised on the idea purely substantive theses fail to take into account the intrinsic value of political equality and the fact that this equality can only properly be recognised when political decisions are made through a democratic process of some kind, where our conflicting interests and conceptions of the good are recognised publicly as worthy of equal consideration.

[260] *Hershovitz* (n 237) 3.

Arguments of this type, of course, rest on controversial and deeply contested moral premises that have no place in a thesis of this type—that is, a thesis concerned with the nature of political authority. Despite the importance of these arguments, analytically speaking they can only be made after we grasp the limits that the form of political authority imposes on such arguments. This does not mean, however, that formal analysis is synonymous with normatively-neutral analysis. In fact, the reverse is true. In Chapter III (c)(v), I explained that the analysis of political phenomena is normative because the existence of these phenomena is dependent on the way that a plurality of persons interacts—our normative commitments determine whether political phenomena in fact exist. Political authority, for example, emerges from a form of plural interaction that has, through the exchange of reasons, the regulation of action as its end. This means that people must conceive of and treat each other in a particular way for the phenomenon of political authority to exist at all. This fact, I think, has important implications for justificatory arguments pertaining to the exercise or use of political authority.

What normative commitments characterise political authority? In Chapter III (c), I argued that a *polis* only exists if a plurality of persons interacts in way that creates a 'normative' space that is both public and shared—in this space different political phenomena can come into being. For political authority to manifest in this space the plurality of interacting persons must adopt a normative standpoint in relation to each other; they must be willing to exchange reasons for the sake of regulating action. Once this form of 'belonging' is internalised, reasons that are political in nature are born—that is, people experience the reasons given by others as relevant to what should be done. In other words, people in these situations address each other in ways that can be characterised as second-personal. In this way, political

authority depends for its existence on people conceiving of and treating each other as autonomous and equal. Further, since the members of the community must be willing to take into account others' reasons when making political decisions, they in this way respect others' concerns and interests. Thus, if interaction is characterised either by a denial of others' agency or by a lack of consideration of others' concerns or interests, the phenomenon of political authority cannot exist. If this is right, internal to this phenomenon are the values that inspire procedurally-orientated justifications: political equality and mutual concern and respect for the interests of others.

If these values are internal to the phenomenon of political authority, what does this mean for the debate around the justification of political authority? Does it mean that political authority will only be justified if decisions are made through democratic processes, as argued for by the proceduralists? Formally speaking, there does not seem to me to be any necessary connection between autonomy and equality, on the one hand, and democracy, on the other hand. Whether democratic forms of rule are, morally speaking and in any given community, the only or even the best mechanism for respecting the equality and autonomy of the members of that community is both a substantive and a contingent question that can be resolved only by moral argument.[261] Form alone, in other words, cannot say which institutions are consistent with equality and autonomy. When considering what we truly should do—that is, how to structure our institutions and how to exercise power—we cannot and nor should we ever try to escape moral argument, evaluation and judgment.

That said, the normative commitments internal to the phenomenon of political authority mean that the members of a community must at least be willing to exchange reasons in public—in the *polis*. The public exchange of reasons, though, is precisely

[261] The contingency of this question, I think, means that there are no *a priori* reasons why aristocracies or monarchies could not satisfy the normative commitments internal to political authority.

what is envisioned by those theorists who advocate hybrid justifications of political authority. Thus, a procedural mechanism of some kind—probably similar to what is contemplated by theorists like Besson and Christiano[262]—will be required to enable this public exchange. In this way, some of the 'normative content' of a justification of political authority 'arises from the . . . structure of [the] communicative actions'[263] that partly constitute the phenomenon of political authority. Thus, any justification of political authority will at least have to satisfy the procedural aspect of the dualistic accounts advanced by hybrid theorists.

I am sure many will resist the idea that Raz's normal justification thesis, when qualified by the fact of plural self-authorship and the normative commitments internal to political authority, collapses into a hybrid justification of political authority. If so, perhaps they will at least agree that my analysis reveals that Raz's independence condition, according to which free decision-making is an important value that must be taken into account when determining whether the use or exercise of political authority is justified,[264] is not just a separate condition in terms of which 'reasons to decide' are weighed up against 'reasons for conformity'. Rather, it is a necessary condition that must be satisfied independently of an evaluation of any reasons for conformity. The condition must be satisfied, though, not just for moral reasons, but for reasons of form. In other words, unless it is satisfied the form of rule that to be justified is just not politically authoritative.

[262] See the final paragraphs in section (b)(i).

[263] *Habermas* (n 168) 6.

[264] *Raz* (n 60) 1014. This was discussed in subsection (ii).

V. CONCLUSION

I conclude my thesis about the nature and limits of political authority with a brief comment on what my method and arguments might mean for an account of the nature of law. First, though, let me recap some of the main arguments in this thesis.

In Chapter II, I briefly outlined the meaning that I ascribe to the terms 'form' and 'nature'. I explained that I understand the form or nature of political phenomena to be essentially limiting—that is, the nature of a thing provides constraints on what can logically speaking be done with that thing. It limits the potential uses of that thing as a means to some desired end. In this way, I argued, form is logically prior to questions that we have about how we truly should decide to use these phenomena.

I started Chapter III by outlining part of Raz's concept of authority, according to which authority entails the power to create exclusionary reasons. I also noted Raz and Green's claim that the concept of self-authorship is parasitic on interpersonal authority—the primary reason being the fact that authority by its nature is triadic in structure. I initially resisted this conceptual hierarchy, citing the etymological kinship between authority and author. Section (b) was in part directed at challenging analytically this hierarchy. I explored in that section the phenomenon of self-authorship, concluding that it possesses the same triadic structure—ruler, rule and subject—that Green has attributed to political authority. Thereafter, in section (c), I relied on my analysis of the nature of self-authorship as a model for analysing the nature of political authority. I concluded that the phenomenon of political authority emerges from a particular form of interaction among a plurality of persons in their capacity as members of a single political whole—that is, from a form of interaction where people exchange reasons for the sake of regulating individual and collective actions, and resolve the conflict that arises from this exchange through deliberation

and decision. In section (d), I finished the chapter by emphasising and defending the claim that the phenomenon of political authority can only emerge from the interaction of a plurality of self-authoring (meaning, autonomous) individuals.

In Chapter IV, I explored some of the limits that the nature of political authority imposes on its exercise and justification. In particular, I focussed on Raz's claim that law by nature claims comprehensive authority and on his normal justification thesis. I concluded that law cannot by nature claim *comprehensive* political authority as a claim to be able to exercise such power contradicts the fact that political authority can only arise under conditions of plural self-authorship. This claim is also inconsistent with the fact that the jurisdiction of political authority is always contingent on the self-understanding of the members that constitute a particular community—that is, such a claim is contrary to the nature of the phenomenon of political authority. As for Raz's normal justification thesis, I argued that a 'strong version' of the thesis is inconsistent with the necessary plurality of self-authorship. A weaker version of the thesis, however, according to which both conformity to reason *and* respect for the autonomy and equality of the subjects of political authority must be satisfied, will be consistent with the nature of political authority.

In the space that remains I consider very briefly what my method and arguments might mean for an analysis of the nature of law. I have already argued that the plural nature of authority means there is no logical space for law to claim comprehensive authority. It seems to me, though, that my argument about the existential conditions necessary for there *to be* political authority supports the positivist thesis regarding the source of law, at least in the form of (LP*).[265] This is because central to my account

[265] According to *Gardner* (n 1) 21, (LP*) states that: 'In any legal system, whether a given norm is legally valid, and hence whether it forms part of the law of that system, depends on its sources, not its merits (where its merits, in the relevant sense, include the merits of its sources)'.

of political authority is the fact that only certain exercises of power, resulting from particular forms of engagement, can be political and only this power can generate authoritative political norms, like legal rules. Thus, we must look to the source of the norm—private, social or political—to determine whether it is legal. This argument for (LP*) differs from one of Raz's arguments for his sources thesis, namely, that positivism 'is based on the mediating role of the law', which is to say, the authoritative nature of law read with the normal justification thesis.[266] I have already rejected the idea that law claims comprehensive authority (and a strong version of the normal justification thesis). If law does not claim comprehensive authority, does it at least by nature claim authority?[267]

My account of the nature of political authority emphasises deliberate political-decisions. Decisions may impose obligations, grant permissions or delegate powers. They exert normative force as exclusionary reasons—they are authoritative in nature. Should we limit our concept of law to norms that are created in this way?

If law is a political phenomenon that emerges from the interaction of persons, it is not clear why it should be construed in such narrow terms. Through the habitual doing of things individuals develop traditions or customs. Such traditions or customs, though the result of deliberate action, need not entail a decision to adopt a 'particular pattern of conduct'.[268] If they arise in this way, they will not generate exclusionary reasons for action. Rather, action of this type creates first-order reasons for action. Likewise, customs or conventions evolve in communities that shape in important ways what we do and how deliberate political power is exercised. These conventions

[266] See *Raz* (n 53) 234 and *Raz* (n 3) 47-52.

[267] *Raz* (n 53) 215-20.

[268] Though, it can entail this, in which case these customary norms would be authoritative: see *Finnis* (n 47) 238-45, where he discusses the transition from 'PJ_0' to 'JJ_1'.

and customs will not be authoritative, since they are not created intentionally[269] as 'expression[s] of the judgment of some people or of some institutions on the merits of' a proposal for particular and sustained future action.[270] That said, since these customs and conventions arise from actions that are 'collective expressions'[271] of the values and beliefs of the members of that community about how individuals should act as members of that political community, they do exert normative force as first-order reasons.[272] If (LP*) is correct, the fact that the source of these first-order reasons is the political community itself—people *engaging* as members of a unified whole—means they are legal norms.[273] If this analysis is correct, it seems to me that law does not by nature claim authority.

I have come a long way since Chapter III, where I outlined part of Raz's account of the nature of authority. Whilst I have agreed with him that authority is a normative power that entails the creation of exclusionary reasons, I have disagreed with him on much else. Why? This disagreement, I think, may best be explained by the fact that we answer very differently Gardner's question about what type of engagement is required for there *to be* phenomena like authority (and law). This issue is too complex to be addressed properly here, but a single example from Raz's work may be helpful in gesturing at my thoughts on the issue.[274]

In discussing the relation between law and morality, Raz says that he doubts 'that there are important tasks that are unique to the law, in the sense that they cannot at all

[269] Cf. *Gardner* (n 1) 70-4 and 96 and *Ekins* (n 170) 170-1.

[270] *Raz* (n 53) 231.

[271] *Marmor* (n 35) 110.

[272] This is reflected in practice, when officials grapple with their implications (*Barber* (n 23) 89-103).

[273] For similar points, see *Finnis* (n 47) 254 and *Gardner* (n 1) 179.

[274] See Michael Wilkinson, 'Between Freedom and Law: Hannah Arendt on the Promise of Modern Revolution and the Burden of "the Tradition"' in *Goldoni and McCorkindale* (n 223) 35-61, for a more developed exploration of some of these ideas.

be achieved any other way'.[275] No 'special kudos' attach to communities with law,[276] which means law is not essential to living a complete life. Since by its nature law is only an instrument that provides the 'framework within which social life takes place', it may be replaced whenever something more serviceable in satisfying our interests is discovered.[277] Is this right? I do not think so. Perhaps law not only frames our interactions, allowing us to act as we think best, but it is also the link that binds us together—constitutes us—as a political community.[278] If having a political identity is an important part of what it means to be a person, such that it endows our affairs with dignity,[279] then perhaps law is necessary for realising this identity. Just as we do not live fully as persons if we do not make decisions or choices and if we do not live our lives according to custom and tradition, our political lives may be incomplete if we do not interact in a way that generates legal norms.

How could one go about resisting these conclusions? One could perhaps deny that politics has this dual function: constitutive and instrumental. It is not essential to the constitution of identity—each person, following Robert Nozick,[280] has only one life, her separate individual life. It is not essential to being a free and rational person. Rather, legal systems are merely 'agglomerations of bureaucratic power' with law 'superfluous'[281] in communities where 'higher . . . reason',[282] perhaps, has made it

[275] *Raz* (n 2) 170.

[276] *Gardner* (n 1) 295.

[277] *Raz* (n 28) 154.

[278] See the discussion of *nomos* and *lex* in Keith Breen, 'Law beyond Command? An Evaluation of Arendt's Understanding of Law' in *Goldoni and McCorkindale* (n 223) 15-34.

[279] *Arendt* (n 5) 140.

[280] Robert Nozick, *Anarchy, State and Utopia* (Blackwell, Oxford 1974) 33.

[281] See Martin Stone, 'Positivism as Opposed to What? Law and the Moral Idea of Right' (2010) (last accessed at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1554500, on 30 July 2015) 8 and 29,

[282] *Habermas* (n 168) 3.

unnecessary 'for large-scale enforcement and administration' of people.[283] Perhaps Raz and others would deny that they rely on a view of politics where 'government is . . . an apparatus of public administration, and society . . . a market-structured network of interactions among private persons'.[284] If they did deny this idea, however, what are our options? I think that we have only two. Either, politics is the conflict-ridden and sometimes practical interaction of a plurality of persons *qua* members of a single community, or it entails behaviour of an as yet unspecified type. If it is the former, many of Raz's famous and powerful arguments about the nature of political authority (and law) cannot be sustained. If it is the latter, however, many of the arguments that I have made in this thesis might be wrong.

As legal theorists, therefore, before exploring the natures of political phenomena like authority and law we must answer yet another question to do with identity, one that Raz once suggested to be 'tedious', [285] but which is ontologically more basic than these often more popular questions, namely, 'What is politics?'[286]

[283] *Raz* (n 61) 78 and *Raz* (n 60) 1004

[284] *Habermas* (n 168) 1.

[285] *Raz* (n 61) 3.

[286] On the possibility of 'political jurisprudence', see Michael Wilkinson, 'Political Jurisprudence or Institutional Normativism? Maintaining the Difference between Arendt and Fuller' (2014) 43(3) Netherlands Journal of Legal Philosophy 240.

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