



# **Law as claim of legitimate authority**

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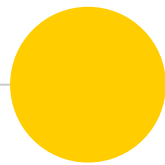
# Structure

1. The Source thesis and legal positivism:  
how law works as legitimate authority
2. Justifying legitimate Authority

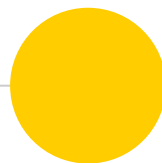
# The Social Thesis

- In the most general terms the positivist social thesis is that what is law and what is not is a matter of social fact.

# Why social thesis?



- A. reflects the meaning of 'law'.
- B. separates the description of the law from its evaluation.
- C. eliminates investigator's bias.
- D. the character of law as a social institution.



# Understanding Social Thesis

- The tests for identity and existence of a legal system:
- efficacy, institutional character, and sources.
- How do you understand the difference between the weak and strong version of the social thesis?

# **Efficacy**

- generally adhered to and is accepted or internalized by at least certain sections of the population

# Institutional

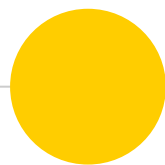
- adjudicative institutions charged with regulating disputes arising out of the application of the norms of the system
- claims to be authoritative and to occupy a position of supremacy within society



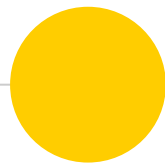
# Source

- The existence and content of every law is *fully* determined by social sources.

# Why source thesis?



## 2. Justifying Legitimate Authority



# **The Classification of Authority**

- Reason for action—practical authority
- Reason for belief—theoretical authority

# How to Tell It's An Authority?

- The authority's decision is for the disputants as reason for action. The authority's decision is meant to be *based on* the other reasons, to sum them up and to reflect their outcome.
- The authority's decision is also meant to *replace* the reasons on which it depends.

# **The Conception of Authority**

- The dependence thesis
- The normal justification thesis
- The pre-emptive thesis

# **The Dependence Thesis**

- 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.

# Normal Justification Thesis

- Consider suggestion again: Why do you take a suggestion?
- The normal way to establish that a person has authority over another person involves showing that the subject *is likely better to comply with reasons* if he accepts the directives of the authority rather than following the reasons applying to him directly.



# The Service Conception of Authority

- Dependent thesis+ normal justification thesis
- They regard authorities as *mediating* between people and the right reasons which apply to them, so that the authority judges and pronounces what they ought to do according to right reason.

# The Pre-emption Thesis

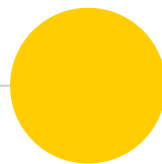
- dependent thesis+ normal justification thesis→ pre-emption thesis

Not creating new reasons+ directives from authority are better → The whole point of authority is to pre-empt individual judgment on the merit of actions.

*Authority replaces rather than adds to individual judgment. Why?*

“Ultimately, however, directives and rules derive their force from the considerations which justify them. That is, they do not add further weight to their justifying considerations. In any case in which one penetrates beyond the directives or the rules to their underlying justifications one has to discount the independent weight of the rule or the directive as a reason for action. Whatever force they have is completely exhausted by those underlying considerations.”

(J. Raz, *The Morality of Freedom*, p. 59)



# The Source Thesis and Authority

- DT+NJT → Law as legitimate authority →  
PT → the source thesis

## Raz's view on Separation Thesis

- For Raz, the fundamental legal relationship is that of authority. Law relates to morality by 'serving' it through the authority relationship.