

## Introduction

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It is a truism that law is, by its nature, a locus of practical authority. As far as just our conceptual practices go, there cannot be a normative system that counts as one of law that lacks, for instance, a judicial institution that has authority to decide legal disputes in a manner that binds the parties. Indeed, it is eminently plausible to think that legislatures, courts, and executives must all exercise something that counts as *legal*, if not morally *legitimate*, authority to do what they must do in the course of making, adjudicating, and enforcing the law—though the character and scope of such authority is not always, as discussed below, optimally clear.

Notwithstanding that we cannot understand the nature of law without understanding the nature of practical authority, there have been comparatively few attempts to explicate the concept of authority. This is likely because legal and political philosophers have been far more concerned, and understandably so, with addressing normative issues pertaining to the justification of practical authority than with understanding its nature. However, we cannot ascertain what norms someone with authority must satisfy to justifiably exercise it without knowing which properties constitute a person as having practical authority and which properties constitute a directive as authoritative. Conceptual issues having to do with the nature of authority cannot be ignored without cost to our understanding of the nature of law and the moral justification of law and practical authority.

It is worth noting that Joseph Raz's service conception remains the most influential theory of authority, though it includes only two conceptual theses. The first, the Preemption Thesis asserts that (1) authoritative directives give rise to first-order reasons to comply as a matter of conceptual necessity and that (2) those reasons should replace some of the preexisting reasons in the subject's deliberations. Claim (1) is a descriptive claim about the nature of authoritative guidance, whereas claim (2) is a normative claim pertaining to what objective standards of practical rationality require in deliberating about whether to comply with an authoritative directive. The only other conceptual claim about the nature of authority that Raz defends is that authoritative directives, by nature, also give rise to second-order exclusionary reasons as a matter of conceptual necessity. His dependence and normal justification theses are non-conceptual normative claims.

The fact that a theory containing just two conceptual claims is still regarded as the most complete account of the nature of practical authority more than thirty years after its publication speaks to the need for a truly comprehensive account of its nature. As discussed below, there is much more that can be, and should be, said about the nature of practical authority than merely that its directives create first- or second-order reasons to comply as a matter of conceptual necessity; it is also clear that authoritative directives define obligations and are made under a claim of right as a matter of conceptual necessity.<sup>1</sup> Despite being essential to understanding the nature of law, the concept of authority has been significantly undertheorized in conceptual jurisprudence.

This issue of *Problema* seeks to help fill out a conceptual account of the nature of authority. It begins with a contribution by Kenneth Einar Himma<sup>2</sup>, who argues that it is a necessary condition for a

<sup>1</sup> This is probably why Raz refers to his theory as a "conception" of authority, rather than as a theory of its "nature." In contrast, he is quite explicit in characterizing positivism as a theory of the "nature" of law. See, e.g., Raz. (2003). About Morality and the Nature of Law. *American Journal of Jurisprudence*, 48(1).

<sup>2</sup> "Practical Authority as Grounded in a Plausible Claim of Right". In this issue *Problema* (20, 2026).

directive to count as authoritative that it is backed by detriment that is reasonably likely to deter enough noncompliance to enable the authority to minimally achieve the ends that she intends to achieve by directing subject behavior. To this end, Himma argues that authoritative directives are distinguished from other commands or demands, like those of a robber, in virtue of being made under a claim of right that subjects regard as plausible. He concludes that the reason a directive must be grounded in a plausible claim of right to count as authoritative is that a directive counts as authoritative only if backed by detriment reasonably likely to deter enough non-compliance to enable the authority to minimally achieve the ends she intends to achieve by directing behavior.

Julie Dickson<sup>3</sup> considers the issue of whether it should 'count against' theories of practical authority that, for example, that they imply that law has little, or none, of the authority it claims to have. Her essay begins with a discussion of whether there is an uphill explanatory task for theories that reach conclusions about the nature and range of law's authority that are at odds with the beliefs about law's authority that are held by those who are subject to the law. Next, it considers theories of law's authority that hold that there are gaps between (i) the authority claimed by law and the legitimate authority it actually possesses and between (ii) law's ideals and its ability to live up to those ideals. Her concern is whether these theories need to consider ways to close these apparent gaps can be closed. She argues that it should not count against theories of law's authority that they reach these negative conclusions, but also that such conclusions have relevance for evaluating the success of such theories.

Miodrag Jovanović and Jules Rábanos<sup>4</sup> argue that the theoretical frameworks for attributing practical authority might not be enough to account for cases of what seems at first blush to be cas-

<sup>3</sup> "Authority and Methodology: can theories 'come out negative'?" In this issue *Problema* (20, 2026).

<sup>4</sup> "Global Practical Authority. An analysis through the case of W.A.D.A." In this issue *Problema* (20, 2026).

es of global authority. They begin by articulating a methodological framework for an analysis of authority. They then consider Himma's analysis in *The Nature of Authority*,<sup>5</sup> giving particular attention to the *existence conditions* of practical authority and Himma's so-called Sanctions Thesis. Next, they consider, in when applied in a transnational/global setting, whether and to what extent it is preferable to talk about authority instead of governance. Finally, they consider the case of the World Anti-Doping Agency as a case of global practical authority and how this analysis reveals the limitations of Himma's framework in accommodating such cases.

Yahya Berkol Gülgeç<sup>6</sup> considers a critique of the Razian account of exclusionary reasons in subject deliberations about whether to comply with an authoritative directive. He focuses on the criticism that it is sometimes impossible to determine the scope of exclusion without recourse to the balance of the first-order reasons, thus rendering exclusionary reasons conceptually incapable of fulfilling the function Raz assigns to them. His essay begins by attempting to fill the gaps in the Razian account. It argues that the Razian conditions for legitimate authority, such as the expertise, the dependence, and the efficacy condition for political/legal authorities, can be better understood as criteria for scope restriction by incorporating the "clear mistakes" doctrine. His essay concludes that critics are mistaken in thinking that the determination of the scope of exclusionary reasons even sometimes depends on the weights or the balance of first order reasons.

Imer B. Flores<sup>7</sup> considers the complex character that law exhibits as an artefact, arguing that it is much more than a mere (social) artefact. He argues that conceiving law as a complex institution which comprises different sub-institutions coheres more tightly with our understanding of law and its practices. In particular, he argues that law is the authoritative institutionalization of morality, which

<sup>5</sup> Himma, *The Nature of Authority* (Cambridge University Press, 2024).

<sup>6</sup> "On the Scope of Exclusionary Reasons in Law: Some Replies to Critiques". In this issue *Problema* (20, 2026).

<sup>7</sup> "Is Law an Artefact?". In this issue *Problema* (20, 2026).

constitutes the basis of legal authority. To this end, he defends a Dworkinian conception of legal authority as concerned with the justification of authoritative institutional decisions regarding the binding and public use of coercion or its threat in case of non-compliance by legal authorities. He thereby endorses the claim that the authority of law is coercive in character.

This collection of essays concludes with a challenge to the methodological soundness of grounding the “nature” of legal authority in necessary ontological properties. Germán Sucar<sup>8</sup> argues that the constitutive properties of legal authority can be best explicated within a specific theoretical reconstruction which locates the fundamental constitutive property of legal authority in its power to create, apply and enforce valid legal norms. This methodological framework emphasizes the importance of distinguishing the methodology of conceptual analysis from the methodology of normative (political-moral) argumentation and distinguishes political-moral from epistemological normativity.

<sup>8</sup> “Against the Nature of Legal Authority”. In this issue *Problema* (20, 2026).