

On Legitimacy and Authority: A Response to Krehoff

Bas van der Vossen

Published online: 7 November 2008
© Springer Science+Business Media B.V. 2008

Abstract In this paper I respond to Bernd Krehoff's article 'Legitimate Political Authority and Sovereignty: Why States Cannot Be the Whole Story'. I criticize Krehoff's use of Raz's theory of authority to evaluate the legitimacy of our political institutions. Krehoff argues that states cannot (always) claim exclusive authority and therefore cannot possess exclusive legitimacy. Although I agree with his conclusion, I argue that the questions of legitimacy and (Razian) authority are distinct and that we need to focus more on the former in order to really support and defend Krehoff's conclusions.

Keywords Legitimacy · Authority · Raz

In his article Krehoff argues that we should create political institutions that are well-suited to solving problems. I agree. Krehoff also suggests that creating such political institutions might mean that we ought to remove some of the political power current sovereign states are said to rightfully possess. Here too, I agree. However, I do not think Krehoff's argument, in particular his use of the Razian theory of authority, is adequate for establishing these conclusions—although he does point toward the correct way of thinking on how to shape political institutions.

Krehoff's use of the Razian theory of authority in support of his claims against sovereign states overlooks an important distinction. This is the distinction between justified (or, if you prefer: legitimate) *authority*, and the idea of legitimacy as the *right to rule*.¹ As we will see, the two notions express different judgments about political institutions and require different arguments in order to be successfully

¹ See Krehoff (2008, n. 3) tells us he will not distinguish between justified and legitimate authority.

established. In order for his arguments in favour of dismantling the sovereignty of states to be convincing, Krehoff must offer us an argument that addresses the concern of legitimacy, something Raz's theory of authority alone cannot deliver.

To say that a political institution is legitimate is to say that it has the right to rule. In order to establish that an institution has legitimacy, what must be shown is that the kind of political rule it exercises is justified. Political institutions need to meet this burden of justification because they engage in coercive behaviour. They tell us what to do, they issue threats about what they will do if we do not obey, and they carry out such threats. It is in this context that the claims of states to sovereignty are important. A sovereign state is a state that claims that it has a privileged right to rule over its subjects: if a state is legitimate and has sovereignty it means that it, and only it, has legitimacy with respect to its subjects.

Krehoff suggests that in order to find out whether a political institution is legitimate, we should ask whether that institution satisfies Raz's conditions for authority, as given by the Normal Justification Thesis (NJT). Raz argues that *A* has authority over *B* if that *B* is likely to do better by following what *A* says than by acting on her own judgment. Thus the Razian theory of authority, if successful, explains how it is possible that an autonomous person should sometimes not do what she herself thinks is the right thing to do, but do what someone else tells her to do—indeed can be obligated to do what someone else tells her to do.

Yet Krehoff seems to think that many more questions about the justifiability of political rule can be answered via the NJT. He claims: 'Political authority is legitimate if it *serves* some of the reasons for action that apply to its subjects' (Krehoff 2008, p. 3). That is, of course, true on the Razian view. But it is important to remember that this is a justification of political authority *qua* authority. In other words, what the NJT establishes is only that persons can be obligated to do what a certain person or body, an authority, tells them.

When we are dealing with so-called political authorities, the adjective *political* simply expresses that the specific authority in question is a state or other such institution. For there is no principled difference between, say, an authority on cooking—telling me to add some salt—and a political authority—telling me I ought to drive no faster than 30 mph in this street. In both cases the authority of the person or body derives from the superior decision-making skills of that person or body relative to me. The reason I am free to ignore the demand to add salt but not the demand that I drive not too fast is *only* that driving too fast involves my violating duties. It is not because the state, the 'political' authority, said so. This is due to what Raz labels the dependence thesis (Raz 1986, p. 47).²

But showing that some *A* is an authority does *not* entail showing it has the right to rule. The cook cannot *force* me to add salt. And the *A* who is a good judge on what speed satisfies my obligation to not drive recklessly is not thereby justified to enforce such a rule. In other words, to have justified authority means just that: it means one is in a position where one is able to tell others what to do. But nothing more.

² Krehoff seems aware of this, or at least I take it that this is what he is getting at in the rather obscure passage starting with 'We can now begin to see ...' (Krehoff 2008).

On the other hand, an institution is legitimate if the kind of political rule it exercises is justified, if it has the right to rule. But this is a separate question from its purported authority. We can see this easily by looking at what is the traditional way of arguing that states can be legitimate: theories of political obligation. A theory of political obligation holds that if the subjects of a state are under relevant obligations, that state is legitimate. For example, if we all consented to our state, that state would on the basis of our consent have the right to rule.

It is therefore perfectly possible that a political institution be legitimate *without* having Razian authority.³ And similarly, any person or institution can possess Razian authority without having the right to rule. Consider for example a state that does equally well as its subjects in determining what they should do, and whose subjects have all freely consented to its rule. That state would be without authority, but it would definitely have the right to rule. In this case, the state, and only the state, can legitimately impose and enforce law. On the other hand, if (somehow) tomorrow some person came forward with a better set of rules for how our country should be governed than is embodied by its body of law, we would not be willing to say that she could legitimately govern our country. And this seems true *regardless* of the quality of her rules.

Authority and legitimacy are two different things therefore, even though they are in Raz's theory closely related. Raz endorses the Rawlsian idea that political rule can be legitimate because we all have a natural moral duty to support just institutions. To him, it is the task of the account of authority to help us determine which particular institution has the right to rule over a set of persons.⁴

Krehoff describes his view as one in which '[l]egitimate political authority would then be a predicate reserved for the actor which is best fitted for serving a set of reasons applying to the subjects' (Krehoff 2008). He means this to be an implication of Raz's NJT. For him, no other institution than the one best placed for serving the reasons of subjects can have the right to rule. But we can now see that this does not hold. Even if there were other possible institutions that could make subjects better comply with the relevant reasons than the state, the state *could* still be a legitimate political institution, even the unique legitimate institution. Authority and legitimacy are two different things.

³ I here simply assume (as I indeed believe) that consent theory is a coherent, if not entirely practical, proposal of how states *could* achieve legitimacy. Nothing said here depends on one's views on the ongoing debate on whether legitimacy and the duty to obey the law are logical correlates. (That is, I do not mean to come down on the question whether a state could achieve legitimacy without its subjects having political obligations.)

⁴ Raz is not entirely clear on this topic. He endorses Rawls' idea of a natural duty of justice on p. 66 of *The Morality of Freedom* (Raz 1986), but also suggests that 'serving reasons' might be what confers legitimacy. Yet that must be wrong as it renders unintelligible why a political authority can coerce, yet the cook (or the doctor from Krehoff's example) *cannot* coerce me. For one, I understand Raz's position to be this. What makes a particular political institution a legitimate one is that it actually achieves just results in accordance with the Rawlsian principle. The idea of authority as expressed by the NJT comes into play in the following way: only if a political institution has authority do we have an obligation to obey its laws instead of being free ourselves to go and achieve justice on our own. So only if an institution has authority can it command the allegiance it needs to effectively exercise political power in accordance with the Rawlsian principle. In other words, perhaps it should be said that the best way to achieve *de facto* authority is to *actually* be an authority.

Let me in closing stress once more that I agree with Krehoff's substantive position. Indeed, I believe that we should endeavour to create a world containing political institutions that are shaped strictly on the basis of their respective abilities to perform their appropriate functions as well as practically possible—and that such a world would not be one made up of territorial states. But any argument toward that position cannot rely exclusively on Raz's views on authority. Although this theory might assist us in deciding which institutions are well-suited for their tasks, what we first need to do is ask what the proper basis of legitimacy is. Only then can we see what (kind of) political institutions would best serve those principles or ends.⁵

Acknowledgment Thanks to Massimo Renzo for helpful suggestions.

References

- Krehoff, Bernd. 2008. Legitimate political authority and sovereignty: Why states cannot be the whole story. *Res Publica* 14. doi:[10.1007/s11158-008-9073-z](https://doi.org/10.1007/s11158-008-9073-z).
- Raz, Joseph. 1986. *The morality of freedom*. Oxford: Oxford University Press.

⁵ Elsewhere I have argued that *whatever* view on legitimacy we adopt (whether it be a voluntaristic theory of political obligation, a non-voluntaristic theory of political obligation, or a natural duty theory), we should dismantle the territorial states we currently live in. See my DPhil thesis, *The Shapes of Legitimacy* (Oxford: unpublished manuscript).