

## Bowing to Authority: the COVID-19 Experience

The Covid-19 crisis is not only a subject of sadness and increasing worries but also a source of wonder and amazement. The incredible speed with which people adapted themselves to the new circumstances is one of the most remarkable features of the last few months. Much was made possible by technology (without the internet, a lockdown would not have been an option at all), but also regulation was drafted so swiftly that it seemed to mock the usual complaints about bureaucratic inertia.

Even more astonishing probably, especially for those whose job it is to reflect on law, is the amazing initial preparedness and willingness of people to comply with the rules. It is true that countries reacted differently, according to their tradition, political context, and historical experience. Some countries reacted with a more Draconian measure than others, and whereas in some countries people were literally banned from the streets, other countries boasted a more liberal attitude. But even in the latter, where there is a strong tradition to 'let people decide for themselves' and where governments admonished their citizens to make use of their common sense (as the Dutch Prime Minister never tired of pointing out), the infringement of human rights was massive. Even there, police entered private houses in order to impose fines on friends who had gathered there, as was the case with students who, though sharing the same flat, nevertheless were considered to belong to different households' and were fined for sharing their meals together. Nevertheless, in the first stages of the crisis, these measures met with very little resistance and it was only after the worst was over and infection rates dropped that the people started to express doubts and criticism. Then and only then, people started to organise protests against the measures.

It would be too simple to say that in times of emergency people naturally flock around their leaders and that as soon as the emergency is felt to be less threatening and acute, people start to think for themselves. The question is rather: *what kind* of reasons impel them to obey or violate the rules? Do they obey because their leaders are informed by experts and because the official guidelines they issue are based on scientific evidence?

Or do they obey because it is the Prime Minister who in the name of the government announces these rules on prime time television? And what fuelled the protests against governmental measures in the later stages of the crisis? A distrust in science or a distrust in politics?

Joseph Raz's theory can be of help here to shed light on the matter. Although he is a philosopher and not an empirical sociologist he introduced a conceptual distinction which enables us to get a proper view of what happened.<sup>1</sup>

Raz distinguished two types of reasons: first order reasons and second order reasons. First order reasons are reasons to act in a certain way. Should I go with Tom to the city to have fun? Or should I stay at home to finish this article? By balancing these conflicting first order reasons, I will finally decide on a specific course of action.

Second order reasons are reasons about reasons: second order reasons decide which reasons should and should not be taken into account. For instance, if I promised Tom yesterday that I would take him to the city centre, this very promise is a reason for me to *disregard* several conflicting first order reasons today such as that it will rain or that I want to finish my article. Promises are what Raz calls 'preemptive reasons', reasons which prevent other reasons from being taken into consideration. Not only promises, but also rules, expert advice, decisions and agreements are all pre-emptive reasons.

Second order reasons often pertain to collective action, as is the case with agreements and rules, but they can also be individual: a promise I made to myself or a rule that I imposed on myself. For instance, if I decided that from now on I will exercise daily, that decision itself is a second order reason *not* to enter into a debate with myself every morning about whether I feel like it, or whether I have other pressing concerns. The fact that that is the rule that I decided upon is in itself sufficient reason to adhere to it. That is why we often speak about second order reasons in tautological terms: "a promise is a promise" or "rules are rules" or, unfortunately better known: "command is command".

Why do second order reasons exclude deliberation on first order reasons? Raz thinks that this is due to the fact that a second order reason is the *outcome of a deliberation* between first order reasons. In the case of my promise to Tom, it is assumed that my promise is not given light-heartedly but is given after some reflection on the relevant (first order) reasons, one of which is my wish to do him a favour and which is balanced against my wish to finish my paper and the probability that it will rain. The promise, therefore, is thought to be the outcome of balancing first order reasons and thereby *replaces* those

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<sup>1</sup> JOSEPH RAZ, THE MORALITY OF FREEDOM (1986) 38-62.

reasons. Were I to allow them to play a role in the discussion, they would count double. That is why Raz calls these second order reasons ‘pre-emptive’: they make the first order reasons ‘empty in advance’.

The better this process of deliberation (i.e. the more different considerations have been taken into account) the more weighty the resulting promises, agreements and rules. We might also say: the more “authoritative”. The rule or statement issued by an authority is not just another first order reason for me to do or to refrain from a certain act, it is a second order reason for me not to act on first reasons, because I trust the authority to have balanced a plurality of (first order) reasons (values and interests) and that the rule was the outcome of such deliberation.

Authorities are not necessarily endowed with legal or political authority. Specialists can also enjoy authority if they are believed, on the ground of their expertise, to be better equipped to balance different first order reasons. If I treat a financial advisor as an authority I believe that her knowledge is more complete in financial matters than mine, which enables her to appreciate, consider, and balance more first order reasons than I can do myself; I defer my own judgement to her in the belief and trust that she will better take care of my financial resources than I am capable of myself. That means that her advice will preempt my own reasons to invest or borrow money. Obviously, I can also treat myself as an authority, as in the case of the daily exercise mentioned above. I then view the decision of my ‘better’ and more rational self as the result of a superior kind of balancing, which I am not able to perform late at night or when I have a headache. But more commonly, we rely on the authority of others.

But not unconditionally. As Raz pointed out, we can only speak of authority if it succeeds in balancing the different reasons (goals, interests and values) that apply to us *in a better way than we could do ourselves*. If the financial advisor repeatedly causes me to lose money, I will look for another one, even though I am not able to pinpoint the deficiencies in her expertise. Authorities who only act on first order reasons which apply to themselves, such as winning the coming election, and do not balance considerations that are relevant to their citizens, lose authority. The more we can rely on their balancing act (i.e. the more sensitive they are to different values and interests including mine) the more we will be moved to comply with their resulting rules.

So far so good. Going back to the Covid-experienc there are clearly two instances of authority at stake here: medical authority and political authority. At the outbreak of the virus the Dutch Prime Minister (and I think most Western European governments) explicitly and repeatedly asserted that governmental measures were and would be completely guided by scientific medical expertise. Being clearly unable to assess and

apply the various virological and epidemiological considerations by himself, our PM bowed to the authority of medical experts and left it to them to do the balancing. In the Netherlands, this led to the establishment of the so-called Outbreak Management Team (OMT) in which different medical disciplines participated. Virologists, epidemiologists, and intensive care specialists deliberated on different possible strategies, each of which can be seen as first order reasons for action. The result of their deliberations, the advice they finally gave to the government, was therefore received by the Cabinet as an authoritative second order reason: medical recommendations were followed to the letter and translated into governmental decrees without further ado.

The Cabinet might have thought that its total reliance on medical expertise would inspire confidence on the part of the public and be conducive to widespread compliance with the rules issued by the public authorities and indeed, at the beginning of the crisis, this strategy was successful. It made people suddenly stop shaking hands and engage in strange dances in the streets to keep each other at the prescribed 1.5 metre distance. The unconditional surrender of politics to medical authority is presumably one of the factors that contributed to the quick and unreserved compliance of citizens. This degree of compliance that was not attained in countries such as the US and Brazil, where political leaders were in competition for the authority enjoyed by medical experts, as exemplified in the Fauci-Trump relationship.

So in the initial stage of the crisis, deference to medical authority was a success. But when the worst was over, it became clear that this strategy could be vulnerable and risky as well. In the first place because – as was to be expected – science did not speak with one voice. A number of scientists, who were not daily sitting at the Cabinet table, were quick to point out that the scientific evidence was far from conclusive on a number of issues, and revealed that even the most basic assumptions were a contested territory. They thus reopened deliberation on the various medical first order reasons and undermined the authority of the team. And rightly so! If science starts to issue second order reasons which do *not* allow for reconsideration and rebalancing, it removes itself from the scientific ideal of openness, ongoing discussion and essential refutability and revisability of theories. By this, however, the authority of the Cabinet was undermined as well. Having claimed that its policies were entirely dependent on scientific medical advice, every attack on the official medical expertise simultaneously weakened the authority of governmental policies. Political authority became vulnerable to scientific refutation.

However, there was a second risk of this deference to medical authority, which materialized as soon as people came to realize that Covid was here to stay. The daily

consultations between the government and the OMT led to the situation in which the OMT started to identify itself with the task of the government. They started to take into account non-medical reasons as well. At least that is what happened in the Netherlands when medical experts said that it was not necessary to wear protective masks or that it was not dangerous to fly. They did not recommend this out of medical expertise but were also guided by other considerations: that there was a shortage of masks, and that airline companies faced bankruptcy.

Therefore, in a sense, medical experts overstretched their boundaries, taking into account first order reasons which they were probably *not* better able to weigh. This obviously ignited the debate on the composition of the team. If their advice was so authoritative, why did it only consist of medical experts? Why not include economists? Why not include behavioural scientists or ethicists? Or, let us be honest: *constitutional lawyers*? Didn't the deplorable state of the economy and the repeated violations of human rights call for an extension of expertise?

These questions are justified in the context of a government which has apparently outsourced its authority to weigh second order reasons to the OMT. In that context, it seems reasonable to require a composition of the team that would not exclusively focus on the virus and which would take into account the interests of small businesses, the wellbeing of schoolchildren and students, of old people in retirement homes, of the mentally retarded, as well as the requirements of the rule of law and respect for human rights.

At the same time, however, one might question the wisdom of extending an expert medical team to other expertises. Would it not be simpler and more democratic if the government resumed its responsibilities as an authority and weighed the various first order reasons itself? It is one thing to listen carefully to medical experts in the face of a pandemic, it is another thing to *substitute* political authority for scientific authority. It is one thing to treat medical reasons as very weighty and important first order reasons, it is another to take their recommendations as a second order reason which excludes inquiry into – other – first order considerations.

Maybe it is time to remind the governments of democratic societies of the Razian wisdom: that they enjoy authority insofar as they are better able to balance first order reasons than individual citizens, and that they only function on the basis of the confidence that they can engage in this complex task because of the fact that they represent the multiple voices, interests and values of the population at large. It might be the case that that is not enough and that additional expertise (medical, legal, ethical) is required in order to have a clear insight into the first order reasons that play a role. But

the government is the final instance that should do the balancing. If it tries to hide itself behind the tree of knowledge, it can only do so at the expense of losing its authority in the long run. No expert can remedy such a loss.

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†This contribution is inspired by a discussion I had with my colleague Kostiantyn Gorobets who is writing his PhD on authority in international law.