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## JUSTIFIED EPISTEMIC AUTHORITY (IN LEGAL INTERPRETATION)

*The paper analyzes one of the main influences on the results of legal interpretation – epistemic authority. An account of authority is given along with a distinction between two basic types of authority, followed by a brief explanation of practical authority. Epistemic authority and derivative epistemic authority in particular are explained, in order to propose the conditions under which the influence of epistemic authority on judicial interpretation is justified. The general conclusion of the paper is the following: A court or judge Y is rationally justified to defer to the ascription of meaning (interpretation) p to a legal text q of person X, if court or judge Y has good reasons to believe that X has more knowledge, skills, experience or training in ascribing meaning to (interpreting) q.*

Key words: *Authority. – Legal interpretation. – Epistemic authority. – Practical Authority.*

### 1. INTRODUCTION

Legal interpretation – the ascription of meaning to legal texts – is subject to many influences. At times, the very source of law that the judge interprets dictates its own interpretation by mandating definitions of words, phrases, and specifying the usage of language in any other way. These definitions and specifications purport to tell judges how to act by mandating that a word will be ascribed a determinate meaning given by the source of law; they share the authority of the source of law in which

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they are contained. The main trait of the authority of the formal sources of law is that they give their subjects so-called protected reasons for action; they purport to guide the action of subjects by excluding all the other reasons that the subject might have (not) to act in a certain way.

However, this is not the main source of influences on legal interpretation. Despite the recent proliferation of norms that define the key terms in statutes, legislative bodies are often too engaged in political and strategic reasoning to include extensive regulation of intricacies of judicial interpretation. Legal scholarship and judicial practice have traditionally exercised significant influence on legal interpretation of judges. Today, they are supplemented by judicial dialogue between national and international courts. These sources of influence are quite different from the influence that formal sources of law have on legal interpretation. They do not mandate an action and by themselves they have no practical authority. Still, they can and often do have a specific kind of authority – authority over belief.

Scientific work done by a legal expert in intellectual property, a judgement of a court dealing for a long time with issues of political corruption, the practice of courts from other jurisdictions that is much more elaborate than the domestic practice, at times greatly influence judicial interpretations by giving judges reason to believe that one interpretation is the right one, a better one, or even the only reasonable one. The authority exercised by these persons and institutions is called *epistemic authority*.

In order to explain these two types of authoritative influences on legal interpretation I will (a) give an exposition of authority and distinguish between its two basic types, (b) give a brief explanation of practical authority, (c) explain epistemic authority, and finally, I will (d) propose the conditions under which the influence of epistemic authority on judicial interpretation is justified.

## 2. AUTHORITY

According to Joseph Raz, since authority has a bearing on what we ought to do, or what we ought to believe, the best account of authority should be able to explain its role in our practical reasoning.<sup>1</sup> From the perspective of practical reasoning, authority can be defined as a property of entity *X* that enables (mostly verbal) behaviors of *X* to act as reasons<sup>2</sup>

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<sup>1</sup> J. Raz, *The Authority of Law*, Oxford University Press, New York 1979, 10.

<sup>2</sup> Reasons being facts that “count in favor” of doing or believing something A. Marmor, *Social Conventions*, Princeton University Press, Princeton, New Jersey 2009, 5.

for person  $Y$ .<sup>3</sup> We say that  $X$  has authority over  $Y$  if  $X$  is able, with dominantly verbal utterances, to change  $Y$ 's reasons for doing or believing something.<sup>4</sup> Authority is, then, the ability to give rise to new reasons for action or belief or the ability to change reasons for action or belief.<sup>5</sup>

In one plausible account shared by a large number of contemporary writers there is at least one necessary feature to authority – *content independence*.<sup>6</sup> A proclamation or directive is authoritative not in light of its content, but in light of its source.<sup>7</sup> We are inclined to say that something or someone is an authority if its expression is able to change our reasons for acting or believing, not in virtue of the content of the expression but in virtue of the source of the expression.<sup>8</sup> We could therefore state that  $X$  has authority over  $Y$  if  $X$ 's utterance of  $p$  gives  $Y$  new reasons or changes his existing reasons for acting or believing, not in virtue of the content of  $p$ , but in virtue of  $p$  being uttered by  $X$ .

### 3. KINDS OF AUTHORITY

The distinction between various types of reasons in our practical reasoning, like reasons for emotions, attitudes, norms and institutions and so on, can in principle be condensed to two fundamental types – *reasons for action* and *reasons for belief*.<sup>9</sup> This leads us to the mentioned distinction, routinely made in contemporary epistemology and jurisprudence<sup>10</sup> – the distinction between epistemic (sometimes called theoretical) and practical authority.<sup>11</sup> As Raz points out, “there are

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<sup>3</sup> J. Raz (1979), 12.

<sup>4</sup> *Ibid.*, 19.

<sup>5</sup> *Ibid.*, 16.

<sup>6</sup> See K.E. Himma, “Practical Authority”, forthcoming in *Handbook of Legal Reasoning and Legal Argumentation* (eds. G. Bongiovanni *et al.*), Springer-Verlag, 2018, <https://ssrn.com/abstract=2957215>, last visited 23 April 2017.

<sup>7</sup> F. Schauer, “Authority and Authorities”, *Virginia Law Review* 94/2008, 1935.

<sup>8</sup> An important difference that J. Raz makes in this regard is the difference between having authority and being an authority. I could have the authority to use the scanner in my Institute without being an authority for anyone. The central case of authority for J. Raz is the authority over persons (J. Raz (1979), 20–21).

<sup>9</sup> J. Raz, *Practical Reason and Norms*, Oxford University Press, Oxford 1999<sup>3</sup>, 15.

<sup>10</sup> H. M. Hurd, *Moral Combat*, Cambridge University Press, Cambridge 1999, 62–63.

<sup>11</sup> Hurd takes epistemic authority to be a general term that includes advisory authority, influential authority and theoretical authority *ibid.*, 63. Richard Foley tends to call this kind of authority intellectual authority (R. Foley, *Intellectual Trust in Oneself and Others*, Cambridge University Press, Cambridge 2001, 83). J. Raz is inclined to call it

practical authorities whose authority is based entirely on their being theoretical authorities.”<sup>12</sup> According to him, theoretical and practical reasons have “the same basic structure”, but that the main difference is that “they provide reasons for different things.”<sup>13</sup> There is at least one core difference between epistemic and practical authority — the two kinds of authority give reasons for different things. While practical authority is thought of as giving reasons for action, epistemic authority is understood as giving reasons for belief.<sup>14</sup>

#### 4. EPISTEMIC AUTHORITY

We are fundamentally social beings when it comes to acquiring beliefs and knowledge. We are, it seems, inescapably epistemically dependent in a degree that even warrants the question about whether we are able to have any knowledge if we exclude what others have taught us.<sup>15</sup> Since there can't be any real debate about whether our beliefs are, as a contingent matter of fact, influenced by others, the main question is whether we are justified in holding beliefs in virtue of someone else having those same beliefs and sharing them with us. To explain epistemic authority is to do the same thing that Raz expects from an explanation of

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theoretical authority (J. Raz (1979), 8; J. Raz, *The Morality of Freedom*, Oxford University Press, Oxford 1988, 29), and L.T. Zagzebski uses the term epistemic authority (L.T. Zagzebski, *Epistemic Authority: A Theory of Trust, Authority, and Autonomy in Belief*, Oxford University Press, Oxford 2012). The possible terminological confusions and subsequent or antecedent conceptual confusions will be made clearer in the remainder of the paper.

<sup>12</sup> J. Raz (1979), 8; J. Raz (1988), 28–29.

<sup>13</sup> *Ibid.*, 53. J. Raz, *Ethics in the Public Domain*, Oxford University Press, Oxford 1995, 212. One kind of authority that is often mentioned but won't be a topic in this paper is called persuasive authority. H. P. Glenu notes in a 1987 paper that the concept lacks formal definition (H. P. Glenu, “Persuasive Authority”, *McGill Law Journal* 32 (2)/1987, 264), but still states metaphorically that it is “the authority which attracts adherence as opposed to obliging it” (*ibid.*, 263).

<sup>14</sup> Even though there is significant agreement in legal literature on this subject, the exact differences between theoretical and practical authority are not uncontroversial. H. Hurd believes that all kinds of epistemic authority function evidentially. They give us “a reason to think that there are other reasons (...) to act as recommended” H.M. Hurd, 63. What follows is that the utterances of an epistemic authority are content dependent reasons for action, or, more rigorously formulated: “X has epistemic authority for Y if and only if, as a result of X's stating that Y ought to do act A, Y has a reason to believe that the balance of (content-dependent) reasons dictates that Y ought to do A.” On this account, an utterance of an epistemic authority merely makes more probable that we should act accordingly, since it only points us to other antecedently existing reasons to act in a certain manner.

<sup>15</sup> E. Fricker, “Second-Hand Knowledge”, *Philosophy and Phenomenological Research* LXXIII(3)/2006, 592.

authority in general – namely, to explain the role of authority in our inferences explained.<sup>16</sup>

Despite the fact that every belief has a social aspect, it is thought that the social aspects of belief formation cannot answer the question of whether our beliefs are reliable or justified. Social aspects of knowledge are unable to tell us if the practice of forming our beliefs (doxastic practice) is reliable (if it has verific propensity).<sup>17</sup> Doxastic practices that are reliable produce evidence, and the evidence in turn gives justified reasons for belief. The fact that another person and a group of persons have a shared opinion are not in themselves evidence.<sup>18</sup> It thus seems that the opinion of another person or a group of persons can never substitute a belief-forming practice with verific propensity. If this is so, the most that can be stated regarding beliefs formed by means of epistemic authority is: *Y* sometimes can have good reasons to believe that *X* has good evidential reasons to believe *p*. On this account, the knowledge that *Y* gains from an utterance of another person, *X*, is always secondhand, since it implies that *Y* has a commitment to believe that *X* is expressing knowledge,<sup>19</sup> which entails that the knowledge transmitted by another person that we trust can, or could be checked, verified in some other way that doesn't imply utterances of other persons and “say-so” in general.<sup>20</sup>

Some distinctions are necessary. When we talk about any kind of authority, we have in mind something more than sheer influence. Another person could spell out for me the procedure to arrive to a belief, and the belief itself in which case I could say that he influenced me to undertake the procedure that leads me to a belief, but the procedure and the belief are the result of my own faculties. The issue of authority is posed when I trust the other person's opinion either because it comes from another person, or because there is some other reason to trust the opinion of the other person.<sup>21</sup> Epistemic authority can thus be twofold: fundamental and derivative. *X* has fundamental epistemic authority over *Y* if *p* is believed by *Y* in virtue of it being uttered/believed by *X*. *X* has derivative epistemic authority over *Y* if *p* is believed by *Y* in virtue of other independent reasons for thinking that *X* is reliable when uttering something. In the case of fundamental authority, we believe *p* because it was uttered/

<sup>16</sup> J. Raz (1979), 10.

<sup>17</sup> W. P. Alston, “Belief-Forming Practices and the Social”, *Socializing Epistemology* (ed. F. Schmitt), Rowman & Littlefield Publishers, Lanham, Maryland 1994, 33–34.

<sup>18</sup> J. Hardwig, “Epistemic Dependence”, *The Journal of Philosophy* 82(7)/1985, 337.

<sup>19</sup> E. Fricker (2006a), 592.

<sup>20</sup> *Ibid.*, 608.

<sup>21</sup> R. Foley, “Egoism in Epistemology”, *Socializing Epistemology* (ed. F. Schmitt), Littlefield Publishers, Lanham, Maryland 1994, 53.

believed (excluding cases of insincerity) by  $X$ ; in the case of derivative authority we believe  $p$  because of some properties of  $X$  that make us believe that  $X$  is reliable in claiming  $p$ .<sup>22</sup>

## 5. DERIVATIVE EPISTEMIC AUTHORITY

We tend to treat the opinions of other persons that possess relevant knowledge or skills as reasons for belief.<sup>23</sup> The most common way of thinking about an epistemic authority is to view it as a kind of expertise: we say that a practicing lawyer has epistemic authority in the domain of litigation in civil or criminal suites, or that a medical doctor has epistemic authority when it comes to common illnesses.<sup>24</sup> The word “expert” should be understood as relative to the person that believes something in virtue of the expert telling her that it’s so. In this thin definition, an expert is simply a person that is epistemically in a better position than the other person to “have, or make a judgement to form a conscious belief” regarding something.<sup>25</sup> It seems uncontroversial enough that it is justified to confer derivative epistemic authority to an MD when it comes to your health or to a lawyer when it comes to court proceedings. If I have no idea what is causing the pain in my abdomen, the only reasonable thing to do is to defer to a medical doctor; if I’m completely oblivious about the functioning of civil litigation in Serbia (in most cases), it is perfectly reasonable for me to confer derivative epistemic authority in these matters to my lawyer. Still, justifying the deference to epistemic authorities will depend on the knowledge that we possess about the issue at hand. From a justificatory standpoint, we can distinguish at least three types of situations:

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<sup>22</sup> *Ibid.*, 54.

<sup>23</sup> From the perspective of contemporary epistemology and social epistemology epistemic authority could be treated as a subsection of testimony and testimonials-based belief. This would however depend on the definition of testimonial belief. One of the prominent positions on testimony is the claim by Elizabeth Fricker that testimony is connected with telling in general see: J. Lackey, “Introduction”, *The Epistemology of Testimony* (eds. J. Lackey, E. Sosa), Oxford University Press, Oxford 2006, 2.

<sup>24</sup> H.G. Gadamer devotes most of his discussion about authority to derivative epistemic authority and writes: “It is primarily persons that have authority; but the authority of persons is ultimately based not on the subjection and abdication of reason but on an act of acknowledgement and knowledge—the knowledge, namely, that the other is superior to oneself in judgment and insight and that for this reason his judgment takes precedence—i.e., it has priority over one’s own” H.-G. Gadamer, *Truth and Method* (translated by J. Weinsheimer, D. G. Marshall), Continuum, London – New York 2006, 281.

<sup>25</sup> E. Fricker, “Testimony and Epistemic Autonomy”, *The Epistemology of Testimony* (eds. J. Lackey, E. Sosa), Oxford University Press, Oxford 2006, 233.

(1) When  $Y$  has no opinion about  $p$ , it is rational for  $Y$  to defer to the opinion of  $X$  if there are reasons to think that  $X$  is more knowledgeable about  $p$  than  $Y$ .  $Y$  “has good reasons to believe that”  $X$  “has good reasons to believe”  $p$ .<sup>26</sup> Consequently,  $Y$  is justified in holding the opinion that  $X$  holds. In situations in which we have no knowledge whatsoever about an issue, it can be rational to defer to opinions of other persons about the issue, even if we don’t have particularly good grounds to believe that they are particularly knowledgeable on the issue. If we have good reasons to believe that another person is more knowledgeable about the issue than the first person we trusted, we can justifiably defer to the other person’s opinion. This is in line with our intuitions and our practices of forming beliefs. A news report on an accident that we haven’t witnessed will lead us to form a provisional but justified belief about the information provided to us by the person reporting about the incident. Since we don’t have any knowledge about the situation it is rational to give *prima facie* derivative epistemic authority to the person reporting. A testimonial of eyewitnesses that might contradict the statements of the reporter will justifiably make us change our opinion about the matter, since it is reasonable to assume that the eyewitnesses have more knowledge about the accident than the reporter. Likewise, we have reasons for accepting the authority of an MD or a lawyer since we rarely have consciously formed opinions about matters in which we have little knowledge, skills or training.

(2) The reliance on the opinions of others is often not justified on the grounds that I can’t get some beliefs directly at all, but on the grounds that I can get them directly but in a less trustworthy manner.<sup>27</sup> When  $Y$  has beliefs about  $p$ , it can still be rational for him to substitute some or all of his beliefs about  $p$  for beliefs about  $p$  that  $X$  holds. In an example borrowed from Elizabeth Fricker, my shortsightedness can make a person that I’m with an “expert” in matters that require good vision.<sup>28</sup> If we have formed justified opinions about certain matters about our health or about the legal system, one could say that, in principle, we would be able to arrive to a justified belief by finding the evidence ourselves. The reasons that we have for believing the opinion of somebody else may well be derivative, but they can’t simply be substituted for personal examined reasons. Even if one conducts the same inquiry that the MD or a lawyer conducted before giving a diagnosis or advice, he would still lack the training and experience required for evaluating the results of the inquiry. Conversely, a person determined to go to law school in order to gain knowledge about a case might lack the means to conduct the inquiry necessary to reach an evidence-based belief. So, having our own

<sup>26</sup> J. Hardwig, 338.

<sup>27</sup> L.T. Zagzebski, 12.

<sup>28</sup> E. Fricker (2006b), 234.

independently formed opinions that are in conflict with the opinions of others, doesn't by itself delegitimize conferring epistemic authority to others on various grounds, the main one being the fact that the other person has more knowledge, training, has devoted more time to investigating the issue or has just put more effort into it.<sup>29</sup> In this stronger sense, an expert is a person with "specific differentiating characteristics" related to her skills, training or knowledge, be it derived from "genetic endowment" or "special training and education."<sup>30</sup>

In both (1) and (2) a problem arises from the fact that if we are not able to judge the merit of an expert opinion, I'm, in most cases, not able to judge on their expertise. Deference to the opinion of another person seems rationally justified as a matter of derivative authority in both of those cases, even if the person who is trusted is only contingently an expert. In these cases, nothing prevents us from shifting from the opinions of others to personal examined opinions if we manage to gain the skill, training or knowledge required to form a belief for ourselves. Even if we can, at times, rely on our own knowledge and expertise in order to ascertain whether a person is really an expert, most of the time we are rationally bound to defer to either other persons who have more knowledge about experts in the field or to other experts, lists of experts etc. This issue leads us to the third possibility to explore in relation to epistemic authority.

3) While it may be that ordinarily epistemic or theoretical authority is associated with an expert in relation to a layman, it would be very wrong to think that this is the only relation of epistemic authority. The situation in which we have epistemic peers seems to be completely devoid of relations of epistemic authority. But ideal peer disagreement, in which two persons are experts in the exact same domain, is more of an exception than a rule. An example from the domain of legal interpretation would be the example of a judge compared to a scholar. Both could be very proficient in law in general terms, but it could still be justified for the judge to defer to the scholar. The scholar is usually highly specialized in a particular field, and the judge is often a "generalist jurist" that doesn't know the nuances of a particular field of study. In the sense of knowledge about the relevant subject matter the judge and the scholar are in fact not peers, even though their relative position makes it seem so. The derivative epistemic authority of the scholar is in this case justified by the fact that the knowledge of the judge is not detailed or granular enough in a specific field of research that the scholar has devoted his career to studying.

4) Finally, we can easily imagine a situation in which a layman isn't sure about which expert opinion to follow; indeed, we don't even

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<sup>29</sup> R. Foley (1994), 65.

<sup>30</sup> E. Fricker (2006b), 235.



have to imagine the situation in which the opinions of experts in a certain field contradict one another.<sup>31</sup> From a layman's perspective, the disagreement of experts doesn't change much in regards of the basic rationality of him deferring to an expert opinion. Even if the opinion of an expert is not as good as the opinion of another expert, it is still rationally justified to defer to the lesser opinion and to grant the lesser expert derivative epistemic authority. The option might as well be a result of contingent factors like the availability of experts, the general quality of experts in a certain area, and so forth. But the contingent matter of the quality of expert opinion doesn't change the main thesis: namely, that derivative epistemic authority is justified under those conditions.

## 6. GENERAL CONCLUSIONS ABOUT THE NATURE OF EPISTEMIC AUTHORITY

Having in mind the analysis of epistemic authority, we can identify some of its basic features. Utterances of an epistemic authority do not require compliance but are believed by subjects to the authority in question.<sup>32</sup> In order for someone or something to have epistemic authority its utterances have to be able to give *content-independent reasons for belief*. This is a trait that epistemic authority conceptually shares with practical authority. There are, however, important differences between the two.

Primarily, it is rare and difficult, if not impossible, to command a belief.<sup>33</sup> Epistemic authorities do not give reasons by giving orders, and the utterances of epistemic authorities are not intended as exclusionary reasons for belief in the same way in which utterances of practical authorities claim to give exclusionary reasons for action.<sup>34</sup> Practical

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<sup>31</sup> K. Lehrer, "Social Information", *The Monist* 60(4)/1977, 476.

<sup>32</sup> L. Green, *The Authority of the State*, Clarendon Press, Oxford 1988, 29.

<sup>33</sup> At least not in a literal fashion. Robert Nozick though claims that we can be coerced to believe, at least in philosophy: N. Robert. *Philosophical Explanations*, Belknap Press, 1981, 4; L.T. Zagzebski, 24.

<sup>34</sup> J. Raz claims that theoretical advice preempts the other reasons for belief that one would otherwise have, and in this way, it resembles practical authority (J. Raz, *Between Authority and Interpretation*, Oxford University Press 2009, Oxford 155). L.T. Zagzebski defends the claim that epistemic authority gives exclusionary reasons for action by relying on Raz's analysis of practical authority. The preemption thesis can be reformulated to include epistemic authorities in this way: "The fact that the authority has a belief p is a reason for me to believe p that replaces my other reasons relevant to believing p and is not simply added to them" (L. T. Zagzebski, 107). Most of the discussions are based on the supposition that epistemic authority is in fact practical authority based on expertise. This is the case with discussions of S. Darwall and Hurd (S. Darwall, "Authority and Reasons: Exclusionary and Second-Personal", *Ethics* 120(2)/2010,

authority involves “power, whether it be the power to command another or act for him.”<sup>35</sup> Since epistemic authority is not a normative power in the Razian sense and in this way, it is *powerless*. The right to issue deontic propositions and the duties of other persons to obey those propositions are not based on his superior knowledge, because “there are no epistemic laws, epistemic courts, or epistemic punishments” that would enforce compliance with an utterance of an epistemic authority.<sup>36</sup>

Another important feature of epistemic authority is that it exists if Y explicitly or tacitly *acknowledges* that authority of X.<sup>37</sup> Richard T. De George gives interesting examples of acknowledgement to prove a point that “no one can be forced to acknowledge another as an epistemic authority.” Faculty members may well legitimately ask of someone else to consider them an epistemic authority, but they cannot one force someone else to consider them an epistemic authority.<sup>38</sup>

Epistemic authority is *substitutional* – “its purpose is to substitute the knowledge of one person in a certain field for the lack of knowledge of another.”<sup>39</sup> It should be noted that the former analysis shows that while substitution is possible in principle, it is often unattainable. John Hardwig is certainly right when he emphasizes the importance of our time constraints and constraints in talents, resources and knowledge for personal examining every belief that we hold.

Finally, the relations of epistemic authority are often *formalized or institutionalized* within a society. De George stresses that an epistemic authority is formally produced in a society by being certified as such by peers; he then acts as an epistemic authority for subjects of epistemic authority only if accepted by them.<sup>40</sup>

## 7. CONCLUSION: WHEN IS IT JUSTIFIED TO DEFER TO EPISTEMIC AUTHORITIES IN LEGAL INTERPRETATION?

One crucial question still remains open. Judicial interpretation is considered to be an activity that is done independently by the judge,

274; H. M. Hurd. In this vein Darwall for example writes that expertise alone doesn't give anyone “the standing to issue authoritative directives that create preemptive reasons”.

<sup>35</sup> R. T. De George, “The Function and Limits of Epistemic Authority”, *Southern Journal of Philosophy* 8(2)/1970, 199.

<sup>36</sup> L. T. Zagzebski, 138.

<sup>37</sup> R. T. De George, 200.

<sup>38</sup> *Ibid.*, 203.

<sup>39</sup> *Ibid.*, 201. See also: C. Jäger, “Epistemic Authority, Preemptive Reasons, and Understanding”, *Episteme* 13(2)/2016, 170.

<sup>40</sup> *Ibid.*, 202.

subject only to the authority of the sources of law. Can it then be justified to defer to the interpretations of other persons in ascribing meaning to legal texts or is every instance of reliance on the opinions of others in interpreting law illegitimate for a judge in contemporary political systems characterized by the separation of powers. The empirical question of the amount of deference to epistemic authorities cannot be tackled in this paper, and it is still to be researched by sociology and psychology of law. Still, insofar as there can be greater knowledge, expertise and experience in matters of interpreting legal texts, it seems possible that a general formula of legitimate epistemic authority can be put forward. In the same way in which it would be unjustified to follow one's own hunch when it comes to, for example, the interpretation of quantum mechanics, or the evolution of a species of bird, or, for that matter, the reliability of DNA evidence in a criminal proceeding, it would be unjustified to trust, without exception, one's own faculties when it comes to interpreting legal texts. The reasonableness of the deference to an epistemic authority would be dependent on certain qualities of the source of authority, namely his knowledge, skills, experience or training in the interpretation of certain legal texts, or all of these qualities together. A tentative formula encapsulating the justification conditions of epistemic authority would then be:

Court or judge  $Y$  is rationally justified to defer to the ascription of meaning (interpretation)  $p$  to a legal text  $q$  of person  $X$ , if court or judge  $Y$  has good reasons to believe that  $X$  has more knowledge, skills, experience or training in ascribing meaning to (interpreting)  $q$ .

When a judge faces something that he perceives as an interpretative problem, the activity of ascribing meaning to the legal text is, in many ways, dependent on various epistemic authorities. In much the same way, it can be reasonable to a layman to defer to an opinion of an expert, it is often justified for an official to defer to an opinion of another official, an institution or an opinion of a prominent scholar.<sup>41</sup>

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<sup>41</sup> C. R. Sunstein and A. Vermeule show that some of the contemporary doctrines of legal interpretation heavily premise unsubstantiated trust in institutional and epistemic capacities of judges: "It is reasonable to believe that judges are not well-equipped to engage in theoretically ambitious tasks" C.R. Sunstein, A. Vermeule, "Interpretation and Institutions", *SSRN Electronic Journal* 29/2002, [http://papers.ssrn.com/sol3/cf\\_dev/AbsByAuth.cfm?per\\_id=231075](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=231075), last visited 28 July 2018, 40–43.

## REFERENCES

- Alston, W. P., “Belief-Forming Practices and the Social”, *Socializing Epistemology* (ed. F. Schmitt), Rowman & Littlefield Publishers, Lanham, Maryland 1994.
- Darwall, S., “Authority and Reasons: Exclusionary and Second-Personal”, *Ethics* 120(2)/2010.
- De George, R.T., “The Function and Limits of Epistemic Authority”, *Southern Journal of Philosophy* 8(2)/1970.
- Foley, R., “Egoism in Epistemology”, *Socializing Epistemology* (ed. F. Schmitt), Littlefield Publishers, Lanham, Maryland 1994.
- Foley, R., *Intellectual Trust in Oneself and Others*, Cambridge University Press, Cambridge 2001
- Fricker, E., “Second-Hand Knowledge”, *Philosophy and Phenomenological Research* LXXIII(3)/2006.
- Fricker, E., “Testimony and Epistemic Autonomy”, *The Epistemology of Testimony* (eds. J. Lackey, E. Sosa), Oxford University Press 2006.
- Gadamer, H.-G., *Truth and Method* (translated by J. Weinsheimer, D. G Marshall), Continuum, London – New York 2006.
- Glenn, H. P., “Persuasive Authority”, *McGill Law Journal* 32(2)/1987.
- Green, L., *The Authority of the State*, Clarendon Press, Oxford 1988.
- Hardwig, J., “Epistemic Dependence”, *The Journal of Philosophy* 82(7)/1985.
- Jäger, C., “Epistemic Authority, Preemptive Reasons, and Understanding”, *Episteme* 13(2)/2016.
- K. E. Himma, “Practical Authority”, forthcoming in *Handbook of Legal Reasoning and Legal Argumentation* (eds. G. Bongiovanni *et al.*), Springer Verlag, 2018, <https://ssrn.com/abstract=2957215>, last visited 23 April 2017.
- Hurd, H. M., *Moral Combat*, Cambridge University Press, Cambridge 1999.
- Lackey, J., “Introduction”, *The Epistemology of Testimony* (eds. J. Lackey, E. Sosa), Oxford University Press, Oxford 2006.
- Lehrer, K., “Social Information”, *The Monist* 60(4)/1977.
- Marmor, A., *Social Conventions*, Princeton University Press, Princeton, New Jersey 2009.
- Nozick, Robert. *Philosophical Explanations*, Belknap Press, 1981.
- Raz, J., *Between Authority and Interpretation*, Oxford University Press, Oxford 2009.
- Raz, J., *Ethics in the Public Domain*, Oxford University Press, Oxford 1995.

- Raz, J., *Practical Reason and Norms*, 3rd ed., Oxford University Press, Oxford 1999.
- Raz, J., *The Authority of Law*, Oxford University Press, New York 1979.
- Raz, J., *The Morality of Freedom*, Oxford University Press, Oxford 1988.
- Schauer, F., “Authority and Authorities”, *Virginia Law Review* 94/2008.
- Sunstein, C. R., Vermeule A., “Interpretation and Institutions”, *SSRN Electronic Journal* 29/2002, [http://papers.ssrn.com/sol3/cf\\_dev/AbsByAuth.cfm?per\\_id=231075](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=231075), last visited 28 July 2018.
- Zagzebski, L. T., *Epistemic Authority: A Theory of Trust, Authority, and Autonomy in Belief*, Oxford University Press, Oxford 2012.

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