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Paper: RULES AND RULERS

Demanding, Commanding and the Assumption of Responsibility



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RULES AND RULERS

Demanding, Commanding and the Assumption of Responsibility

David Owens (Kings College London)

Political theory broadly construed is the study of social power, of the mechanisms of social control. So conceived, it covers the inculcation of social norms of every kind (i.e. rules of behaviour and standards of character). Human life devoid of such norms is hard to imagine and any credible 'state of nature' will contain them. The classical political philosophers concerned themselves with a narrower subject matter namely social control by means of binding commands and their coercive enforcement. It is at least conceivable that no one should claim such authority over another, that society exist without this form of hierarchy. Liberals treat this possibility as an occasion to justify such authority, anarchists as an invitation to eliminate it from our lives.

The classical political philosophers focused on what I'll call *directive authority*, exercises of which provide for *personal obedience*. Personal obedience is obedience to a person (natural or artificial). Such obedience takes two forms: compliance with a command, a speech act which communicates the intention to create an obligation or, failing that, submission to enforcement.¹ Liberals regard obedience as the antithesis of liberty. For example, Berlin opens his famous discussion of liberty with 'what has long been the central question of politics – the question of obedience and coercion'.² In this paper I shall contrast this classical problematic with an alternative, one which developed in the second half of the last century. Here I am thinking of the work of Hart, Raz, Gilbert, Searle, Scheffler and Bratman amongst others.³ For these writers the main challenge is to specify the conditions under which we are bound to comply with prevailing social rules or norms; whether these rules set up an authority that can demand our obedience is, in their eyes, a secondary issue. Whilst offering

¹ See Hobbes, Locke, Rousseau and Mill together with many contemporary political philosophers (for a helpful review of the latter see Kolodny 2023 pp. 33-6). We find a similar focus on obedience amongst the classical sociologists e.g. Weber 2019, pp 134-8 and 339-41.

² Berlin 1969, p.121.

³ See Raz 1999; Hart 1994, Chapters 5 and 6 and Hart 1982, p. 258; Gilbert 2006, Chapter 9; Searle 2010, Chapters 5 and 7; Scheffler 2018 and Bratman 2022, section 5.6. For more detailed consideration of Raz's approach, see Owens 2024.

various accounts of what a social norm is and of how its bindingness may be established, they each take rules rather than rulers as their primary focus.

Though I agree with these writers that instituting a directive authority involves the recognition of a social rule, being expected to obey an authority is a very different thing from being expected to comply with a social rule. Directive authorities face a special problem of legitimacy: requiring our obedience curtails our liberty in a way that being bound to comply with a social norm is not. Recognising this, classical liberals placed various restrictions on directive authority (a requirement of consent, the harm principle etc.), restrictions not plausibly extended to binding social norms as such. I reckon that they were onto something.⁴

The paper unfolds as follows. In the first section I distinguish two speech acts imposing obligations on those to whom they are addressed: *commands* and *demands*. Where demands create obligations, the mechanism involved differs from that through which a command creates obligations. Commands create obligations by declaration and, I maintain, people have a special objection to being bound in this way. The second section begins to explain why, arguing that only those who occupy a socially recognised office can issue commands and that they must issue the command *qua* office holder because they must assume responsibility for the audience's compliance. More generally anyone who imposes an obligation on someone by declaration must assume responsibility for their compliance.

The third section expands on what is involved in 'assuming responsibility' for an act. I argue that acts performed in obedience to an authority are imputable to that authority and so the subordinate can 'pass the buck' to their superior who must assume culpability for the commanded act. This is so even when the authority is applying pre-existing social rules. Disagreements about the implications of the rule for particular cases are inevitable and a peaceful resolution can often be achieved only by transferring the decision to a third party whose verdict is authoritative (i.e. whose decision binds even if known to be mistaken). On the other hand, such obedience compromises our liberty understood as the status of being responsible for our own deeds. Many regard the verdicts of a legitimate authority as

⁴ Figures outside the liberal tradition like Foucault (2003, Chapter 2) have urged political theorists to 'cut off the head of the King' and attend to other more insidious and pervasive forms of social power. It is worth noting that the disciplinary institutions (military, medical, industrial and educational) identified by Foucault do deploy the apparatus of command and coercion.

enforceable in that the authority has a *pro tanto* entitlement to compel the recalcitrant to comply. I agree and in the fourth and final section, argue that this is so *because* a legitimate authority is entitled to compromise the liberty of its subjects by assuming responsibility for their obedience to its commands.

1. Commands and Demands

Let's start with a set of binding social norms which have yet to be institutionalized and so are devoid of officials entitled to issue instructions. Call it a system of *customary rules*.⁵ Imagine a village where neighbours feel obliged to relate to each other in certain ways – e.g. to greet each other, lend each other tools etc – and where the rules are such that they genuinely bind the villagers. Over time the villagers have evolved a practice of following these rules and evaluating each other's behaviour in terms of them. This process involved no lawmaker and no collective agreement; without any design these rules came to be generally accepted. The rules are not codified, there is no canonical statement and they form no integrated system. Furthermore, there is no procedure for adjudicating breaches of the rules, neither for settling disputes of fact nor for applying the rules where the facts are agreed, nor for collectively enforcing compliance where a rule has clearly been violated. Relations between neighbours in our village are regulated by binding social norms though these norms set up no directive authority; we have rules without rulers.

Customs can be onerous: one villager may be obliged to lend a valuable tool that another villager has requested. Where the former shows reluctance, the latter can demand the tool and where the demand is refused, blame, indignation etc. both from the neighbour and from others may be expected. In an undeveloped society people greatly depend on those around them and their norms of neighbourliness may authorize many such demands. Not all villages are egalitarian; perhaps age gives you high status and the village elders enjoy special privileges. Even so one important form of hierarchy is absent: the customs of the village have yet to require one neighbour to obey the commands of another.⁶

⁵ Hart 1994, p. 9. In this paper, I shan't ask which customs bind us and why. For some answers, see Owens 2022, Chapter 1.

⁶ For a society without command, see Evans Pritchard 1940, pp. 162-184. Among the Nuer 'even the suspicion of an order riles a man when a Nuer wants his fellows to do something he asks it as a favour to a kinsman' (*op cit.* p. 182). Similarly, for the (non-Highland) natives of America: 'if there is something completely alien to an Indian, it is the idea of giving an order or having to obey, except under very special circumstances such as prevail during a martial expedition' (Clastres 1989, p. 12). Here Hume 1978, pp. 540-1 anticipates Clastres.

Command and obedience come into the picture once authorities are established either to apply customary norms or to create new norms. A *de facto* directive authority exists in a community where a sufficient proportion of its members regard themselves as being bound by the commands of the authority. There are other ways to ensure that people reliably do as you tell them. The protection racketeer does not try to convince their ‘customers’ that they have an obligation to pay up; they simply make it clear that it would be wise of them to pay.⁷ Directive authorities operate differently; they issue commands in the expectation that their subjects will feel obliged to comply.⁸ Directive authorities may also claim the right to enforce their commands – we’ll return to that – but any such claim is based on the prior idea that we are bound to obey them.

A directive authority is *legitimate* where its subjects are genuinely obliged to obey at least some of its commands. In this paper I shall not be offering a full account of legitimacy, of exactly when *de facto* authority constitutes *de jure* authority, of which (if any) of the commands of a socially recognised authority bind. In the first two sections, I’ll be assuming that some commands issued by some authorities do bind i.e. that it makes sense to obey them simply because they have been issued rather than for some extraneous reason (e.g. because disobedience will ferment social disorder, perpetrate an injustice or entail punishment). Though falsifying a tax return would cause no social harm, would likely remain undetected and would be to their advantage, many people still complete the return correctly and without asking themselves how wise or fair the government’s tax policy is.⁹ In the third section, I’ll sketch an account of the function of such directive authority based on the need to enhance social coordination but I’m not out to settle the proper origin (consent?), scope or limits of that authority.

What does it mean to say that we are *bound* to obey? Obligation has two aspects: motivational and reactive. On the one hand, obligation motivates action in a distinctive way;

⁷ Hart calls the instructions of a racketeer ‘coercive orders’ (Hart 1994, pp. 19-20).

⁸ Raz 2009, p. 9.

⁹ Indeed, the wrongfulness of inflicting social harm by falsifying the return might well depend on the fact that falsification would be wrong regardless.

on the other hand, we react in a distinctive way to those who breach their obligations. Neither aspect can be explored in detail but I should briefly outline the approach I favour.¹⁰

As to the motivational aspect, it *makes sense* to fulfil an obligation – i.e. you can intentionally do what you are obliged to do simply because you are obliged to do it (e.g. keep your promise) – but obligation does more than render compliance intelligible: it requires it. Views differ on what that means. Some think that a genuine obligation must provide you with a decisive reason for action, showing that you ought to fulfil it all things considered. This would rule out conflicts of obligation, cases in which you are genuinely obliged to perform incompatible actions, conflicts which are in my view a regular occurrence.¹¹ Indeed, in the third section I shall suggest that the proposition that you are obliged to do something need not provide any support at all for the proposition that you ought to do it, need not help to justify your doing it.

Obligation involves two other features. When we are obliged to do something, it is not just that it makes sense to do it; it is also the case that one should not act on certain other considerations which count against doing it, that one should not treat such considerations as a factor in one's practical deliberations.¹² For example, in deciding whether to comply with their officer's order to confiscate a private car, a soldier is not meant to attend to the inconvenience to the motorist, the adverse effect of confiscation on relations between the army and citizenry etc. Respect for the officer's authority should prevent the soldier from acting on such considerations – and so from including them in their deliberations about what to do – thereby clearing the way for the soldier to comply with the command.¹³ The effect of the exclusion is to leave it up to the authority to weigh the excluded considerations on their subordinate's behalf. An officer should take account of all the relevant factors before issuing their order but 'mine not to reason why' is, within certain limits, the attitude expected of a soldier.

¹⁰ For more discussion of obligation, see Owens 2012, Chapter 3 and Owens 2022, Chapter 2. When I write 'obligation' without qualification I mean 'genuine obligation', so it would be redundant to add 'moral'. I do think that many (though not all) genuine obligations are conventional (i.e. the product of social rules which bind in virtue of their recognition). When I write 'obligations of neighbourliness', I mean 'genuine obligations created by the norms of neighbourliness'.

¹¹ Owens 2012, pp. 92-5.

¹² Here I adapt Raz's notion of exclusion, whilst rejecting Raz's rationalist framework. For discussion of Raz on exclusion, see Owens 2012, pp. 85-88.

¹³ Raz 1999, p. 38.

In the previous paragraph, I spoke of what one ‘should’ do rather than what one ‘ought’ to do and this introduces obligation’s reactive aspect. To say that I *should* do something is to say that blame would be apt for my not doing it.¹⁴ Feelings of blame, resentment, indignation from others and guilt or compunction from the agent are an appropriate response to their breach of an obligation.¹⁵ They are also an apt response to any manifest willingness to act on considerations excluded by the obligation. These reactions differ from mere criticism of the agent. For example, when you fail to do something that you have good reason to do, you might be regarded (or regard yourself) as a bit of a fool but you won’t be blamed (or blame yourself) unless you were obliged to be more sensible.

Having explained what ‘obligation’ means, we can distinguish *commanding* from *demanding*:

To command someone to do something is to communicate the intention of *hereby* putting them under a fresh obligation to do it, of obliging them to do it by the communication of this very intention (i.e. by *declaration*).

Commands, instructions and directives, such as the orders issued by military officers to their subordinates, often employ imperatives such as ‘do this’, ‘stop that’. As just defined ‘command’ also includes the rulings of an adjudicator such as a judge’s verdict or an umpire’s call. What such speech acts have in common is that they are exercises of *deontic power*, imposing new obligations by declaration even when they purport to be applying pre-existing obligations. I shall use the phrase ‘a *demand* to ϕ ’ to cover any request to ϕ that is somehow associated with an obligation to ϕ . Though a command implicitly asks you to do something and so could be understood as a species of demand, demand as I am understanding it is a much broader phenomenon.

Sometimes a demand simply highlights a pre-existing obligation. Perhaps my lawnmower is not working, you have the only tool that can fix it and must hand it over. Should I demand the tool, that does nothing to alter the normative situation but simply draws your attention to it. Such a demand could be made by a stranger on my behalf. Alternatively, suppose several

¹⁴ Raz neglects this aspect whilst Hart (1994, pp. 82-91) emphasises it.

¹⁵ I offer no analysis of ‘aptness’ and, for simplicity, I ignore the existence of excuses, issues of standing, forgiveness and so forth.

such tools are available but I decide to ask you for yours and so place *you* under an obligation to provide one. I could have approached someone else but I asked you and thereby refined the normative situation. Still, I did not *command* you to help me: a request and an obligation to do the thing requested are connected other than via. the exercise of deontic power. What makes my request for a tool bind is not that I communicated an intention of hereby obliging you to provide one. Even if I did communicate that intention, this is not why my request binds. You are obliged to help because I asked for a tool and, given the rules of neighbourliness, requests of this sort are binding. The source of the bindingness of the request is the rule and the situation, not some declared intention to bind you.¹⁶

This difference between commands and binding requests may seem largely presentational, after all the result is much the same: my speech act obliges you to comply. Furthermore, don't we speak of your *obeying* the rules of neighbourliness when you comply? Indeed we do but that is not the same thing as obeying *your neighbour*, as complying with their orders. Instructions to help are out of place between friends and neighbours, even though demands for help are not. If your neighbour ordered you to hand over the tool (i.e. communicated the intention of hereby obliging you to do so) their presumption might well provoke defiance.¹⁷ But why should the distinction between commands and demands matter? What hangs on the character of the obligation generating mechanism here?

A tempting answer is that commands can be enforced whilst demands cannot. In our village there is no system for enforcing compliance with requests for help, however binding. A villager in dire straits may be entitled to seize another villager's tool when the owner is either obstinate or unavailable but neighbourly requests are not enforceable simply because the request binds. That depends on other factors – the gravity of the situation, whether the owner has been made aware of it (perhaps by being asked), whether the tool is needed elsewhere – and *in extremis* it may not matter who owns it; you'd be entitled to seize any available tool. Things seem different once an authority has been established, an authority whose function is to resolve disputes about tools between neighbours. Such authorities generally do claim the right to enforce their rulings simply because they bind.

¹⁶ For more on commands and requests, see Enoch 2014, pp. 306-7 and Owens 2024.

¹⁷ Even those who are entitled to issue orders often take refuge in constructive ambiguity. Think of the 'requests' of employers or the 'guidelines' issued by bureaucratic officials.

Fair enough but tracing the objectionable character of commands to their enforcement just pushes our question back a step. Why should the enforcement of commands seem *prima facie* appropriate whilst the enforcement of mere demands does not? We'll address this issue in the final section. In the meantime, let's first clarify the relationship between the institution of a ruler and the recognition of a social rule. I shall argue that the power of command requires not merely the recognition of a social role defined by rules (like 'friend' and 'neighbour') but the creation of an office.

2. Commands, Offices and Culpability

Though binding social rules need establish no directive authority, the power of command presupposes recognition of a rule that institutes an office.¹⁸ This seems to be true of the social authorities who leap immediately to mind – police, military officers, employers, teachers, judges etc. – but can binding commands sometimes be issued by one who occupies no office?

An injured person is lying in the street and a small crowd has gathered; though anxious to help, they mill around aimlessly because the phone network is down and they are stumped without it. Soon after I join the crowd another stranger shows up and begins telling people what to do: some of us are to tend the injured person whilst others are to disperse and return once they discover where the nearest hospital is. The stranger claims no official position, nor do they manifest any special expertise; they are simply more confident and charismatic than the rest of us and so able to take charge of the situation. Perhaps dispersal is not the best strategy for discovering where the hospital is. Still, reasoning that anything is better than chaos and anticipating that others will think the same, I decide that we are all obliged to implement the stranger's plan.

¹⁸ Oakshott 1983, p. 130. Against Hobbes (1994, p. 173) and others, Hart (1994, Chapters 2-4) maintained that there must be some rules in any legal system which do not originate in the commands of any official. He argues that whenever we are bound by the command of some social authority, (a) this is in virtue of the fact that we are bound by a social rule instituting the relevant authority and (b) not all such instituting rules can themselves be the product of command for any such command would have to originate with an office holder whose power of command is instituted by a binding rule. Therefore, Hart concludes, the basic legal rules, those which define legal offices and their powers, cannot be the products of command. Hart's conclusion is consistent with the following claims: (i) a legal system necessarily institutes officials with the power of command and (ii) it is in virtue of this feature that legal systems raise a problem of legitimacy which customary social rules do not.

Several authors have argued that such speakers exercise a form of social authority without occupying any office.¹⁹ I agree: our stranger means to get us to act in a certain way and their utterances oblige us to comply. Furthermore, many of us may feel so bound even though we suspect that it would have been better to do something else and this is so precisely because we all know that enough of us will comply anyway. Given this, doesn't our stranger rule over us, however briefly, in virtue of their possession of such authority? I think not. Directive authority is exercised by issuing commands and not demands. Our stranger is not issuing commands, at least as we defined them in the last section. When the charismatic stranger 'tells people what to do' we should understand them as asking people to do something, a request with which their audience will feel obliged to comply.

Our interpretation of the stranger's words should not turn on whether they happen to use the imperatival form. Demands for help can be as peremptory as you please. The real issue is how the speaker obliges us to comply. We are losing valuable time, someone needs to 'take charge' and so much is clear to us all; what makes the charismatic stranger's words bind is this common knowledge. The stranger need not intend to impose an obligation on anyone. If they do intend to bind us, their communication of this intention does no normative work. What does the work is the need for action coordinated around their speech. Regarded as commands their utterances are normatively inert; the obligation-generating mechanism here is that of a binding request.

Once the authority is in uniform, a different obligation-generating mechanism comes into play, one which does not depend on their personal charisma.²⁰ Take a police officer directing traffic. They occupy an office defined by a battery of social rules – one of which requires drivers to do as the office holder tells us once they invoke the authority of their office – and they use the powers of their office by communicating the intention to oblige us to act in their capacity as a police officer (say).²¹ To assess their claims, we must ask: are they really a

¹⁹ Raz 2009, pp. 9-10, Langton 2015, pp. 5-6 and Maitra 2012, pp. 106-8. I shall urge that, because it threatens our liberty, directive authority poses a problem of legitimacy which other forms of social authority do not.

²⁰ Weber's 'charismatic authority' is grounded in exceptional personal qualities and is 'alien to all rules' (Weber 2019, p. 376.) By contrast, the exercise of 'legal authority' requires the occupation of a socially recognised office defined by rules (Weber 2019, pp. 343-4). For discussion of how the commands of police officers create legal duties in the USA, see Harmon 2023, pp. 966-74.

²¹ Commenting on a similar example, Enoch (2014, p. 316) implies that our charismatic stranger's requests become commands once the practice of coordinating around their requests had been going on for a while. I'd add that this is because the practice gives them a social status which they can choose whether to invoke when speaking i.e. an office.

police officer? Is this a situation which falls within their jurisdiction? Are they requiring us to do something illegal? And in so doing we treat the police officer's words as utterances communicating the intention to bind us *qua* commands, regardless of whether there is any further reason to act as they suggest.²² Of course we usually expect them to be an effective coordinator of the traffic but that fact is not the source of this obligation to obey their instructions, rather it is the other way around: we expect them to be an effective coordinator *qua* police officer because their orders bind. Confronted by a charismatic stranger and a police officer with little presence each trying to direct the traffic, we might find ourselves with conflicting obligations but the horns of this deontic dilemma would arise by different mechanisms.

Our example indicates that Oakeshott is right: only the police officer can bind us by declaration because only they can appeal to a social rule identifying them as the occupant of an office with a power they are currently invoking.²³ So why does command require an office i.e. an artificial personality assumed by the speaker in issuing their command? Our answer will employ two ideas: (a) that a personality is a locus of responsibility and (b) that when a subordinate obeys the command of a superior, the subordinate acts on the authority of the superior and so responsibility for what they do is assumed by the superior.²⁴

An office may be held by a natural person or a group of such people equipped with some procedure for making collective decisions like a court or a legislature.²⁵ Whatever the nature of its occupant, the essential feature of an office is that we can distinguish the acts which its occupant performs *qua* officer from their other actions. Being addressed by someone in their capacity as a police officer is quite different from being addressed by that same person in the guise of a fellow citizen. My interlocutor chooses whether to assume the role of police officer

²² Hart briefly considers a situation in which non-official's words are treated as pre-emptory and content-independent reasons for action and describes this as a 'normative command system' which 'may be regarded as an embryonic form of a society in which a developed legal system is in force' (Hart 1982, p. 257); see also Anscombe 1981, p. 153. Hart says nothing that would distinguish this person's words from binding requests. The above example suggests that the recognition of an office does not just institutionalise the power of command, it creates it.

²³ Raz argues that 'it is possible for a legal power to be recognised ... even if it is not conferred by a pre-existing social norm' (Raz 1972, pp. 84-5). That possibility is consistent the claim that a source of valid commands must be 'identified in terms of rules' provided the rules and the office they identify are co-eval.

²⁴ Hobbes 1994, pp. 101-2.

²⁵ The group may constitute an artificial person, an entity which is not identical with the people that presently constitute it and the officer may be a representative or *organ* of that entity (Hobbes 1994, p. 104 and Weber 2019, p. 127). That raises the question (which I shall not consider) of how such entities can bear or assume responsibility.

and their choice will determine the significance of their words. ‘Friend’ and ‘neighbour’ are not in that sense offices. Like offices they are social roles defined by a battery of rights and obligations but whether my request obliges you to help does not depend on whether I choose to address you as a friend (or as a neighbour).²⁶ ‘I’m asking you this as your neighbour’ calls attention to your request’s significance, it does not imbue it with that significance.

Why should issuing a command (as opposed to a mere demand) require that one adopt some conventional persona? Social rules impose obligations, differentiating right from wrong. I maintain that social rules can also determine who is responsible for a given action. When it sets up a directive authority with the power of command, the rule does two things: (i) it institutes a power both to create an obligation by declaration and to assume responsibility for its fulfilment and (ii) it creates an artificial personality – an office – whose occupant serves both as the possessor of the power and as the locus of responsibility for obedience once the office is invoked.

What does it mean to say that a police officer ‘assumes responsibility’ for my compliance with their orders? For one thing I can pass the buck, referring complaints about what I have done to the officer. The form of responsibility here is *culpability* rather than *liability*. The agent responsible for a given act is the person who is blameworthy (or guilt-worthy) for that act, should the act turn out to be wrong rather than the person who must suffer some penalty or pay compensation (though that may also be true).²⁷ Note responsibility so understood is not merely shared between the parties, rather the authority assumes the entire responsibility for the action they command.²⁸ Thus, when a soldier is ordered to confiscate a car by their

²⁶ Essert maintains that it is essential to an office that the same office can be occupied by different people at different times (Essert 2013, pp. 15-20). I leave it open whether occupants and offices are separable or offices transferable, though they often are. It is also left open whether the officeholder is obliged to act in the name of, or on behalf of, those subject to its commands (as claimed by Hobbes 1994, pp. 112-3; Ripstein 2009, pp. 190-98 and Kolodny 2023, pp. 90, 134 and 274). That *might* be a consequence of the rationale for directive authority to be floated in the next section.

²⁷ For helpful discussion of how authority affects civil liability, see (Beuermann 2018, Part 2). Various practical considerations ensure that liability need not track culpability in this area. On the one hand, an employer may be held liable for the wrongful action of an employee who is subject to their authority even though they neither ordered it nor could have prevented it and so are not at fault. On the other hand, a public servant who commits unforced errors in their official capacity may be immune from personal liability though the people who suffer from their errors are perfectly entitled to blame them.

²⁸ Maitra correctly notes that in the examples of pre-institutional social authority she considers, responsibility is shared between the parties. There the ‘subordinate’ can’t evade culpability for compliance (Maitra 2012, p. 108).

officer and obeys, they act on the officer's authority and can refer on any complaints about the wisdom or propriety of the confiscation.²⁹

There is no such assumption of culpability when one simply complies with a binding social rule. Suppose I lend a valuable tool to my neighbour and my brother asks why I risked damage to something that we might need. Here familial and neighbourly obligations conflict and though it may be that I ought, all things considered, to loan the tool as requested, guilt is apt whatever I do. I can't evade responsibility by passing the buck to my neighbour. Now suppose a manorial court is established to adjudicate issues of this sort and they instruct me to loan the tool to my neighbour.³⁰ Like the rule of neighbourliness, the court's instruction obliges me to comply but something further is true: probably to my relief, the matter has now been taken out of my hands. Not that the previous conflict of obligations is thereby resolved, rather it is no longer my problem. If my brother has a valid complaint about the risk involved in the loan of the tool, that complaint can now be referred to the court. Having determined that the court is acting within their jurisdiction I simply pass the buck on the matter of where the tool should go. Note the point is not that the court's verdict gives me an extra reason to hand over the tool which settles the matter in favour of my neighbour – I might have already decided that, all things considered, my neighbour ought to have the tool – rather being ordered by the court to hand it over means that I can now do so, perhaps regretfully but without compunction.³¹

In the next section, I'll argue that the assumption of culpability involved in obedience to a binding order reflects a deeper transfer of responsibility, an assumption of imputability.

3. Commands, Disagreement and Imputability

A society governed solely by customary rules is a credible state of nature and yet, as a way of regulating human social life, customs have some obvious inconveniences memorably

²⁹ The soldier retains responsibility for implementation, for aspects of the action which are left to their discretion e.g. where they are left to choose which car to confiscate. Perhaps the soldier can be praised for executing an especially difficult order (where disobedience would have been excused) but not for plain obedience.

³⁰ Reconciling the conflicting demands of the family with those of the wider society must have been the main business of the first adjudicators.

³¹ The point is not that the order provides an *excuse* for compliance. Those who do wrong and are excused should still feel compunction for what they have done, though they are shielded from blame (Owens 2023, p. 305).

noted by Hart. There is (a) the *uncertainty* as to the identity and precise content of the rules and (b) the *static* character of the rules i.e. their immunity to deliberate change.³²

Authoritative rules of recognition (e.g. the promulgation of a code) reduce uncertainty whilst powers of legislation enable the deliberate creation, amendment and repeal of social rules. Both codification and legislation involve the creation of obligations by declaration and are exercises of deontic power but for the moment we'll focus on what is needed to resolve a third inconvenience identified by Hart, what Hart calls the *inefficacy* of rules. This is addressed by recognising a power of adjudication exercised by norm-applying officials issuing rulings i.e. authoritative determinations as to when the rules, whether customary or created, have been violated.³³

Once the authority of a set of rules has been recognised there will remain disputes about questions of both fact and interpretation, all of which becomes evident when we seek to apply the code to individual cases.³⁴ Judges and umpires purport to settle the matter correctly whilst also settling the matter authoritatively i.e. by using a deontic power whose efficacy does not depend on their being right. To end the controversy, they speak *qua* judge or *qua* umpire deliberately invoking the authority of their office. Could one resolve such differences with something less than this? Suppose there are elders with a firm grasp both of the customs of our village and of what goes on in it, elders whom all are obliged to consult once disputes about neighbourly obligations arise. Where the parties to the dispute are ignorant or at least uncertain of how the rules apply to them, they can resolve matters by accepting the mediation of the elders and trusting their understanding of the normative situation.³⁵ What though of cases, common enough, in which each of the parties is convinced that they are in the right? To achieve a resolution here the villagers must regard themselves as bound by the views of the elders even if they know them to be wrong. Once this happens the elders are no longer just trustworthy people offering expert advice but judges issuing verdicts.

³² Hart 1994, pp. 91-99.

³³ See Austin (1975, pp 153-5) on 'verdictives', Hart (1994, pp. 141-5) on 'scorers' and Raz (2009, pp. 105-15) on 'primary organs'. I turn first to adjudication because, as Hart (1994: 93-4) notes, it is easier to find societies without codifiers and legislators than organs of adjudication.

³⁴ Hobbes (1994, pp. 180-1), Locke (1988, p. 351), Hume (1978, pp. 534-9) and their successors (e.g. Ripstein 2009, pp. 168-72 and Anscombe 1981, pp. 146-55) foresee pervasive difficulties in applying the rules which regulate the state of nature and urge the need for authoritative organs of adjudication to avoid intractable conflict, though these authors understand the rules that regulate the state of nature differently and would explain their bindingness in various ways.

³⁵ Evans-Pritchard 1940, pp. 172-77.

Courts make rulings on points of fact and norm and once they pronounce you guilty, all of us must accept the verdict. Such organs of adjudication expand the role of authorities with the power of command in our system of customary rules.³⁶ Though, unlike legislators, judges represent themselves as interpreting or applying rules which they do not create, they issue their verdicts by communicating the intention of hereby binding the relevant parties to comply. I am obliged to stay away from a certain tree when the manorial court's interpretation of custom and practice leads them to declare that it is owned by my neighbour and not by me. If I object that their verdict is misguided they can reply that I must follow their understanding of the rule and not mine.³⁷ So is the batsman bound leave the field once the umpire declares them to be out and regardless of whether the umpire's eyesight is at fault.

Our villager should not regard the verdict of the manorial court about either the tree or the tool as providing them with an extra reason to comply, a reason which makes this the right thing to do. The effect of a binding order is rather to relieve them of the task of justifying compliance: it is no longer their decision. The loan of the tool is, as I shall say, no longer *imputable* to them and so even where loaning the tool was indeed the wrong thing to do, we can't infer that they act wrongly in handing it over. The court may have misunderstood or misapplied the norms of neighbourliness but since the loan is not imputable to the villager, they do not act wrongly in complying.³⁸ Imputability is assumed by the manorial court and this explains the assumption of culpability noted earlier.³⁹ That is why (unlike in the case where they have only an excuse) our villager is relieved of the burden of guilt. The appropriate object of blame shifts along with the proper venue of decision-making.⁴⁰ It is also why our soldier is not to blame for confiscating the car under orders. Action in obedience to a

³⁶ Oakeshott 1983, p. 148.

³⁷ I might appeal their verdict and do so because I deny that I am in fact bound but, in the meantime, I feel obliged to behave as if the lower court's verdict is correct because I think it is up to the lower court (and not me) to decide what the legal situation is until the appeal is heard.

³⁸ To act wrongly is to be subject to criticism, criticism which can take various forms: an act can be wrong in virtue of being rude, silly, imprudent or irrational and can incur anger, disgust, contempt (or first-person shame). Since we are focused on obligatory acts, the relevant forms of criticism are blame, resentment, indignation (or first-person guilt) and the relevant form of responsibility is culpability.

³⁹ In the literature on responsibility, words like 'attributability', 'accountability' and 'answerability' have all been used to mean something in the vicinity of 'imputability' as I use it but since the terminological situation is unclear it seems safer to use a different word.

⁴⁰ Other emotions may be apt reactions to wrongdoing whether it is imputable to oneself or not. For example, one can feel disgusted by or even ashamed of doing what one does under orders.

command is imputable to the authority and it is no longer up to the subordinate to determine whether the commanded act is the right thing to do.⁴¹

Our soldier does have a story to tell themselves (and others) about why they do what they do – such obedience is after all a form intentional agency, not an automatic reflex – but that story takes the following form: it is someone else’s decision and they have so decided. Having determined that they are bound to obey a given order, our soldier need no longer consider whether the car ought to be confiscated. An objector may reply that it must remain up to the soldier to justify obeying the order whilst it is up to the officer to justify issuing the order – there is no assumption of imputability here – and the officer assumes culpability only because the soldier is better placed to avoid blame by justifying their obedience to a misguided order than the officer is to avoid blame by justifying their issuing it. This response elides the distinction between thinking that you are blameless because you did the right thing and thinking that you are blameless because though you may have done the wrong thing, doing it is not imputable to you. In conscientiously obeying the order, the soldier is not deciding that confiscating the car is what they *ought* to be doing; rather they confiscate because they decide that this *should* be someone else’s call (hence they are not culpable for obeying).

An analogy between the way in which commands shape practical deliberation and how future directed intentions do so may show what I have in mind.⁴² It is often the case that one *should* stick with a past decision (i.e. that a well-functioning agent will stick with that decision) without considering whether one *ought* to stick with that decision (i.e. whether one ought to do what one earlier decided to do). For example, having decided last month where to go on holiday next month by assessing the merits of various destinations and having settled on France, if I feel tempted to do otherwise, often I should simply remind myself of my earlier decision to visit France. This is so even though the brute fact that I earlier decided on France provides no justification, no recommendation at all for a trip to France. Here I would be regarded as incontinent or fickle were I persuaded to reconsider the plan by some attractive

⁴¹ Raz (1999, p.193) seeks to analyse command’s ‘removal a decision from one person to another’ with his notion of an exclusionary reason. Since (as noted above) such exclusion is a feature of any obligation, whether the product of an exercise of authority or not, this strategy will not work (Owens 2024).

⁴² Hume (1978, pp. 536-7) also draws the analogy.

advertising of other destinations, whether going to France was (or remains) the best destination or not.

Perhaps the fact that I settled on France does recommend France once combined with other information about the reliability of such intentions etc. but the whole point of making up your mind in advance is to block later consideration of the quality of your earlier decisions. Very often you *should* stick with what you decided to do (i.e. you would be criticisable for abandoning the plan) without asking whether the decision is likely to have been a good one or whether you ought to reconsider. You should ask only whether you have remembered the decision correctly, whether you really did decide to go to France. Here you might be criticised for the earlier decision but not for sticking to it once it is taken. True when war breaks out in France you should then re-open the issue of whether you ought to go – like obligations, intentions come with a limited zone of exclusion – but absent such extremities sensible people simply defer to their earlier self.⁴³

The propensity to act on our intentions without assessing them is not merely useful but essential to intra-personal coordination over time given the limitations on cognitive resources like memory and attention (restricting our capacity to re-open deliberation effectively) and the build-up of various pressures and temptations as the time for action approaches. Asking what one ought to do – or even whether one ought to reconsider – in the heat of the moment is usually a bad idea and simply recalling a past judgment about what one ought to do from memory will not ensure that one does it: a (preserved) decision is required.⁴⁴ Unlike future-directed intention, command regulates interpersonal coordination and requires deference to the decisions of someone else who assumes responsibility for your act. On the other hand, in the case of both command and intention, once the decision has been taken justification should be off the table. Very often you *should* obey a binding command (i.e. would be blameworthy for disobedience) regardless of whether the thing commanded is what you *ought* to be doing.⁴⁵

⁴³ For a fuller discussion of future directed intention see Raz 1999, pp. 65-73, Bratman 2022, pp. 3-8 and Owens 2022, pp. 75-7.

⁴⁴ Where a decision was needed to break a tie between options or deal with the pull of incommensurable values, your present intention can't have been based on an earlier judgement about what you ought to do but you should stick with it nonetheless.

⁴⁵ Compare Williams 2005, pp. 124-7 on the 'doublemindedness' needed to live with those whom you disagree and the loss of liberty involved.

Is such an assumption of imputability really required to deal with the disagreements that concern us? Suppose a binding command instead altered what an agent is justified in doing whilst leaving it to them to take the decision. That might or might not enable the parties to converge on a common view of what ought to be done all things considered by adding an extra consideration to the mix. On my understanding of how adjudication resolves disputes, there need be no consensus on what ought to be done all things considered; we need only agree on whose call it is. Of course, it is perfectly possible to disagree about the latter issue also, to dispute the identity of the authority, their powers and jurisdiction, the content of their instructions, just as it is possible for me to doubt that I settled on a holiday in France. But, at least when the system of adjudication is well designed, these matters will often be easier for people acting in good faith to settle than the question as to which of two conflicting obligations ought to be discharged or of what ought to happen all things considered.

The account of directive authority and responsibility offered in this section raises some familiar worries. First, does it serve to vindicate the ‘just obeying orders’ defence? Does it absolve soldiers from responsibility for committing atrocities? That depends on whether the relevant commands can bind them and that in turn depends on our theory of legitimacy. I have been assuming that some seriously unjust commands do bind. Having one’s car confiscated is no small matter and our soldier may think it most unfair that this person is to be deprived of their car, yet military authority would be worth very little if soldiers were allowed to disobey orders whenever they regarded them (perhaps rightly) as seriously wrong. In this paper, I make no attempt to formulate a theory of legitimacy that would enable us to draw the line between this confiscation and some atrocity. Rather I’m concerned with what we should say about responsibility for obedience in those cases where wrongful orders do bind.⁴⁶

Any vindication of directive authority must also deal with cases in which obedience to a law or an order seems silly rather than atrocious. The hackneyed example is respecting the traffic laws when there is no traffic visible for miles. Since people are often mistaken about whether compliance would be silly, directive authority could not reliably coordinate if people felt free to disobey whenever they couldn’t see any rationale (coordinatory rationale included) for obedience. Yet, consistently with this observation, there may well be situations in which it is

⁴⁶ We can all feel bound by the command of a recognised authority without agreeing on, or even having any clear view about precisely why that authority is legitimate; we need only agree on whether an authority we all regard as legitimate can issue this particular order.

not the case that we should obey because it is clear to all concerned that there is no rationale for obedience. I have been focused on people like our conscientious taxpayer who do obey even where obedience has no obvious rationale and where it seems plausible that this is what they should be doing.

Might the informal social authority exemplified by our charismatic stranger suffice to ensure social coordination without recourse to directive authority? Maybe among small groups of people of good will but once we leave this face to face society, a reliable consensus based on common knowledge of relevant considerations will likely elude us. The rationale for a system of taxations is complex and intangible. To cite just one relevant consideration, it will be hard for people to attain common knowledge of a body of information which can settle whether the tax we are being asked to pay is fair. And even if we could all know that we all had that information, it would be easy for each party's self-interest to bias their assessment of it in their own favour. To ensure that tax is paid where practical deliberation based on common knowledge can't be relied on, we need the qualified form of blind obedience I have been describing.

Organs of adjudication settle disagreements about the application of certain social norms by deploying the idea that the disputants are obliged to let a third party decide. This is often the best way to proceed and yet some social norms resist such institutionalisation. For example, the value of being subject to the norms of friendship would likely be undermined by attempts to establish courts of friendship to resolve disputes over what constitutes disloyalty between friends. Whether institutionalisation is appropriate will depend on the interests served by the norms in question, interests which explain their bindingness. More particularly, it depends on whether the value of compliance with the relevant norm will be lost if you comply despite believing (and perhaps knowing) that the relevant norm does not really apply. If I stay off a stranger's land to obey an injunction, the owner has got most of what they want from me though I still maintain that I am not trespassing but help to a friend provided on the orders of a court of friendship would no longer be an act of friendship i.e. one done out of loyalty to a friend. Norms of neighbourliness hover between friendship and property in this regard; something is lost once we resort to the manorial court to settle who should have the tool but not everything. And, as we'll see in the final section, the case in favour of institutionalising a given system of norms by recognising organs of adjudication must be strong enough to compensate for any loss of liberty involved.

4. Commands, Coercion and Liberty

Our discussion has left two questions from earlier sections hanging:

- (1) Why does personal obedience compromise our liberty in a way that compliance with a binding social rule does not?
- (2) Why is there any entitlement to enforce commands?

Both questions are answered once we conceive of liberty as a social status, namely the status of being held responsible for your own actions.⁴⁷

In saying ‘your own actions’ I’m presupposing that there is a sense in which actions are allocated to people prior to any conventional apparatus of imputation. For example, I have both direct knowledge of and direct control over the movements of my body; that body’s movements are, in this sense, *my* actions. Furthermore, when there are no physical obstacles to my moving my body as I intend, I have what might be called ‘natural liberty’, a form of liberty also possessed by non-rational agents like spiders.⁴⁸ Finally, if I’m under no obligation of obedience then I also possess what Hobbes called ‘the liberty of subjects’⁴⁹ and my actions are imputable to myself.

We’ve argued that my actions are not imputable to myself when I perform them in obedience to a binding order. Where this is so, though I may retain my natural liberty, I lack something which usually matters to me. We feel constrained by binding requests and may well resent them but there is a special presumption in ordering someone to do something and a special affront when that presumption is not well grounded. People generally wish to have their view of what they ought to do determine what they do. This is most obviously so with momentous decisions like whom to marry or what career to pursue, especially when the agent has a definite opinion on the matter, but it is often true even when the issue is relatively trivial or the decision a hard one to make; people object to being someone else’s charge like a child.

⁴⁷ Elsewhere I’ve argued that the excuses available to an agent (and thus the scope of their responsibility) is settled not just by aspects of their psychology and the causal consequences of their actions but also by the conventions governing their social role (Owens 2023, Section 3).

⁴⁸ Hobbes 1994, p. 136.

⁴⁹ Ibid. pp. 138 and 143.

Adult responsibility can be a burden and occasionally we are content to lose it – I feel relieved when I am ordered to hand over the tool to my neighbour – but I also lose something even if avoiding a row with my brother is the greater gain. That is because command undermines our liberty, as other interpersonal demands do not.

Describing how we are constrained by the obligations of friendship, Scheffler says that

If I have a valuable friendship with someone, then I may sometimes find myself with reasons to provide assistance to my friend even if I regard what he is doing as silly or ill-judged or unwise. As a general matter, to participate in valuable forms of social interaction is to incur new limits to one's authority to determine the content of one's reasons for action; some of that authority is now shared with one's intimates and associates.⁵⁰

It is not just that I have reason to act in my friend's interest; I am obliged to defer to my friend's judgement as to what would be in their interests, at least within certain limits.⁵¹

Scheffler's observation is true and important but the form of authority he describes is not directive authority and can't account for obligations of obedience. In Scheffler's example I defer to my friend's judgment about what they ought to do because I feel so obliged but I do not defer to their judgement about whether I owe them such deference *qua* friend; indeed there need be no difference between us on that point. The function of directive authority is to resolve disagreements about what we owe each other by taking that decision out of the hands of the parties, a function that (as we just noted) it would be pointless to discharge in the case of friendship. Contemporary friendship excludes the type of hierarchy that command presupposes, a hierarchy which involves not just binding demands but the imposition of an obligation by declaration together with an assumption of responsibility for compliance. Confronted by my friend's demand for help, I may decide that facilitating their foolishness is what I ought to do. Still, I am not relieved of the responsibility for complying with their demand and so my liberty is not curbed.

⁵⁰ Scheffler 2018, pp. 19-20.

⁵¹ Ibid. p. 7.

Moving onto question (2), for many liberals, what makes commands, laws and judicial orders a threat to our liberty is their association with enforcement.⁵² I doubt that binding commands are always enforceable. What is true is that directive authorities often claim the right to use force to get us to do something *because* they claim authority over the matter, a fact more puzzling than it is usually taken to be. After all, command and coercion are completely different ways of persuading someone to do something. Command is speech that communicates the intention of obligating us to comply; coercion compels us to comply by main force or the threat of a sanction. It is often said that both command and coercion undermine our liberty but what can that mean when they operate on us so differently? Any account of the oppressive character of command should explain all of this and not take the link between command, coercion and the deprivation of liberty for granted.⁵³

In the last section I suggested that the commands of an authority (whether right or wrong) bind because they are needed to deal with disagreement. Now such an authority will be an effective social coordinator only if most people conform to its edicts and it is likely that a significant number of people will remain unmoved for one reason or another. These rebels need some other incentive to conform and the rest of us need an assurance that the rebels have this incentive before we feel obliged to conform ourselves. For Hobbes and many others, this supplementary reason is supplied by giving the authority the power to enforce its commands.⁵⁴ Fair enough but if, as many suppose, coercive enforcement poses a threat to our liberty, we must understand how the rationale just given for the enforceability of binding commands might also help to deflect liberty-based objections to coercion.

I've said that liberty is the status of being responsible for what you do. If the problem with coercion is that it threatens our liberty, that must be because it deprives us of responsibility for compliance. This is indeed the case at least when enforcement takes the form of brute force. Once my tool is confiscated, the loan of the tool is no longer imputable to me. Given this, it becomes clear how possession of directive authority might help to explain why one is entitled to enforce one's commands. To possess such authority is to be entitled to get someone to act by assuming responsibility for their compliance with your orders (i.e. by

⁵² For example, Williams 2005, pp. 82-3. Note I am discussing *enforcement* which aims to ensure that what has been commanded happens. Punishment has other functions.

⁵³ For one (I think) unsuccessful explanation, see Kant 1996, p. 388 and Ripstein 2009, pp. 52-6.

⁵⁴ Hobbes 1994, pp. 144-5; Hart 1994, p. 198 and Ripstein 2009, pp. 159-68.

depriving them of their liberty) and that is exactly what you do in bypassing their agency with brute force. We can't conclude from this that you ought to use force where there may be other objections to be overcome – coercion is often harmful to its object and terrifying to others – but these observations are enough to establish that your commands are *pro tanto* enforceable. By contrast, I take it that one is never entitled to enforce a binding request *simply* because the request is binding. The considerations which render a particular request binding (its great urgency etc.) might also establish that one is entitled to seize the thing one has asked for should it be refused but where the bindingness of my request turns on say the depth of our friendship, it is not *pro tanto* enforceable.

Cases in which enforcement takes the form of coercive threats are more tricky. The manorial court may get you to hand over the tool by threatening a fine or imprisonment. Many writers regard such threats as influencing what you do by providing you with an extra reason for compliance. If so, such threats do not compromise your liberty (as I am understanding it) since you still get to decide what to do by making a judgement about what you ought to do.⁵⁵ I suspect that this justificational model of coercion can't fully account for the problematic character of coercion and would argue for an excusatory model according to which someone who gives in to coercion can often deflect blame onto the coercer even if they are unable to justify their compliance because they are excused by the threat.⁵⁶ Where this is so, incentive threats do compromise our liberty conceived of as our responsibility for acting on our own judgement about what we ought to do and so are connected to command in something like the way already indicated.

To sum up, I have indicated how one might explain the connection between command and enforcement in its various forms without downplaying their differences. Each undermines our liberty conceived of as our responsibility for acting on our own judgement about what we ought to do. Brute force altogether deprives us of agency, command renders our acts no longer imputable to ourselves, coercive threats mean that it is not up to us to justify our compliance, at least in the eyes of others. Each form of obedience involves the loss of a status we have reason to value but, by the same token, a story which explains why someone can

⁵⁵ For Hobbes (1984, p. 136) brute force (e.g. putting someone in chains) does indeed deprive one of responsibility by depriving one of one's natural liberty. However, Hobbes adds that one who is merely threatened with force retains their natural liberty to defy the threat (ibid, pp. 136-7).

⁵⁶ Owens 2023. Here culpability is qualified rather than removed since guilt may still be apt.

deprive us of our liberty by command will help to explain why they can do so by coercion also.

5. Conclusion

Our discussion has been largely diagnostic. I floated a familiar rationale for directive authority, namely the need to resolve disagreement but that does not tell us when it ought to be recognised all things considered for command in all its forms threatens our liberty and thereby creates a problem of legitimacy. Some liberals react by insisting that directive authority requires the consent of each of the individuals living under it, others that its scope must be restricted in various ways to protect their liberty and yet others that it must be exercised in the name of those subject to it, furthering their interests and/or under their democratic control. Some anarchists maintain that because directive authority, however constrained, compromises our liberty, it can never be legitimate⁵⁷. One might seek to defuse this problem of legitimacy by replacing the apparatus of command and obedience with something more like the binding requests of neighbours or the urgent suggestions of a charismatic stranger, substituting the demands of our fellows for the edicts of our superiors.⁵⁸ Perhaps this is what leads the authors mentioned at the outset to focus on the authority of rules, not that of rulers. Directive authority as we have it can't be reconstrued in these terms.⁵⁹

⁵⁷ Wolff 1970, pp. 8-10.

⁵⁸ Thus, some anarchists maintain that disagreement can be handled without resort to directive authority. On the picture of chieftainship in South America painted by Clastres (1989, pp. 27-32), the chief is expected to lead the tribe with a mixture of diplomatic skill, bribery and oratorical prowess, except perhaps in war.

⁵⁹ Thanks to Ezequiel Monti, Daniel Viehoff, Kieran Setiya, David Enoch, Ralph Bader and to audiences at Kings College London, Oxford University, NYU Abu Dhabi, Fribourg and MIT for comments.

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