The Domain of Authority

DUDLEY KNOWLES

Folk are deeply ambivalent about authority. They react to claims of authority with both suspicion and deference. The attitude of suspicion has strong philosophical credentials, clearly expressed in the following famous argument due to Robert Paul Wolff.[1] First there is an account of authority. A state that claims authority claims a right to command understood as a right to obedience from the subjects addressed by the command. These subjects have a 'correlative obligation *to obey the person who issues the command*… Obedience is not a matter of doing what someone tells you to do. It is a matter of doing what someone tells you to do *because he tells you to do it*.'[2] Secondly, there is an account of autonomy. The fundamental assumption of moral philosophy is that persons have free will, and, being rational, are responsible for their actions, which is to say that they are autonomous. 'The autonomous man, insofar as he is autonomous, is not subject to the will of another. He may do what another tells him, but not *because* he has been told to do it. He is therefore, in the political sense of the word, *free*.'[3] The conclusion is swift and inevitable: there is an irresolvable conflict between authority and autonomy. 'Insofar as a man fulfils his obligation to make himself the author of his decisions, he will resist the state's claim to have authority over him. That is to say, he will deny that he has a duty to obey the laws of the state *simply because they are the laws*.'[4]

I put to one side discussion of this elegant argument, because I want to draw attention to an important feature of it. Wolff's portrayal of the autonomous agent as freely examining the commands of authority to determine whether or not he will comply is deeply attractive. Wolff sternly tells us that the autonomous exercise of the rational will is a duty, but I take his instruction as a compliment, a recognition of my moral capacities. I can't quite say

[1] Robert Paul Wolff, *In Defense of Anarchism* (New York: Harper & Row, 1976).
[2] Wolff, op. cit., 9.
[3] Wolff, op. cit., 14.
[4] Wolff, op. cit., 18.

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that I hug myself at the prospect of moral athleticism but I find the implication—that I should carefully inspect the credentials and deliverances of any authority, challenging it when I smell a rat—strongly appealing. There is a radical side to my nature which this argument quickens. Much more importantly, I suspect that I am not alone, that many other inheritors of the traditions of liberalism feel likewise. Wolff's powerful argument draws artfully on more than Kant's moral philosophy; it articulates, not to say flatters, a central element of the self-image of modern citizens.

By contrast however there is evidence to suggest that this self-image is flawed, that we are not the sturdy moral individuals we portray ourselves as being. In a famous experiment Stanley Milgram attempted to test subjects' willingness to obey authority.[5] The 'authorities' were university staff in appropriate uniform ('grey technician's coats') in their natural habitat (a laboratory setting). Milgram briefly describes the experiment in these terms:

> a person comes into a laboratory and, in the context of a learning experiment is told to give increasingly severe electric shocks to another person—who, unknown to the subject is a confederate, and does not actually receive the shocks. This arrangement provided an opportunity to see how far people would go before they refused to follow the experimenter's orders.

The appalling upshot was that the experimental subjects inflicted step by step what they perceived as increasingly serious pain upon the actors who kept making errors. Many did so reluctantly, some did so to their own evident distress. But they continued to inflict the pain because they were told to do so by persons they took to stand in a position of authority and they were disposed to obey the instructions.

Much has been said about the integrity of Milgram's experiment, but it has been repeated several times and does surely reveal something that any observant and self-aware reader must suspect—that we are much more ready to obey the commands of authority than it is comfortable for us to concede. The most optimistic conclusion is that we are nothing like so disrespectful of authority as we would like ourselves to be, nothing like the potential subversives with whom we smugly identify when we give Wolff's

[5] S. Milgram, *Obedience to Authority* (London: Tavistock, 1974). The material is summarized in Milgram's article 'Obedience' in Richard L. Gregory (ed.), *The Oxford Companion to the Mind* (Oxford: Oxford University Press, 1987), cited below at 568–9.

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argument an initial sympathetic hearing. The most dire conclusion is that, far from being suspicious of authority, we embrace it. We flee from our pretensions of autonomy and radical freedom into the arms of anyone who looks as though they might be in the position of telling us what to do. Milgram concluded that '[T]his research showed that many people do not have the resources to resist authority, even when they are directed to act callously and inhumanely against innocent victims'.[6]

The nature of practical authority

Philosophers have marked a distinction between practical authority and epistemic authority, between the authority of the commander and the authority of the expert,[7] and I shall take this contentious distinction for granted in what follows.

To fully understand the core elements of political authority we should seek a fuller account of practical authority. H.L.A. Hart and Joseph Raz have done most valuable work in this area. Following Hart we should say that the authority of the commander is captured by the quality of the reasons for action constituted by his

[6] Some peoples may be more susceptible than others to the claims of authority. Thus: 'There is a story I like to tell. In Japan, if you tell the [football] players to sprint at high speed into a brick wall, they will do it unquestioningly. Then, when they crack their heads open and fall to the ground, they look at you and feel completely betrayed. The English player runs at full speed into the brick wall, gets up, dusts himself off and does it again. He won't feel betrayed by his manager or ask himself the point of running into the wall.

Now, the French player, like the Italian, will react differently. He'll look at you and say, "Why don't you show us first how it's done?"... [The English] do as they're told, they follow orders, they do not question authority and they never give up.' (Arsène Wenger, as quoted by Gianluca Vialli, excerpted from *The Italian Job*, *The Times*, 24 April 2006).

[7] There is a vast literature on the kinds of authority. For examples, see the symposium 'Authority' by R.S. Peters and Peter Winch, *Proceedings of the Aristotelian Society*, Supp. Vol.32, (1958), 207–40, and more recently, Heidi M. Hurd, *Moral Combat* (Cambridge: Cambridge University Press, 1999), 62–9. It is worth noting, too, that governments exercise their will concerning the behaviour of subjects in many ways other than by simply commanding them—they inform and advise them, they make requests, they manipulate conditions to make options easier or more costly, and much else.

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commands. Such commands are binding on those they address, are peremptory and content-independent.[8]

To say that the commands or directives of practical authorities are binding on subjects is to say more than that they simply apply to them. It is to echo a Kantian thought, though in a more restricted context and with a more limited force. Kant argues that moral laws bind in a categorical fashion, contrasting categorical and hypothetical imperatives. The latter, hypothetical imperatives operate conditionally (and mostly contingently) on the desires or inclinations of the subject. Thus 'carry an umbrella' is a reason for action only if one wishes to stay dry or look smart. By contrast categorical imperatives apply to the subject willy-nilly—universally and unconditionally. In a similar fashion, the commands of a practical authority are deemed to apply to subjects on the basis of the normative relationship in which the subjects stand to the authority irrespective of whatever desires and inclinations they may have concerning the subject matter of the directives. Authoritative commands cannot be cast off or repudiated as applicable reasons for action simply on the basis of 'I don't want to do that', as all children learn to their cost or benefit sooner or later.[9] To say that the commands of legitimate authorities are binding is to grant that they have some moral force, hence that, other things equal, one does wrong who fails to comply. It is over-ambitious to insist that such commands have absolute moral force in the manner of

[8] H.L.A. Hart, *Essays on Bentham* (Oxford: Clarendon Press, 1982), 243–68.

[9] David Brink, distinguishes three strands in Kant's claim that moral demands are categorical imperatives: (1) an '*inescapability* thesis' to the effect that the application of moral requirements 'to an agent does not depend on the agent's own contingent inclinations or interests', (2) an '*authority* thesis' such that moral demands 'are requirements of reason such that it is *pro tanto* irrational to fail to act in accordance with them, and this authority is independent of the agent's own aims or interests', and (3) a '*supremacy* thesis' which insists that the authority of moral requirements is always overriding.

To clarify: in taking authoritative norms as 'binding' I mean that they are inescapable. I doubt, but it is moot, whether they ever have authority in Brink's sense, and I would deny that the norms of any practical authority (e.g. the legal norms of the state) are overriding, i.e. have supremacy. (David O. Brink, 'Kantian Rationalism: Inescapability, Authority and Supremacy', in Garrett Cullity and Berys Gaut (eds.), *Ethics and Practical Reason*, (Oxford: Clarendon Press, 1997), 255. I'm grateful to John Skorupski for urging me to clarify these matters.

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Kantian moral laws. Many political philosophers have discussed the weaker claim that the laws of the state are binding *prima facie*, i.e. defeasible in principle (though they may still have significant moral force).[10]

A second feature of authoritative commands is that they have a peremptory character. They are peremptory in that they cut off 'deliberation, debate or argument'[11]. A different way of putting this point is to say, with Joseph Raz, that such commands operate as exclusionary or pre-emptive reasons.[12] The essential feature of peremptory commands is the way they feature in the logic of the practical reasoning of the subject. Take the standard background condition as one wherein the subject has reasons for and against performing a given action, as might a soldier contemplating whether or not to advance. A successful advance will eliminate a threat to his own- and fellow soldiers' lives. Yet it will expose him to more danger than remaining in the trench. And so on ... If the officer gives the order to advance, the order does not feature as another reason to weigh in the balance, not even as a decisive reason which will always tip the balance of reasons in favour of compliance. If the order is the directive of an authority, this means that the reasons hitherto assembled as pro and con just do not count.

There will generally be a psychological correlate of this structure of practical reasoning. Suppose a soldier were in fact deliberating

[10] For a well-known discussion see M.B.E. Smith, 'Is there a *Prima Facie* Obligation to obey the Law?', *Yale Law Journal* 82 (1973), 950–76, reprinted in W.A. Edmundson (ed.), *The Duty to Obey the Law* (Lanham MA: Rowman & Littlefield, 1999), 75–105. (Smith rejects the imputation of even a *prima facie* obligation.) This terminology is rejected in A.J. Simmons, *Moral Principles and Political Obligations* (Princeton, NJ: Princeton University Press, 1979), 24–28. For the detail of Ross's original distinction, which Simmons is correct to read as much confused, see Sir David Ross, *The Right and the Good*, (Oxford: Oxford University Press, 1930). I shall not adjudicate the dispute here since I believe it is tangential to the argument of this paper.

[11] H.L.A. Hart, op. cit., 253.

[12] Raz introduced the term 'exclusionary reasons' in J. Raz, *Practical Reason and Norms* (London: Hutchinson, 1975), 35–8 and continues to use the term in *The Authority of Law* (Oxford: Clarendon Press, 1979), 23–33. In *The Morality of Freedom* (Oxford: Clarendon Press, 1986), the term appears to have been dropped in favour of 'pre-emptive reasons'. I shan't attempt to track down the similarities and differences between peremptory, exclusionary and pre-emptive reasons.

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on what he should do, assembling and weighing reasons pro and con. Just as soon as an order is given, the reasoning becomes otiose. Deliberation, if there were any, is cut short, debate is misconceived, and argument misses the point. The order, given that it is authoritative, determines how the soldier ought to behave. Of course, the fact that an order has been given can't stop the soldier continuing to deliberate the question of what is the best thing to do if he is so minded. The point rather is that the order has the effect of making the process of reasoning academic, in the unfortunate sense of that term. It no longer counts as practical reason directed towards action. How the soldier should act has been determined by the order he has been given.

Political authority has the same feature. If directives such as laws or the instructions of properly warranted officials (including army officers as described above) are authoritative, then, of their nature they determine what citizens ought to do, irrespective of whatever reasons they may independently have for or against the course of action they have been commanded to take. If this judgement is thought implausibly severe, remember: nothing in the argument so far has committed us to the conclusion that there are *any* such authorities.

The final condition that Hart mentions is 'content-independence'. Authoritative commands 'are intended [and should be taken] to function as a reason [for action] independently of the nature or character of the actions to be done'.[13] Hart contrasts this with standard cases where there is an obvious connection between the reason for action and the action to be done, e.g. the action is a means to some end specified as a reason for performing it. The officer may shout 'Advance' or 'Stay put'; in either case the soldiers' reason for advancing or staying put will be exactly the same: that was what they were ordered to do. Their reason for doing what they do when they obey orders does not bear directly on the content of what they are to do, whatever that happens to be. They must just do what they are told.

Peremptoriness and content-independence, thus construed, may be judged to yield quite unacceptable consequences. If the point of relationships of authority is to get subjects to do what they are told willy-nilly, to adopt operative reasons for action peremptorily, 'independently of the nature or character of the actions to be done', they should be treated with very great suspicion as Wolff saw. 'I was only following orders' is a familiar excuse and is often treated

[13] Hart, op. cit., 254.

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with derision. Yet we are order-following, authority-submissive creatures as Milgram demonstrated, so it behoves us to establish as carefully as we can whether there might be anything other than a dismal pathology underpinning authority relations as we have characterized them. If one accepts that the commands of all authorities are peremptory and content-independent, and understands that to mean that the subjects of authority are required to obey commands *whatever* their content, pre-empting *any* deliberation they might conduct on the substance of the matter, it is quite clear that no rational person will accept that there are practical authorities in any sphere. If content-independence is construed as integral to authority in this totally blank cheque fashion, it is obvious that no rational subject can regard the commands of authority as peremptory. Thus construed, authoritative directives cry out for deliberative appraisal, and for that deliberation to count as a process of genuine practical reason.

Robert Paul Wolff was challenging the claims of the state to political authority, but we can see, if practical authority is characterized quite generally in terms of the peremptory and content-independent qualities of its binding directives, that the critique of authority cuts much deeper than the challenge of the philosophical anarchist to the state. It suggests that there is something fundamentally irrational in any practice wherein deferment to authority requires subjects to ignore the balance of reasons as this features in processes of practical reason. Of course, deferment to authority is perfectly reasonable in cases (as with children) where ignorance or impaired rationality preclude the subject's own rational deliberation and determination. But in all other cases authority seems to usurp the claims of fully rational agency.

Faced with this challenge, the justification of authority is a stiff task and there are plenty of philosophers who believe that it cannot be accomplished successfully in the particular case of the authority of the state. My intention in the rest of this paper is to prepare the ground for a defence of practical authority, and in particular the authority of the state, by demonstrating that the related properties of peremptoriness and content-independence of authoritative directives are not as threatening as they first appear.

The domain of authority

We should notice that the characterization of authoritative directives as peremptory and content-independent becomes less

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alarming if it is qualified, if we reflect that authority relationships are always features of identifiable social practices and circumscribed within some specifiable domain. Let me explain the notion of a domain. I take it that all authority relations are triadic, holding between an authority, a subject or group of subjects, and a domain, and articulated by a schema of the form:

> *a* has authority over *b* with respect to [some domain] *c*.[14]

Thus for example (*a*) an army officer may order (*b*) the soldiers to (*c*) advance or retreat—advancing and retreating being activities which are within the domain of the instructing officer.[15]

I claim that the proper domain of any authority is limited.[16] I can't claim this as a conceptual point since a religious enthusiast may tell me that the authority of God is unlimited. He has the authority to order me to do things which are [otherwise?] immoral or just plain silly, to command me to slaughter my first-born son or to forbid my eating cabbages. Such a claim to unrestricted authority doesn't strike me as conceptually flawed, though I believe it would be very hard to defend. So let us say that all earthly authorities operate within a circumscribed domain, a domain restricted by conditions that establish boundaries intended to determine the propriety of orders as *intra-* or *ultra vires*.

This idea should be very familiar to members of the armed services and those who observe them. John Locke gives us a good example:

> [Y]et we see, that neither the Serjeant, that could command a Souldier to march up to the mouth of a Cannon, or stand in a

[14] A similar point is made by Joseph Raz, *The Morality of Freedom*, 62, Leslie Green, *The Authority of the State* (Oxford: Clarendon Press, 1988), 42, and Heidi Hurd, op. cit., 80–1.

[15] I ignore a complication here. Strictly speaking the domain of a particular authority encompasses both specified subjects and a limited range of actions. The variables in the schema are not independent of each other.

[16] I think this general claim is just as true, and possibly more obviously so, in the case of epistemic authority. As discussed below, I take it that the omniscient and omni-competent God would be an obvious counter-example for some believers in Him, but He is an example of limited usefulness. Better use Google than God if you want instructions on how to knot a bow-tie.

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> Breach, where he is almost sure to perish, can command that soldier to give him one penny of his Money.[17]

The rules of war tell us that army officers who command their soldiers to kill innocent civilians do so without authority and the soldiers have no duty to comply. School teachers in a secular educational system who instruct their pupils to say their prayers before they go to sleep every night exceed their authority. Parents find that as soon as their children come to understand that all claims to authority come with boundary conditions attached battle is engaged to establish and subvert those conditions.

The specification of *intra-/ultra vires* (boundary) conditions to authority is a parochial exercise which varies from authority to authority as states, religions, armed forces, schools and families differ in the content and stringency of their particular rules. In each case the specification of what matters are within and what matters outwith the domain of a particular authority is of crucial importance. Rules are sometimes clear, often not; sometimes explicit, often not. I daresay, for example, that Locke's case of the *ultra vires* command to the soldier to hand over money to his commanding officer is just about universal amongst armed services yet is nowhere specified as one of the things that officers cannot do. These things are just as surely true of claims to political authority.

If it is correct that all earthly authorities operate within the fixed boundaries of some specifiable domain, it follows that the peremptory and content-independent character of authoritative commands has to be understood differently. Directives have a peremptory character only when it is clear that they are *intra vires*. If it is obvious that they are not, or if the issue of whether the commander is acting within his proper authority is raised as moot, then the directives cannot have peremptory force. Similarly, the thesis of content-independence should be understood to operate only within an accepted domain. If it is obvious that the content of a directive does not respect the proper domain within which authority should be exercised, or if the issue is thought to be controversial, the matter of appropriate content should be examined.

[17] John Locke, *Two Treatises of Government*, many editions: *Second Treatise,* ch. XI, §139.

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Domain-limiting principles

Are there any principles which limit *all* claims to authority, which circumscribe *all* putative domains? I can think of several principles which might operate in this way.

(a) Immorality

The most obvious such principle is: *commands which require subjects to violate moral principles or otherwise to act immorally are void*.[18] There are two ways in which this domain restriction might operate. Firstly and most obviously it would void commands which directly instruct subjects to commit an immoral action. Secondly it would void a command which is not otherwise immoral but which in the circumstances can only be satisfactorily complied with by acting immorally. Commands of either sort could have none of the binding force that the directives of authority essentially carry.

There is a presumption that acting in accordance with authority is the right thing to do, or at least is morally defensible. We should remember that 'I was following orders' *is* a satisfactory defence in standard cases. But since orders are void if they require subjects to act in ways that are wrong for independent reasons, in these circumstances 'I was only following orders' fails to exculpate the obedient subject from the charge of wrong-doing, though it will certainly implicate the authoritative superior who delivered the orders in the crime that was committed. It cannot be right (in virtue of an authority relation) to perform an action that is otherwise wrong. This is exactly where the subjects in Milgram's experiment went astray. They forgot, or failed to understand, that their compliance with the university authorities should cease just as soon as it is clear that what they are doing is wrong. Likewise, it is always wrong for the soldiers to shoot the innocent civilians, notwithstanding the order of their superior officer. In this way authority works like promise-giving and unlike consent. Promises are void if they are promises to do wrong, or if doing wrong is the only way to fulfil them, whereas consent can transform what is

[18] Joseph Raz says: 'Remember that sometimes immoral or unjust laws may be authoritatively binding, at least on some people', op. cit., 78. Taking 'immoral or unjust laws' as laws that command citizens to do immoral or unjust actions, my position implies that Raz is mistaken.

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otherwise morally wrong (e.g. punching a fellow in the face) into something which is morally permissible (boxing).

This is a clear enough view but it invites an objection. Grant that it is wrong to break down a door and invade someone's private property. What are we to say of cases where a duly authorised police officer forcibly enters someone's house in order to release a hostage? This certainly looks like a case of a person doing something that is otherwise wrong which is vindicated by the fact that the person was commanded (or authorised) to do so by a legitimate authority acting within its proper domain. I suggest that we view matters this way. Moral principles are rarely simple and generally subject to qualifying clauses. So we should expect the legal rules governing the ownership of private property to encode complex moral judgments which assert the legitimacy of invading private property in specifiable circumstances. Thus it is not the fact that the police officer has been commanded to forcibly enter the property which converts what is otherwise wrong into an action that is permissible. The police officer is authorised to do so because releasing the hostage is the right thing to do, all things considered. By contrast, we do not accept that shooting the innocent civilians is the right thing to do just because the soldier is commanded to do so by a superior officer.

(b) Harm to Self

We should consider a second putatively universal boundary condition, not least because it has a curious pedigree. Thomas Hobbes argues that a subject is not obliged to comply with a sovereign's command 'to kill, wound, or mayme himselfe; or not to resist those that assault him'. This implies (although the attribution of the implication to Hobbes would be mistaken): *authorities may not direct their subjects to put life and limb at risk*.[19] Citizens may properly resist such a command or, in the case of conscription, substitute another to take their place. G.W.F. Hegel rejects this.

[19] Hobbes is best read as arguing that the sovereign does have the authority to put citizens to death or at grave risk, but that citizens have no duty to comply with such commands. Sovereign authority and citizens' duties are thus detached. The sovereign does no wrong to issue such a command and citizens do no wrong when they disobey. For Hobbes's complex discussion, and this quotation, see T. Hobbes, *Leviathan*, C.B. Macpherson (ed.) (Harmondsworth: Penguin, 1985), ch. 21, 26–9 [111].

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> The substantial essence [of the modern state] does not consist unconditionally in the protection and safeguarding of the lives and property of individuals as such. The state is rather that higher instance which may even itself lay claim to the lives and property of individuals and require their sacrifice [in time of war].[20]

But, Hegel insists, the state is the *only* authority that can require a subject's self-sacrifice.

We should recognize that the Hobbesian restriction is severely limiting in the modern world, given our familiarity with the practice of authorities' requiring their subjects to accept the risk of death and (often the certainty of) serious harm. No state would restrain itself from claiming the power to conscript citizens into the armed services in time of war, thus hazarding their lives. Military authorities, whilst not actually commanding their troops to die, will order them into some modern Forlorn Hope, the equivalent of 'into the breach' or 'over the top', circumstances wherein the chances of survival are slender. All states seriously harm those citizens whom they punish severely, and citizens frequently regard, sometimes rightly, the imposition of high taxation or the implementation of planning decisions, to take a couple of familiar examples, as seriously harmful to them. I suspect that if one were to propose that the state or subordinate authorities must accept that a strong possibility of death or serious harm operates as a universal restriction on their authority, one would be left with political authorities that are unrecognizable in the modern world. (Of course this would not faze the anarchist or the sceptic concerning political authority.)

Since I endorse (but do not here argue for) Hegel's point that the state is the only institution which can plausibly claim the authority to oblige citizens to engage in activities which carry the risk of death or serious harm, the question of whether there is a universal domain restriction in play is a matter of substantial argument concerning this particular case. It cannot be settled independently of reviewing the arguments in favour of citizens' acceptance of a sovereign authority with this proper domain. If it turns out that there are good reasons why the rational subject should endorse an authority which possesses such fearsome powers—so be it. If it transpires that the best way to preserve one's life is to put that life

[20] G.W.F. Hegel, *Elements of the Philosophy of Right*, ed. Allen W. Wood, trans. H.B. Nisbet, (Cambridge: Cambridge University Press, 1991), § 100R. See also §§ 70 & 323–6.

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at risk in particular circumstances—to accept a liability to capital punishment or conscription—one would reject such a restriction on the domain of political authority.[21]

(c) Absurdity

There is a third possible universal boundary condition limiting all authorities' claims to obedience: *commands that are palpably absurd or pointless are void*.[22] The remit of any authority runs no further than is recognized by common sense. This condition can be put to good work in defence of the claim that authoritative commands are peremptory and content-independent, since it is an obvious objection to this thesis that whether or not a command is absurd or pointless is surely relevant to whether a subject should comply. The defender of authority can reply that if it is obvious or moot that a command is absurd or pointless, then the content of the command needs to be investigated since it is definitely or possibly *ultra vires*. Sensible citizens, it is claimed, do not recognize a moral duty of any substantial weight not to run a stop sign at two o'clock in the morning, although the state requires them not to do so.[23] And if the absurdity or pointlessness of the content of the directive is relevant to the issue of whether a subject should comply, this compromises the claim that the commands of authority are peremptory and content-independent, since the apparent absurdity or pointlessness of a command calls for the subject to reflect on the matter of whether the command should be complied with on the basis of its content.

[21] Rousseau believes this: 'Every man has a right to risk his own life in order to preserve it ... The death-penalty inflicted on criminals may be looked on in the same light: it is in order that we may not fall victims to an assassin that we consent to die if we ourselves turn assassins' J.-J. Rousseau, *The Social Contract*, Bk II, Ch.V, cited from J.-J. Rousseau, *The Social Contract and Discourses*, trans. G.D.H. Cole, rev. and aug. J.H. Brumfitt and J.C. Hall, (London: J.M. Dent, 1973), 189–90.

[22] Following an observation by Jo Wolff, I accept that the category of the absurd is something of a ragbag, including as it does the absurd, the pointless, the out of date and the blundering commands. I suspect that what they have in common is that those who issue them, so long as they are otherwise rational and not ethical monsters, would accept that it would not be sensible to follow them in the circumstances.

[23] This example is used by M.B.E. Smith, 'Is there a Prima Facie Obligation to obey the Law?' in W.A. Edmundson (ed.), op. cit., 94.

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It's possible that this challenge can be met in much the same way that we met the challenge that folk should always investigate the content of putatively authoritative directives whenever compliance appears to require conduct that is palpably immoral. Just as we argued that commands to perform immoral actions were *ultra vires*, so we could claim that directives which require actions that are absurd or pointless generally or in the circumstances are ultra vires, too. This is a difficult route to take. Of course the commands of a Mad King George or a Red Queen will be inspected with very great care, but then none of their commands are likely to carry authority. We need to distinguish a straightforward or generally absurd or pointless directive from a directive that is absurd or pointless only in the specific circumstances of a particular case.

Concerning absurd directives, I refer readers to Suetonius's *Lives of the Caesars*, particularly his accounts of the regimes of Caligula and Nero, for non-controversial examples of genuine idiocy—which is not to deny that many a prudent citizen readily complied with the lunatic commands. The sort of cases that have figured in the literature concern rules wherewith compliance is sensible for the most part but not universally, for example, rules concerning traffic and pedestrians designed to achieve road safety that have little point between two- and six o'clock in the morning, as mentioned above. But readers can work out for themselves why crude and simple directives are often (but not always) better than flexible instruments in this area of human activity. Really stupid or pointless directives from otherwise respectable regimes tend to be rules that are applied mistakenly or are, for example, out of date. Imagine that the road works have been completed, yet the traffic speed notices have not been altered. Drivers are still required to drive at 30mph on the (now clear) motorway. I suspect that as soon as drivers realise that there is an error in the signage, they will ignore it and they are right to do so. In similar fashion, had it been immediately obvious that 'someone had blunder'd', as Tennyson put it, then the command to charge the enemy guns would not have had peremptory force and the Charge of the Light Brigade should have been called off.

We have not yet solved the problem however since we are left with a couple of conflicting intuitions: first we have a general claim that the directives of authority are peremptory and content-independent only within the bounds of evident reasonableness and that absurd or pointless commands are outside the domain of any authority. But secondly it must surely be one of the main aims of employing a regime of authoritative directives precisely to exclude

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deliberation (and consequent self-directed exemption) on those grounds. A problem of similar structure may be raised concerning the 'immorality' domain restriction. Can we resolve this tension?

There is a spectrum of cases between the absurd and the sensible. In respect of the example above, we can expect that an authority which is considerate of the lives and well-being of its citizens will gold-plate rules of the road and many other regulations in accordance with a precautionary principle which protects them from unreliable fellows who have devised cunning excuses to legitimate occasional deviance. Such a practice will produce at least the appearance of unreasonableness on occasion to reasonable folk who would be well advised to comply regardless. But in the second place, and by contrast, one feels that if it is blindingly obvious that the commander has blundered, then a review of the directive is called for and its content must be carefully examined.

In the background here is a more general problem that we can usefully bring into the open. What looks to be a problem for authoritative directives has long been recognized to be a difficulty with almost any set of rules.[24] This shouldn't be surprising since many authoritative directives themselves constitute the imposition of rules—the practice of legislation, notably. There is a very limited set of rules which are absolutely mandatory in the sense that compliance is so integral to the activity they regulate that they just cannot be permissibly broken. You can't move a pawn backwards at chess and still be playing the same game. If such moves were permissible, you would be playing a different game. For the rest, we can easily recall or imagine circumstances wherein it is prudent or right to break a rule. Sometimes difficulties of this sort will have been anticipated and the rule itself qualified, but it is unrealistic to attempt to protect the integrity of a rule by introducing qualifications intended to anticipate every conceivable circumstance in which a violation might be judged legitimate. And there is surely a limit to the degree of complexity that can be introduced into the statement of a rule if it is to operate peremptorily in the psychological sense, finessing active deliberation—which is the point of using rules-of-thumb. Rules cannot operate as effective substitutes for onerous exercises of practical reason if successfully following them requires much careful thought on the part of those who are subject to them.

[24] The nest of problems hereabouts is familiar from discussions of utilitarianism.

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If this is true, it looks as though the subject of any regime of rules must be reflectively schizophrenic—acting as the rules dictate without further reflection yet being alert to circumstances in which breaking the rules is the right thing to do. Does this fact suggest a deep philosophical incoherence, contradiction or paradox in the very concept of an authoritative command or rule, or does it represent an uncomfortable feature of a world that is meant to try us, a real practical difficulty, but one we can live with? I suggest that the latter is the truth of the matter, because it is not *always* difficult for an otherwise committed rule follower to identify an occasion when breaking the rule is opportune and correct. Sometimes it is obvious that the right thing to do is to break the rule and that one can permissibly do this without the force of the rule being significantly weakened.[25]

There must be countless examples. Here is one I recall because incredibly and shockingly, as reported, rules of public decency as voiced by a troupe of Afrikaaner matrons on a South African beach triumphed over common sense and the poor casualty died: touching a woman's breasts without her consent is ruled an impermissible assault, but if she is unconscious and requires urgent resuscitation the lifeguard should just get on with the business of pressing down hard on her chest. Doubtless there are also countless cases where the matter is quite unclear. These are the cases that are meant to try us. But the fact that there are clear cases suggests that committed rule-following need not entail general moral obtuseness. One can perfectly well go through life following the rules dictated by an appropriate authority and yet be brought to a sharp stop when the moral or prudential alarm bells ring. I take it that this is a fact of our moral experience. This gives us no reason at all to believe that the alarm bells are going to go off so frequently that the rule is useless, or that occasional false alarms cause deep problems.

In the same manner that one can respect a rule yet violate it if the circumstances dictate that it would be absurd (or immoral) to follow it in the present case, so too one can respect an authority even though it would be absurd (or immoral) in the circumstances to comply with its instructions. In neither case does one deny or subvert practical authority quite generally. Despite the difficulties of the position, I am inclined to conclude that it is a universal boundary condition on authoritative directives that they not be

[25] Joseph Raz makes a similar point, distinguishing a great mistake from a clear one. See *The Morality of Freedom*, 62. Raz's argument is challenged by Heidi Hurd, op. cit., 85–6.

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absurd or pointless, that it not be manifestly unreasonable to follow them in the circumstances. I conclude, in respect of all authorities, that they are circumscribed by general boundary conditions which restrict their proper domains to exclude directives which prescribe immoral or absurd actions.

Unlimited authority?

If all authorities are limited by the domain restrictions which proscribe immoral and absurd or clearly unreasonable commands, so too are political authorities. They will be constrained by the universal restrictions we have discussed above as well as by specific restrictions judged proper for the specifically political domain. This claim appears to be more controversial than it ought to be, which is to say that philosophers have found reason to dispute it. There are at least two lines of objection.

In the first place, we note a common belief to the effect that many political authorities claim unlimited authority. Joseph Raz reports this, stating that 'in most contemporary societies the law is the only human institution claiming unlimited authority'.[26] His evidence is that English constitutional theory has it that Parliament 'can make or unmake law, on any matter, and to any effect whatsoever'. And even where, as in the United States, there is a Constitution which limits the legislative power of the Congress and the agency of the executive, the Constitution itself is open to change. These matters of fact cannot be challenged, but they do not yield the conclusion that Raz draws. They do not amount to a judgement that law claims for itself unlimited authority, which Raz glosses as 'that there is an obligation to obey it whatever its content may be'.[27] Matters would be different if one were able to identify the voice of the law making such a claim explicit, but the law itself does not speak to matters of theory of this generality. We have to look elsewhere.

We can examine what constitutional theorists say *about* the law and what politicians or judges (or citizens) claim *on behalf of* the law, attesting its self-understanding in their own persons. What constitutional theorists say about the law, drawing out what they

[26] J.Raz, *The Morality of Freedom*, 76. Raz does not endorse this claim himself. Much of his book is concerned with delineating the proper limits to authority. My criticism, if sound, has the effect of easing his path.

[27] Raz, op. cit., 77.

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judge to be implications of the law of the constitution, presumes to articulate the voice of the law or the constitution as though the law or constitution as personified would recognize the imputation. Any such readings are bound to be controversial, but we should notice that it is just as likely that the voice of the law should be taken to claim self-limiting as unlimited authority. The work of Ronald Dworkin provides good evidence of this. His 'rights thesis' identifies as an ingredient of judicial judgement a requirement 'that judicial decisions enforce existing political rights'[28]. Dworkin may be wrong about this in the case of the law and the Constitution of the United States but his claim is worth serious attention. It is certainly not falsified by the thought that the Constitution (and any specific provisions of law) may in principle be revised.

It is true that many politicians have claimed inviolable authority for the law, instructing potential rebels that law-breaking is always wrong whenever there appears to be a prospect of widespread disobedience to some particular item of legislation. Indeed I remember hearing such voices at the time of the Poll Tax protests in the United Kingdom in 1990. But as Raz fails to see, one can insist that citizens must obey the law as it stands whilst denying that Parliament can legislate any law to any effect, and one can deny that citizens must obey the law whilst accepting that Parliament can legislate as it pleases. The two issues—whether or not citizens are obliged to obey the law and the legal limits of parliamentary sovereignty—are entirely distinct.

The second objection is due to Thomas Hobbes who insists that the authority of the sovereign must be absolute and unlimited—'as great, as possibly men can be imagined to make it.'[29] This is an argument on how the law ought to be, not an argument concerning how the law as it is should be interpreted. Hobbes's reasoning is simple: rational persons are taken to grant (authorise) the sovereign just such powers as are necessary for the sovereign to accomplish the citizens' purposes of securing their lives and the conditions of commodious living. If any limits were set to the sovereign's power, then there would need to be some higher authority with the remit to judge whether or not the sovereign had exceeded the proper limits, whether or not his actions were *ultra vires*. But if there were such a higher authority, that authority would be the true (and

[28] R. Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977) 87.

[29] Hobbes, *Leviathan*, ch. 20, 260 [107].

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absolute, unlimited) sovereign.[30] If, by contrast, there were no higher authority to adjudicate the conflicting claims, the dispute would be irresolvable and the parties would stand to each other as in a state of nature, a condition of incipient war. *Ex hypothesi*, citizens should acknowledge that the alternative to an absolute sovereign is not a limited sovereign, but no sovereign at all.

Hobbes's argument is elegant but unsound. It may well have been the case in Hobbes's day, in the aftermath of Civil War, that England needed a sovereign with pretensions to absolute, unlimited power. Maybe the assertion of absolute, unlimited secular power was necessary to contain the destructive ambitions of contending clerics, as Hobbes believed. Then as now the curse of religious war made a strong case for illiberal tyranny. Nonetheless it is just false to claim that limited governments must be unstable and self-destructive, liable to degenerate into an anarchic state of nature.

There is a very strong tradition of political philosophy which emphasizes, against Hobbes, the limitations of legitimate authority. John Locke in the *Second Treatise of Government* (published in 1690 and taking Hobbes as one of its philosophical targets) insists that the authority of the sovereign is limited to the execution of those purposes for which we must presume that authority was first instituted—the public good, the preservation of the lives and property of the citizens, the protection and prosecution of their natural rights.[31] Sovereign power which violates these limiting conditions is illegitimate. If the commands of the sovereign compromise the pursuit of these goods, or if they exceed this very broad remit, they are *ultra vires*. And the people have no duty to comply with the commands of a sovereign—a tyrant—whose actions are *ultra vires*. By implication, and Locke makes the inference crystal clear, the people have a right to rebel.

The form of this argument is particularly interesting since it suggests that claims to political authority may be intrinsically self-limiting. If such claims are advanced on the basis that political authority is necessary for the achievement of specific goods, the argument that succeeds in justifying political authority extends no further than the secured domain. It is not as though we first have an argument that grounds absolute authority, which authority then finds its horns trimmed as further independent values are brought

[30] '[T]hat King whose power is limited, is not superiour to him, or them that have the power to limit it; and he that is not superiour, is not supreme; that is to say not Soveraign.' Hobbes, op. cit., ch 19, 246, [98–9].

[31] J. Locke, op. cit., *Second Treatise*, chs. XI, XVIII–XIX.

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into play as side constraints or necessary qualifications. On the contrary, we should recognize that arguments that purport to establish the legitimacy of authority in the political (as in other) spheres might bring with them their own domain restrictions.

Conclusion

I trust my arguments have demonstrated that the concept of practical authority is not self-defeating in the manner that was threatened as a consequence of our accepting the analysis of the commands of an authority as binding, peremptory and content-independent. These qualities of authoritative commands apply only to directives that respect the proper domain established for the issuing authority. I examined the possibility that there might be domain-limiting constraints which operate universally to mark the boundaries of practical authority and accepted that commands which require immoral conduct, either directly or in order to secure compliance, as well as commands which are absurd or unreasonable in the circumstances, are to be judged as *ultra vires*.

If these efforts have been successful this opens up the possibility of what would otherwise be a pointless enterprise—that of discovering or establishing the specific domain limits of different kinds of practical authority, and notably the domain limits of the state, the political authority. This is a familiar enterprise and there are many candidates for limiting principles: individual rights, the harm principle, anti-paternalist principles and many others familiar from the work of John Stuart Mill, and in modern times Joel Feinberg and a host of others.[32]

Once this task is completed and we have before us a model of the state with the authority to issue peremptory and content-independent directives within a specified domain the central task of political philosophy—the task of justifying the state—becomes less

[32] J.S. Mill, *On Liberty*, (1859, many editions), J. Feinberg, *The Moral Limits of the Criminal Law: Harm to Others, Offense to Others, Harm to Self, Harmless Wrongdoing*, 4 vols, (New York: Oxford University Press, 1984–8).

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daunting (though no less onerous), and the appeal of the philosophical anarchist is greatly diminished.[33]

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