

DARK DUTIES: COMMANDS AND THEIR PRACTICAL IMPORT

Margaret Gilbert

University of California, Irvine

Email: Margaret.gilbert@uci.edu

PLEASE NOTE: THIS IS A DRAFT. IT IS NOT FOR CIRCULATION,
QUOTATION, PARAPHRASE, OR UPLOADING TO ANY WEBSITE
WITHOUT THE EXPLICIT PERMISSION OF THE AUTHOR.

DARK DUTIES: COMMANDS AND THEIR PRACTICAL IMPORT

Margaret Gilbert

People often obey unconscionable commands---commands to do very bad things. They may attempt to defend themselves by saying that they were only following orders, or only doing their duty. Yet it may seem to others that their duty, at least their moral duty, lay in a different direction. All things considered, they should have disobeyed the orders in question. Is there a duty of obedience to authoritative commands, and what is its relationship to what one ought to do, all things considered? That is the question I discuss here.

Two stories

I start by briefly recounting two well-known, true stories that make vivid the importance of my topic.

In Hitler's Germany, Adolph Eichmann's work as an administrator was instrumental in sending numerous innocent people to their deaths in concentration camps. At his trial in 1961 he gave as a justification for his role in this slaughter the fact that he was following orders. As he put it at one point,

The guilt for the mass murder is solely with the political leaders...*I was held fast in those dark duties.* (my emphasis)¹

¹ Taken from the PBS documentary site on the Eichmann trial: www.pbs.org/eichmann, from Eichmann's statement after he was sentenced to death. Along the same lines

Eichmann thought or purported to think that “I was following orders” was an adequate justification for doing what he did, in the circumstances. In other terms, he thought or purported to think he did what he ought to have done all things considered.²

Eichmann’s self-exculpatory discourse has echoes in the thought and behavior of many less notorious individuals. Around the time of Eichmann’s trial, moved, indeed, by the “slaughter on command” to which Eichmann contributed, psychologist Stanley Milgram conducted now famous experiments on deference to authority.³

In the best known of these experiments, the subjects were told they were participating in a scientific study on learning techniques. A confederate of the experimenter, the “learner” was strapped into a chair. Each subject was instructed as follows. From an adjoining room, he was to administer electric shocks of increasing intensity to the learner, as and when the learner gave the wrong answer to a question.

In fact no real shocks were given. The subject heard an actor’s gasps, pleas, and shrieks, as increasingly intense shocks were administered. Contrary to the expectations of the experimenters, as many as 62% of the

Eichmann said: “I accuse the leaders of abusing my obedience.” Perhaps he also meant to place the blame (largely) on others when he said “Obedience is commended as a virtue”.

² Elsewhere he suggests that a countervailing consideration might be equally adequate in the face of an order; there would then be an impasse practically speaking: “I never carried out killings...If I had received the order to carry out those killings, I would not have escaped using a trumped up pretext...Since because of *the compulsion exerted by an order*, I would have put a bullet through my brain in order to solve the conflict between conscience and duty” (emphasis mine).

³ The quoted phrase is from Milgram (1974: 1). I take my descriptions of the experiments from this text.

subjects went as far as they were commanded to go. Some questioned the experimenter at certain points, but in spite of thinking that *the shocks were so bad they might well kill the learner*, they went ahead and did what they were told to do.

Milgram commented:

With numbing regularity good people were seen to knuckle under to the demands of authority and perform actions that were callous and severe.⁴

Eichmann's self-exculpatory discourse and Milgram's experiments vividly raise the question of the proper relationship of orders or commands to action? Is there a duty to obey? If so, what kind of duty is it? And what bearing does it have on what one ought to do, all things considered?⁵

Robert Wolff's argument for the impossibility of authoritative commands

A good place to start a discussion of commands is Robert Wolff's classic work *In Defense of Anarchism* first published in 1970.⁶ Wolff argues for *the non-existence of authoritative commands* in the human realm.⁷ His claim is

⁴ Milgram (1974: 123)

⁵ I do not invoke a fine-grained theory of "oughts" here. Rather I make use of judgments that I take to be intuitive, and to which any such fine-grained theory should be to some extent answerable.

⁶ Wolff (1970).

⁷ Wolff is not concerned with commands supposed to be divine. Given what he says, it looks as if he would need to deny the possibility of authoritative commands *to* any human being. Since I incline to doubt his argument for the human to human case, there is no need to pursue the plausibility or otherwise of this implication here.

not empirical. He offers an a priori argument to the effect that authoritative commands are *impossible*.

Here is something Wolff and I agree on: to speak of an “authoritative command” is *pleonastic*---at least in a central sense of the term “command”. In order for Jones to *command* (or *order* or *instruct*) Smith to do something, in this sense, he needs the *authority* to do so---whatever precisely such authority amounts to.⁸ Thus Wolff’s thesis can be couched more briefly as follows: in the human realm *there can be no commands*.

One can hold this while allowing that people often *purport* to command others to do things without having the necessary authority. One can also allow that people sometimes *talk* of “commands”, simply, when what is at issue is a purported command. They may be using the term “command” in Wolff’s and my relatively rich sense, but with implicit scare quotes around it; or they may be using it in an attenuated sense. Such attenuated senses of richer terms are common.⁹

Be that as it may, in what follows I shall assume that in order to *command* someone to do something, one needs the authority to do so, as a matter of logic. In other terms, one needs a particular type of *standing*.¹⁰ My use of the term “command” in this discussion should be understood accordingly.

⁸ Cf. Wolff (1970: 4): “Authority is the right to command”. I do not say that he and I agree on what the requisite authority amounts to.

⁹ See Gilbert (2006) opening discussion. The nature of authority in general and political authority in particular receives attention in chapter 11.

¹⁰ Is it possible that every human being, as such, has the standing to issue at least some types of command to another human being---including perhaps the standing to command morally acceptable behavior? I am inclined to a negative answer. See Gilbert (2005). Darwall (2006) argues for a positive one. Both sides agree on the point at issue here: *commanding requires the standing to command*.

Wolff thinks there are often *good reasons* for *acting in accordance with a purported* command. What he denies is that any purported commands are issued with the requisite authority---hence there are no *genuine* commands. There is then nothing to *obey*. For obedience presupposes authority in the one who is obeyed. Without the requisite authority, then, there is neither command nor obedience, though there may be action that accords with a purported command.

A tension in Wolff's discussion

Wolff's argument for the non-existence of commands has been widely criticized, and rightly so, but it will be helpful to consider some central aspects of it here. One way of representing it is in terms of the following steps.

(1) A human being has a primary, overriding obligation to be as autonomous---as self-governing---as possible, with respect to other human beings.

(2) *Were* Jones to command Smith to do something, Smith would be *obligated* to do that thing, or, as Wolff sometimes puts it without noting any distinction, Smith would have a *duty* to do it.¹¹ Indeed,

¹¹ Some authors distinguish between "duties" and "obligations" as referring to different things (Hart (1955) is an example) but many do not, using them as equivalent in meaning. I shall proceed here in the latter way, though I shall endorse an important difference between one class of obligations/duties and another. I thus endorse the distinction Hart, for instance, wanted to mark by the use of these two terms.

there could not *be* a command without such an obligation on the part of the commanded.

(3) Were there such an obligation, it would be an obligation of the same kind as the primary obligation to be maximally autonomous.

(4) Were both obligations to exist, however, they would be in conflict.

(5) One cannot have conflicting obligations of the kind in question at one and the same time.

(6) In the case under consideration, the primary obligation to be morally autonomous---precisely as primary---would preclude the obligation of a command.

Therefore,

(7) There can be no such thing as a human-to-human command

In my discussion here I focus on step (3): the obligation associated with commands, if there were one, would be of the same kind as the obligation to be maximally autonomous.

It can be argued that this point is in tension with *other points* Wolff makes about commands in the course of his writings. I have in mind in particular the following:

my duty to obey is a duty *owed* to them [that is, those who command me to do something]¹²

I take it that Wolff's point can be rephrased as follows: my duty to obey is a matter of *owing obedience* to the people who command me to do something.¹³

This rephrasing makes it clear that neither the word "duty" nor the word "obligation" is needed to describe the situation. The word "owing" suffices.

That said, following a common practice, I shall sometimes say that I am obligated *to* (or *towards*) someone to obey him, or that I have such a duty *to* him, as an alternative to saying that I owe him obedience, an alternative that I take to be its equivalent.¹⁴ Following another common practice, I shall refer to an *obligation* (or *duty*) "to" someone as a *directed* or *relational duty*.¹⁵

Here is the tension among Wolff's points, put now in terms of obligation. On the face of it, the obligation to be maximally autonomous, if it exists, is *not* a matter of *directed* obligation. One way of making the point, consonant with Wolff's discussion, is to say that the obligation to be

¹² Page ref to be added.

¹³ Though the phrase "owing a duty" is common in some philosophical discussions, and goes back a long way in the vernacular, I confess to finding it rebarbative. In particular, I find "owing obedience" fine and "owing a duty of obedience" awkward. I proceed, therefore, in the terms I find most comfortable.

¹⁴ For this equivalence see Hart (1955), Corbin (19...) and others..

¹⁵ The directionality of duties is not always interpreted in terms of owing; indeed, it has occasioned great disputes among its interpreters. On one such dispute, within the theory of rights, and an attempt to resolve it, see Sreenivasan (2005). Some philosophers, following Ernest Weinrib, via Thomson (2004), write of "bipolar" duties. Each of these terms doubtless has its virtues in terms of the matter at hand.

maximally autonomous is a *moral requirement* and, *at least on the face of it*, requirements as such *lack direction*.

Suppose, then, that Wolff is right in saying that were I in receipt of a command, *I would owe my obedience to one who commanded me or (in other terms) I would be obligated to that person to obey him*. It is not clear that the so-called obligation here is *of the same kind* as the supposed so-called obligation to maximize one's autonomy. Though there are surely reasons why the word "obligation" has been used in both cases, the differences between these cases may be so significant that it may be seriously confusing to subsume both under the same label.

Wolff's idea that there is a primary obligation to be maximally autonomous can be questioned as to both its meaning and validity. My point is that *whatever the outcome of such questioning, the possibility of commands may not be impugned*.

In particular, the following is possible: commands give rise to *directed obligations* that are capable of co-existing with a primary moral requirement to be maximally autonomous, and---one might add---*with any moral requirements that both conflict with and override them*.¹⁶

*Can directed obligations co-exist with moral requirements that, if not primary, nonetheless override them?*¹⁷ Clearly, this depends on what directed obligation, or *owing*, amounts to. With Wolff in at least some of his moods, I regard this question as highly relevant to the nature of commands.

¹⁶ In saying that these obligations are "overridden" I mean that they remain---one still has them ---but all things considered one ought to not to act in accordance with them, but rather accord with the moral requirement in question.

¹⁷ If they could, one might wonder, why would that matter? After all, they would be superseded by the moral requirements in question. I say more about this towards the end of the paper.

Prototypical commands---a rough two-stage account

Before pursuing this key question, I offer a rough account of what I shall call *prototypical commands*. This accords both with part of Wolff's discussion, and several other discussions also.¹⁸

In calling these commands "prototypical", I mean to allow that there are other cases of commanding that derive from it. For example, such *collective stipulations* as "Jones is our commander" depend for our understanding of them on our understanding the nature of prototypical commands. In this paper I limit my discussion to these prototypes. When I refer to "commands" then, the reader should understand "prototypical commands".

The account has two stages. First, X needs the authority or standing to command, so the first stage of the account says something along the following lines:

[1] *X has the authority to command Y to perform a particular action @ if and only if, if X addresses an imperative to Y to the effect that Y is to do @, then, by virtue of this, Y owes it to X to do @.*

Note that I am not here attempting to explain *how X may come by the authority to command Y*, or, in other words, how it may come to be that if X addresses an imperative to Y to the effect that Y is to do @, Y owes it to X

¹⁸ Several writers on authority have connected commanding with a right to be obeyed, e.g. Anscombe (1981: 132). Raz (1986: 23) refers to the idea that "authority over persons" centrally involves a "right to rule, where that is...correlated with an obligation to obey" as common, giving several citations. See the text below on the relationship between Y's owing X some action and X's right to Y's performance of that action.

to do @. I am saying rather that for X to *have* this authority is for it to be the case that X addresses an imperative to Y...etc. I say more about the genesis of authority in due course.

The second stage of the account runs as follows:

[2] X *commands* Y to do @ if and only if (1) X has the authority to command Y to do @ (as per the account in [1], above) and (2) X has addressed an imperative to Y to the effect that Y is to do @.

For the sake of a label I shall call this *the owing account* of commands.

It may be observed that in practice a given person usually has the authority to command a given other to do anything that falls within a certain range of actions. At the same time, this range is unlikely to include any action whatsoever. And it may be limited to a single action.¹⁹

In addition, one's authority may be limited to certain contexts. Thus Susan, Professor Pink's student, may owe him compliance with the imperative "Stand here!" when Professor Pink issues it to her in class, but not if he issues it to her in the supermarket.

The owing account is open to revision in light of the above observations. For present purposes it can be left in its current form. I explore it further shortly.

¹⁹ On the last point see Green (1988: 50) for an example.

The owing account compared with a popular form of account

Though the owing account of commands, as it stands, is as yet not fully articulated, it may be helpful at this point to compare and contrast it with a form of account that is now fairly well-entrenched in the literature. This derives from suggestions of H. L. A. Hart and Joseph Raz.

Here is a version derived from Jean Hampton.²⁰ Because the difference between the two accounts lies there, I restrict myself to the first stage of the account, which I label [1A]:

[1A] X has the authority to command Y to perform action @ if and only if, if X addresses an imperative to Y to the effect that Y is to do @, then, by virtue of this:

- (i) Y has a reason to do @, *regardless of what @ is*. Or, in standard technical terms, Y has a *content-independent* reason to do @.
- (ii) In deciding whether to comply Y is rationally required *not to consider* at least some of kinds of consideration in favor of not doing @. In Raz's terms, X's addressing Y in this way gives Y an *exclusionary reason* to do @.²¹

²⁰ Hampton (1997: 5). See also Green (1988: 41-2).

²¹ Green says that Y has a content-independent reason that excludes "some" of Y's reasons for not doing @. Hampton says it excludes "all (or almost all)" of Y's reasons. At one point Raz (1975: 38) seems to be closer to Hampton when he writes "if he was ordered to commit an atrocity, he should refuse. But his is an ordinary case, he thinks,

I shall call this *the standard account*, bearing in mind that it comes in various

If X has the authority to command Y to do @ according to the owing account of commands, then it would seem that X also has such authority according to the standard account. The reverse, on the other hand, seems not to be true.

As to the last point: Suppose (by hypothesis) that Ynez has been commanded by Zack to do whatever Xandra says Ynez is to do. According to the standard account, it is now the case that Xandra has the authority to command Y to do @. For if Xandra now says that Ynez is to do @, Ynez will have now have a content -independent reason for complying with Xandra's imperative that excludes at least some other reasons from consideration. I take it, however, that it is not the case that Ynez now owes it to Xandra to do @. Rather, she owes it to Zack.

I turn now to the point that If X has the authority to command Y to do @ according to the owing account of commands, then X also has such authority according to the standard account. Spelling this out, the following points seem to be true.

First, if Y owes it to X to do @, then Y has a reason to do @, regardless of what @ is. Second, Y's owing it to X to do @ excludes at least some of Y's reasons for not doing @.

Among the considerations that seem to be overruled by the fact that one owes a certain action to another is one's own inclination not to perform it and one's desire not to perform it. If I owe you a certain action, in any

and the order should prevail". Raz suggests that "he" is right about "the nature of authority".

intuitive sense of the term, it does not seem to be a sufficient excuse for not doing it, that I don't feel like doing it.

Purely self-interested considerations, also, may be excluded. Certainly, saying "It would be a nuisance for me to have to do it" does not seem to be a sufficient excuse for refusing to perform an action you owe someone.

I propose that in understanding commands we do better to focus on owing than on those consequences of it highlighted in the standard account. It has other significant consequences, and to stay with the standard account is to ignore them. It is now time to say more about owing.

Owing---and a pertinent question

The term "owe" is currently used in more than one sense. In this section I briefly explain the central, intuitive sense in which I have been using the term.

One possible starting point is this: I have in mind a sense of "owe" such that if Jones owes Smith a specific action, Smith has a *right* against Jones to Jones's performance of that action.²² Indeed, Smith's having a right against Jones to Jones's action *is* Jones's owing Smith his action, viewed from Smith's perspective.

Though this point is firm it will not be of great help in our quest unless we have before us a satisfactory account of rights of the kind in question.²³ For present purposes I set it aside.

²² Cf. Hart (1955).

²³ In my view there are important objections to be made to the most prominent contemporary rights theories in relation to their capacity to explicate the owing

An important and, I believe, particularly helpful point about owing that I take to be firm is the following: if Jones owes Smith a specific action, Smith has the standing to *demand* it of Jones, and to *rebuke* Jones for not performing it. Indeed, if Smith has this standing, then that action in question must be one that Jones owes to Smith.

Clearly, “demand” here means more than “issue an imperative” or even “issue an imperative while implying an undesired consequence will occur if it is not complied with”. To demand in the present sense---which I take to be central---requires a certain standing. One is not *in a position to demand* that someone do something unless one has this standing.

In this way *demanding and commanding are similar*. They are, clearly, closely related, but they are not the same.

One difference between demanding and commanding that will be easier to specify more fully shortly is this. In order to be in a position to demand that you perform a certain action, I need already to stand *in a particular, specifiable relationship* to that action of yours. Meanwhile, I may be in a position to command that you do such-and-such, without already standing in that relationship to your doing such-and-such.

It is true that once I *have* commanded you to do it, I will then be in a position to demand of you that you do it. Before, though, I may not be.

I take a *rebuke* to be an after-the-fact demand. It, too, would then require a special standing or authority---as I think is intuitively the case.

In all of these cases where I speak of standing I mean sharply to distinguish this from *justification*, and in particular from justification all

relationship with which I am concerned. Nor will some amalgamation of them work. I discuss this in detail in my book *Rights Reconsidered*, to be published by Oxford University Press, and more briefly in a related paper, “Giving Claim-Rights their Due”(2010ms). See also Gilbert (2004).

things considered. I may have the standing to demand that you do something though you are so frail that you will collapse if I make this demand. In the circumstances that may entail that I would not be justified all things considered in making the demand.

Here is a further point that I take from Joel Feinberg.²⁴ To demand of someone an action is to say, in effect, “Give me what is mine!” And to make such rebuke for non-performance is to say, in effect, “You did not give me what was mine!” One can infer that one has the standing to demand an action of a person if and only if that action is in a particular sense already one’s own.

Putting together the foregoing points we reach the following: in the pertinent sense of “owe”, if I owe you an action, it is in some as yet unspecified sense yours already. You are therefore in a position to demand it of me and rebuke me for not performing it, in effect demanding your own “thing”.

Intuitive as this is, it raises the question: how can my action be in some sense yours? If there is more than one sense in which my action can be yours, what sense is at issue here?

One way into this question is to start from the observation that one paradigmatic context for the owing relationship is an everyday agreement. Thus if Smith and Jones agree that they will both take the 5pm train, then by virtue of this agreement, Smith now owes Jones his, Smith’s, taking the 5pm train, and, likewise, Jones owes Smith his taking the 5pm train.

Though I do not think this is so, someone may wonder if there are not some exceptions by virtue of the content of the agreement or the

²⁴ The remark in question, in Feinberg, 1970, is relatively casual and not discussed further. He refers to a right-holder as being able to demand what he has a right to, *as his*.

circumstances in which it was made. Let us assume for the sake of the argument at this point that I am talking about agreements that are unproblematic in these respects.

Given that agreements are a paradigmatic context for owing, we can inquire how this is so. I shall do that in a moment. First I want to note that there is an important relationship between agreements and *commands*.

Agreements and commands: the agreement proposal

One can create a situation in which a command is issued by invoking an agreement. Thus suppose that Susan says to Professor Pink “Just tell me what to get from the library and I’ll go fetch it”. Professor Pink says, “Fine!” If he then says to Susan “Get me these three books!” she now owes him her getting the books to him, by virtue of their agreement. And it is surely apt to say that Pink commands, orders, or, perhaps better in this case, *instructs* Susan to get the three books in this case.²⁵

Recall now the rough two-stage account of commands proposed earlier:

[1] *X has the authority to command Y to perform a particular action @* if and only if, if X addresses an imperative to Y to the effect that Y is to do @, then, by virtue of this, Y owes it to X to do @.

This suggests the following “agreement proposal”:

²⁵ When one considers the matter, there are several words akin to “command”, including “order”, “instruct”, “tell (someone to do something)”, “insist (that someone do something)”. Apparently context dictates which one is most appropriate. For present purposes the differentia need not detain us.

X has the authority to command Y to do @ if X and Y have agreed that Y will do @ if X says he is to do so.

Note that the agreement proposal only claims to state a sufficient condition for one's having the authority to command, not a necessary one. In addition, though it tells us one way to produce a command it does not give us any insight into the relevant mechanism: how precisely do agreements create the owing relationship? I now turn to this question.

Agreements, owing, and joint commitment

There has been much discussion in philosophy about the nature of promises and, to a lesser extent, agreements. The focus has been on how promises and agreements *obligate* those who make them. I do not find the standard contemporary approaches to this question helpful.

In a nutshell, these accounts see one's obligation to conform to one's agreements as a matter of moral requirement grounded in a general moral principle---such as Thomas Scanlon's Principle of Fidelity.²⁶ Such principles tell a person what he is morally required to do, having entered an agreement. My problem with these accounts is that they do not show that the parties to an agreement owe each other performance in the pertinent sense of "owe".²⁷

²⁶ See e.g. Scanlon (1998).

²⁷ For discussion see Gilbert, 2004; also 2006: ch. 10, Gilbert, forthcoming, and *Rights Reconsidered*..

We need, then, an account of how agreements create the owing relationship. It seems good to start with some understanding of what an agreement is.

My proposal in that regard has been that the making of an agreement involves the creation of a *joint commitment*. I say something about what I take a joint commitment to be shortly. For now I just say how I think a joint commitment is involved in an agreement.²⁸

Roughly, if we enter an agreement, on my proposed account, we jointly commit to endorse a certain decision or *plan* as a body. What this means as far as each individual is concerned is roughly this: he is to do what he can together with the others to emulate a single person who endorses the plan in question.

Joint commitment and owing

I now say something about what I mean when I refer to a joint commitment, and relate it to owing.²⁹ As a preliminary, I say something about the kind of commitment I call a *personal* commitment. Both joint and personal commitments fall into a general class of commitments I call, for the sake of a label, *commitments of the will*.

An example of the creation of a personal commitment is the making of a personal decision. One decides what to wear to work, what to eat for dinner, and so on. In so doing, one commits oneself to wearing a certain outfit to work, and so on.

²⁸ I argue against an “exchange of promises” account of agreements in Gilbert (1993); there are briefer discussions in e.g. Gilbert 2006, ch. 10. I propose a joint commitment account of promises in Gilbert (2011, forthcoming).

²⁹ For an extended discussion of joint commitment see Gilbert (2006: ch 7).

As I see it, one aspect of what it is so to commit oneself is this. One creates a certain kind of *constraint* on one's own behavior. It is not a physical constraint, to be sure. It constrains me insofar as I care to act without error. Thus, if I have decided to have lunch at Sam's cafe, and have not changed my mind, I will act in error if, at lunchtime, I set out in the direction opposite to Sam's.

To make the point more vivid, suppose that I have forgotten my decision. Remembering it suddenly on while walking in the direction opposed to Sam's, I may clap my hand to my head and indicate my sense of having made a mistake by exclaiming "What am I doing? I'm supposed to be going to Sam's!"

What kind of error is this? I take it that a failure on my part to go to Sam's for lunch need not be a bad thing in and of itself. There may be equally good places to go to for lunch, in the other direction. Nor need his not going to Sam's, in and of itself, be likely to have any unfortunate consequences.

What one can say without contention, I believe, is that the fact that one has decided to do @---and has not subsequently changed one's mind---gives one *sufficient reason*, in and of itself, to do @. By this I mean that the fact that one has decided to do @, in and of itself, is such that should one respond appropriately in light of the considerations bearing on his situation, he will do @, all else being equal.³⁰

Whereas decisions and intentions create personal commitments, two or more people can create a joint commitment by signaling to each other in a

³⁰ I am not sure how this statement accords or fails to accord with the views of prominent theorists of intention such as Michael Bratman and John Broome. I cannot take it upon myself to pursue this question or debate the issue here.

more or less explicit way that they are ready *together to commit themselves* to some course of action.³¹ Each is ready, if you like, to co-author a commitment of them all. They understand, roughly, that if it is out in the open that each has openly expressed this readiness, then the commitment in question has been co-authored. At this point, in my terms, they are *jointly committed* in some way.

The interchange between Susan, a student, and Professor Pink can be construed along these lines: each has openly expressed his or her personal readiness jointly to commit to uphold as a body the decision that Susan will get whatever the professor says she is to get from the library.³²

As I understand it, a joint commitment cannot be rescinded unilaterally by just one of the parties, absent special background understandings. This is a function of the jointness of the commitment. The need for its co-rescission parallels the need for its co-creation.

Though joint commitment is not a conjunction of two personal commitments, as would occur when two people made two corresponding personal decisions, each of the individuals in question is similarly committed to do what he can to achieve the satisfaction of the joint commitment by virtue of his participation. That is, each now has sufficient reason to do this. That, as I shall argue, they owe each other such action adds a further consideration to that supplied for each one by the fact of his being so committed.

³¹ More precisely the content of any joint commitment can be represented as follows. The parties jointly commit *to do @ as a body*, where “doing @” is broadly construed so as to subsume at least believing that such-and-such is the case, feeling such-and-such emotion, accepting such-and-such a goal, endorsing such-and-such a plan. As indicated earlier in the text, the qualifier “as a body” is intended to indicate that the joint commitment is---more fully---to constitute as far as possible by virtue of the activity of them all a single doer of (@).

³² For a nice literary example see Dickens () [details to be added]

One can argue in various ways that owing is part and parcel of every joint commitment.³³ For present purposes the following points may be noted.

Intuitively, the parties to a joint commitment have the standing to demand conforming actions of the others and to rebuke them for not conforming to the commitment: “You have acted contrary to our commitment”, each might complain, clearly having the standing to do so.

Assuming, then, that each does have the standing to demand conformity of every other and rebuke every other for non-conformity, each owes the other conformity and each is in a position to refer to the actions in question as *his*---in the or at least a pertinent sense.

But is each in a position to refer to the action as his---in any sense? It seems so. That is, it seems that we have made these actions our own at least in the sense that *we have by our joint commitment determined that they will be performed by the person in question insofar as, in the absence of countervailing considerations, he will perform them if he acts rationally.* Intuitively that *is* a sense in which these actions are made ours.

As for a single, individual party to the joint commitment, the actions in question are his in his capacity as a party to the joint commitment in question. Thus he is in a position to demand them as his qua party to the joint commitment, and is owed these actions in that capacity.

Owing and joint commitment

I have argued that joint commitment is a source of the owing relationship. Is it the only such source? I incline to a positive answer, at least insofar as owing concerns two or more persons.³⁴

³³ See, for instance, Gilbert (2006: ch. 7).

This is not the place to argue the point at length, but one of the strands in such an argument may briefly be mentioned. Certainly the point is pertinent to the question of the contexts in which commands may be found, assuming the correctness of the owing account of commands.

We have tracked down one sense in which one person may see another's action as his own. This is the sense exemplified in the case of any joint commitment. Were one to try to spell it out---which is not essential in order to link joint commitment and owing---one might say something like this: the action is mine insofar as the person who will perform it, if it is performed, has been directly constrained to perform it by my will (in conjunction with his own). It is hard to see how an action can be mine in *this* sense outside the realm of joint commitment.

The argument might seem to be almost concluded there. For it is plausible on the face of it that the sense of "owe" that correlates with the standing to demand as one's own relates but to a single, unitary (i.e. non-disjunctive sense) of "one's own".

Someone may point out, however, that it could relate to a broader but still unitary sense that subsumes not only the situation that is pertinent to the parties to a joint commitment but other situations as well. That in itself may be doubted, though, on the grounds that if owing is a relatively precise idea, as it seems to be, the sense of "one's own" in question will not be so broad as to skate over significantly different types of situation. In short, a single, relatively narrow sense of "one's own" might reasonably be conjectured to be at issue in the faces of owing.

There is more to be said in favor of the idea that joint commitment is the sole source of owing, but I shall not pursue these here. Note that if this

³⁴ This is, in effect, one theme in *Rights Reconsidered*.

idea is correct, then there is a clearenough sense in which there are no *natural* cases of owing.

The practical import of commands: reflections on “the story so far”

What have we learnt about the practical import of commands from the discussion so far? The owing account of commands has now been given a partial articulation in terms of an agreement-constituting joint commitment. Here is an example of how it plays out in a particular case.

Officer Old and private Pert are party to an agreement-constituting joint commitment to the effect that Pert is to do whatever Old tells him to do within certain limits. Old now says to Pert “Stand to attention!” Old’s purported command having fallen within the limits in question, Pert now owes his standing to attention to Old. In short, Old has *commanded* Pert to do something. If Pert stands to attention in recognition of this, Pert has *obeyed* Old and not merely done what Old said he was to do.

Instead of saying that Pert owes Old conformity to his command one can also say that Pert has an *obligation* or a *duty towards* Old, a duty of conformity, according to the terminological convention I have adopted.

I have not argued that the case of Old and Pert represents the whole story of commands or even prototypical commands. Nor do I believe that it does. Surely an *agreement-constituting* joint commitment is *not* necessary to ground a command. A joint commitment of some kind may well be.³⁵

³⁵ This would to some extent support the longstanding idea that one person’s authority over another is a matter of the second person’s “consent”----though there are features associated with consent as normally conceived of that are not necessary features of participation in a joint commitment. In particular, such participation can have its usual effects without being voluntary in any strong sense. See Gilbert (2006: ch.10) for further

That said, what I want to do now is draw some conclusions about the story so far, *as if the story of Old and Pert represents the whole story*. Insofar as the whole story is a joint commitment story, the conclusions made here will be generally applicable.

What, if anything, does this story have to do with morality? I am inclined to say that Pert's *owing* Old conformity, in and of itself, is not a moral matter.³⁶ The *argument* for it was not, as far as I can see, a moral one.

More important than whether or not the argument for Pert's owing Old conformity is a moral one---which depends on the question of the boundaries of the moral realm---are the implications of this owing from the point of view of practical reasoning.

What, then, are these? I focus on two such implications here.

First, I see no reason to think that the directed obligations or duties, the *owing* that is associated with Old's command, is such that rationality requires one always, under any circumstances, to "give" what is owed. Indeed, on occasion, it may require one not to give what is owed.

This accords with judgments about owing that go at least as far back as Plato's Republic.³⁷ It does not contravene the suggestion made earlier that the fact that I owe someone an action excludes some possible factors in the situation from consideration.

Second, as the way I have put the first point suggests, directed duties are what one might best call *intransigent*: though one is in a given case rationally required to act contrary to them, *they are still there*. They are only

discussion. The appeal to consent often goes along with moral judgments of a kind that have played no role in my discussion here.

³⁶ It may be, of course, that one can mount an argument to the effect that all else being equal people are morally required to conform to their joint commitments.

³⁷ I have in mind Socrates' counterexample to Cephalus's supposed view of justice in Book 1.

destroyed by the termination of the joint commitment in question since they only arise, and only fall, with that.

Note that this is not to say that, when one is rationally required to act contrary to a directed duty, its *source* remains though they themselves disappear. They are present when their source is. That is, the owing relationship obtains whenever a joint commitment obtains.³⁸

Going back now to the first point, it seems that there is more than one type of case in which one may be rationally required to act contrary to a command. In one type of case, there is nothing objectionable about the command in itself, but one should not obey it in the circumstances. Thus if Professor Pink instructs Sue to bring him a particular book from the library, and she finds that this book has been reserved for another patron, she should not attempt somehow to take it from the library nonetheless---not just by virtue of Professor Pink's command.

In another type of case the command is to do something bad enough morally speaking that all else being equal one ought not to fulfill it in spite of the command. Let us call such a command immoral.

Can there *be* immoral commands? That is, pleonastically, can there be an *authoritative* command of this nature? Looking at this from within the joint commitment framework the situation seems to be this.

In particular cases, there could be background understandings or explicit conditions that rule such commands out, restricting what the parties are jointly committed to. For instance, Maria says to John "I'll do anything you say, as long as it is not illegal or immoral". He accepts this, and the pertinent joint commitment is established. John then tells Maria to do

³⁸ Here there is a contrast with obligations in the sense of moral requirements at least as I understand these. See e.g. the discussion in Gilbert (2006: 159-61).

something that is clearly immoral. Maria does not owe John her doing this, given the content of their joint commitment.

Possibly, too, there is a refined and convincing philosophical argument to the effect that such a proviso is always implicit when relevant joint commitments are made. I do not have such an argument in hand, and shall not pursue this possibility.

Suffice it to say that one may have to recognize that immoral commands are possible. The target of such a command will then be obligated to the commander to obey it. He will be obligated through the joint commitment that underpins the commander's authority. In other terms he will owe his commander obedience; it will be his duty---to his commander---to do what he says.

This prompts a return to the stories with which I began. Let us assume as a working hypothesis that immoral commands are possible, as on the face of it they are.

Understanding the duties associated with these commands as directed duties grounded in a joint commitment, one can now see one way in which those involved in Milgram's experiments could be misled by the nature of the situation into giving electric shocks past the point of human tolerance when commanded to do so. And how people could hold themselves to be *held fast* in their *dark duties* as Eichmann maintained that he was.

They *may* indeed have been held fast insofar as *they could not, of their own volition, destroy their duties to their instructors and leaders*---even though those duties were duties to do awful things. *Looking only at the duties with which they were shackled, they may have thought they were therefore* rationally required to comply.

Even *given* the existence of these dark duties, however, this is a mistake. Logic at least allows for this to be true: *all things considered, they should not have done their duty.*

Returning, finally, to Robert Wolff's discussion. Suppose---most likely contrary-to-fact---Robert Paul Wolff is correct in supposing that one is morally required never to abrogate one's self-governance, in the sense of acting on the basis of another's orders. It would not follow that there were no commands, or that no one ever owed it to anyone to obey his commands. On the contrary, there could be commands, and the person commanded would, as usual, owe his obedience to his "commander".

Someone might say: in the circumstance envisaged, how could that matter? If only because of the possibility of a narrow focus by commander and commanded alike on the real directed duties involved, it could, as we have seen, matter a great deal. That is one reason why it is worth thinking hard about the morality of obedience, by which I mean the question when it is morally required that one obey a command and do one's duty by one's commander, and when it is morally permitted or even required not to do this duty.³⁹

³⁹ Versions of this essay have been presented as talks at West Point United States Military Academy (2004), the University of Miami, Coral Gables, and Columbia University (2005), as the Warren Steinkraus Memorial Lecture at SUNY Oswego (2006), at the York University political science workshop, and as part of the Reading University impartiality and partiality series (2007), as a plenary lecture at the collective intentionality conference, Berkeley (2008), at the ANCO seminar in Paris (2009, and as one of three lectures at the University of Palermo (June 2010)). I thank those present for stimulating comments and questions.

BIBLIOGRAPHY [several references need amplifying]

Anscombe, G. E. M. (1981)

Corbin, A. (19) “Introduction” to Hohfeld...

Darwall, S. (2006). *The Second Person Standpoint*:

Feinberg, J. (1970). “The Nature and Value of Rights” *Journal of Value Inquiry*

Gilbert, M. (2004) “Scanlon on Promissory Obligation: The Problem of Promisees’ Rights”, *Journal of Philosophy*.

Gilbert, M. (2005) “Shared Values, Social Unity, and Liberty” *Public Affairs Quarterly*.

Gilbert, M. (2006) *A Theory of Political Obligation: Membership, Commitment, and The Bonds of Society*, Oxford University Press (Clarendon Press): Oxford.

Gilbert, M. (2011, forthcoming) “Three Dogmas about Promising”, to appear in *Promises and Agreements*, ed. H. Scheinman, Oxford University Press: New York.

Milgram, S. (1974) *Obedience to Authority: An Experimental View*, Harper and Row: New York.

Raz, J. (1975) *Practical Reason and Norms*, Princeton University Press: Princeton

Raz, J. (1986) *The Morality of Freedom*, Oxford University Press (Clarendon Press): Oxford.

Scanlon, T. (1998) *What we Owe to Each Other*

Sreenivasan (2005) "A Hybrid Theory of Claim-Rights" *Oxford Journal of Legal Philosophy*.

Thomson, M. (2004) "What is it to Wrong Someone? A Puzzle about Justice" in...eds J. Wallace,...

Wolff, R.P. (1970) *In Defense of Anarchism*, Harper Torchbooks: New York.

Green, L. (1990) *The Authority of the State*, Oxford University Press (Clarendon Press): Oxford.

Hampton, J. (1997) *Political Philosophy*, Westview Press: Boulder, CO.

Hart, H. L. A. (1955) "Are There any Natural Rights?" *Philosophical Review*.