



DIVINE COMMANDS, REASON, AND AUTHORITY

Jeffery L. Johnson

Philosophy, Politics, & Economics

Eastern Oregon University

International Journal for Philosophy of Religion, Vol 35, 1994, pp. 39-55.

I. *A priori* Atheism

Consider such things as square circles, even primes greater than two, and absolutely simultaneous events. We know these things fail to exist. This is not on the basis of mathematical field work, nor carefully controlled experiments in the laboratory. Our knowledge is based on detailed analysis of the concepts in question which shows us that they are contradictory, incoherent, and logically impossible.

What might be called *a priori* atheism adopts a similar method for attempting a deductive disproof of the existence of God. The most straightforward examples seek to show that some key divine attribute is logically incoherent. One classic case study is the literature examining the divine property of omnipotence -- can an all-powerful being create a stone so heavy that he, himself, cannot lift it?⁽¹⁾ Slight variants of this strategy seek to show that the theist's combination of attributes is contradictory. Thus, there are examinations of alleged incompatibility of God's omnipotence and his moral perfection.⁽²⁾ A closely aligned strategy are the arguments based on the classical problem of evil -- employing the contingent, but surely uncontroversial, premise that the world contains pain and suffering, and purporting to establish the incompatibility of this fact with the existence of an omnipotent, omniscient, and morally perfect God.⁽³⁾

In the above examples the *a priori* atheist attacks the heart of the theological doctrine. Occasionally, however, the arguments are directed at what appears to be the periphery. Rather than claim that theism is incoherent, or that God's non-existence can be logically proven, the atheist claims that some other part of the theistic framework is incoherent. One good example of

this is the extensive literature suggesting that considerations from the philosophy of personal identity imply the impossibility of personal immortality.⁽⁴⁾ This strategy appears slightly more modest, but in fact, leaves traditional theism almost as seriously damaged as the direct method.

The subject of this paper is one of these latter, indirect applications of *a priori* atheism. We will examine two closely related arguments concerning the divine command theory of ethics. One attempts to show that God can be accepted as the original moral law giver only at the price of arbitrariness and caprice. The other seeks to show that the divine attribute of moral perfection becomes circular and meaningless if God is seen as establishing the standards of right and wrong. I believe that *a priori* atheism is methodologically unsound, but in the final analysis, the surest way to defeat *a priori* atheists is to expose the fallacies and confusions in each of the concrete arguments that they put forward. This paper attempts precisely such a task.

II. Two Controversial Presuppositions

According to the divine command theory:

if God issues commands they create moral obligations; . . . actions become our duty or become wrong, when commanded or forbidden, as the case may be, by God; . . . man's duty is to conform to the announced will of God.⁽⁵⁾

Obviously such a theory presupposes both the existence of God and universal moral truth. It is hard to imagine two more disputed philosophical theses. We must look briefly at each.

Although I believe that *a priori* atheism rests on a fundamentally unsound metaphilosophy, I must concede that I, too, am a religious skeptic. My doubt is based on evidential considerations, however, not logical ones. I have argued elsewhere that the best explanation of the widespread pain, suffering, and general misery we see around us is the negative hypothesis that an omnipotent and morally perfect God fails to exist.⁽⁶⁾ I believe that the atheist's theory provides the simplest, most complete, least *ad hoc*, and ultimately most plausible account of the manifest fact that the world contains tremendous amounts of pain and suffering. An essential part of this argument, however, is that traditional theism has presented other logically possible explanations of evil. The theodicies are rival hypotheses that attempt to articulate the "morally sufficient reason" why an omnipotent, omniscient, and morally perfect being allows such a painful existence. The method of "inference to the best explanation" is comparative -- we have good evidence for a theory if that theory provides us with the *best* explanation of the relevant data. Thus, my defense of atheism is committed, from the very beginning, to God's existence, and divine morally sufficient reasons for evil, being logically possible. Furthermore, I obviously must concede that other reflective theorists have rank ordered the possible explanations of pain and suffering in dramatically different fashion. Many believe that free will, or the process of soul-making, or some other theistic explanation is superior to atheism. I disagree, but once again the whole context of the dispute commits me to the possibility of God's existence. Thus, there are no theoretical barriers to assuming the possibility of God's existence for the purposes of this exploration of the divine command theory.

Traditional statements of the divine command theory are species of a more general metaphysical, epistemological, and normative position that is recently being labeled moral realism.

[M]oral realism asks us to take moral claims literally, as claims that purport to describe the moral properties of people, actions, and institutions -- properties that obtain independently of our moral theorizing. Moral realism is roughly the view that there are moral facts and true moral claims whose existence and nature are independent of our beliefs about what is right and wrong. . . . A moral realist thinks that our moral claims not only purport to but often do state facts and refer to real properties, and that we can and do have at least some true moral beliefs and moral knowledge.⁽⁷⁾

Universal moral objectivity has long been a goal in ethical theory. Quite independently of its theological implications, the divine command theory deserves our attention as one of the most completely worked out systems of universal moral truth. The theory provides a mechanism for dealing with the epistemological and metaphysical questions that have plagued moral realism. Moral truth is knowable through the pronouncements of God, or in some instances through reliable spokespeople. Perhaps, in addition, some of the components of moral truth are directly accessible to the human intellect because God's reasons for issuing the particular commands and proscriptions he has are discoverable by rational investigation. Most impressively, the divine command theory mitigates the "ontological queerness" of moral truth.

Mackie defends a constructionist and relativist meta-ethical position against moral realism primarily on what he calls the "argument from queerness."

[M]ore generally applicable, is the argument from queerness. This has two parts, one metaphysical, and the other epistemological. If there were objective values, then they would be entities or qualities or relations of a very strange sort, utterly different from anything else in the universe. Correspondingly, if we were aware of them, it would have to be some special faculty of moral perception or intuition, utterly different from our ordinary ways of knowing everything else.⁽⁸⁾

A secular universe containing objective moral values, indeed, seems ontologically queer. What could they be? Where do they reside? The divine command theorist, however, needs no recourse to a Platonic heaven with ideal forms of goodness and justice, plain old theological heaven does just fine. Granting the theist's ontology, objective values present no serious additional problems. Legal concepts like commands, authority, and rules transfer beautifully to the theological context -- a fact of considerable significance in the argument to follow. God has moral authority; he is omniscient and morally perfect, as well as being the creator. From this position of moral authority he authors moral laws -- rules and principles that define our ethical obligations and restrictions. Divine laws have a different source than positive laws, but they are no more theoretically problematic for either an epistemological or metaphysical perspective. Such a view

obviously commits this kind of moral realist to a more extravagant ontology than the secular moral skeptic. But the point of departure is theological, not normative.

A system of theologically based moral realism seems initially coherent and logically possible, however theologically problematic it may prove. The *a priori* atheist, of course, believes that at some deeper level contradictions and absurdities abound. The arguments to be examined in the present context are narrowly directed against the divine command theory, rather than moral realism *per se*. We will, therefore, assume the possibility of universal moral truth; perhaps a divine command meta-ethic will give us one concrete example of fleshed out system of moral realism.

III. The *Euthyphro* Dilemma

The most telling criticism of the divine command theory predates Christian formulations of the doctrine. In Plato's dialogue, *Euthyphro*, Socrates is applying his skeptical method to a proposed theory of piety -- "the pious is what all the gods love, and the opposite, what all the gods hate, is the impious."⁽⁹⁾ The key analytic strategy is for Socrates to distinguish two ways young Euthyphro's theory could be true. He does so by way of one of the most famous leading questions in all of western philosophy. "Consider this: Is the pious loved by the gods because it is pious, or is it pious because it is loved by the gods?"⁽¹⁰⁾ Euthyphro had originally proposed (with much help) being loved by all of the gods as the defining condition of piety. Given this, he obviously should have chosen the latter answer to Socrates' question -- the pious is pious because it is loved by all of the gods. In fact, he is easily manipulated into endorsing the former answer -- "It is loved then because it is pious, but is not pious because it is loved."⁽¹¹⁾ This concession, of course, leaves Euthyphro's theory completely gutted. It also leaves the characters in the dialogue no closer to a definition of piety than when they began. Indeed, *Euthyphro* ends, as with many of the early dialogues, without any positive theory at all.

Given the entire Platonic corpus, it is easy to appreciate why Socrates would reject a divine love theory of piety. The realm of ideal forms provides the ontological home of normative values like piety, not the whims or edicts of Olympian gods. Within the dialogue, however, we are never really given an explanation for Euthyphro's quick abandonment of his theory. When we read it today, in light of two thousand years of Platonic commentary, as well as related discussion of the divine command theory, it is plausible to unpack Socrates' thinking in something like the following manner. If Euthyphro's original theory was correct -- if the single necessary and sufficient condition for pious actions were that they received universal endorsement from the gods -- this would make piety an arbitrary and capricious concept. Preference, even the polytheist preference of Olympian gods, is a notoriously subjective notion. Some of us prefer dark porters, other light pilsners. If the gods have no particular reason for loving those actions which count as pious, then their love of them, however genuine, seems purely contingent to the point of being arbitrary. If as Socrates believes, however, the gods have very good reasons for loving pious actions, then it seems that the theoretical underpinning for piety are the divine reasons, and that the divine love is something of a by-product.

Contemporary theism, many have argued, faces similarly unpleasant options. God issues specific injunctions and requirements. Why these particular ones? Why command love, but forbid

adultery? Why not command torture and forbid charity? If God has no reasons, if he simply flips a cosmic coin and sets up the rules, then the system seems capricious. But the other alternative seems equally undesirable for the theist. If God has good reasons for setting up the rules the way he has done so, then these reasons -- and not the fact that he has issued commands and proscriptions -- seem to carry the real weight in determining the nature of right and wrong.

We might distinguish *strong* versions of the divine command theory, from *weak* versions. According to strong versions, divine choice is the defining condition of moral reality; not the other way around. This implies that the divine choices might have been very different. Adams believes that God *could have* "command[ed] me to make it my chief end in life to inflict suffering on other human beings, for no other reason than that he commanded it."⁽¹²⁾ He does not believe, of course, that God has issued, or ever would issue, such a command. But Adams believes that the divine command theory is committed to such a logical possibility.

According to weak versions of the divine command theory God issues the commands that he does because of his independent knowledge of the nature of right and wrong. Such a view has certain attractions. Divine commands are now completely vindicated from any charges of caprice or arbitrariness. God has the best of all reasons for not commanding cruelty for its own sake -- *It would be wrong to do so*. Furthermore, the theory nicely cashes in on the divine attribute of omniscience. God's role in such a system may be much more than a middleman. Perhaps the true nature of right and wrong is so complicated that only any infinitely wise, and infinitely good, being can correctly appreciate it. God would certainly be worthy of our gratitude, love and respect for sharing this important bit of knowledge with us. Unfortunately, such a view faces two serious objections.

The problem of ontological queerness has been reintroduced. The theist's ontology now contains three distinct types of existence -- that which is the contingent product of divine creation, the necessary existence of divine reality itself, and now the mysterious realm of substantive moral truth. In some senses moral reality becomes even more ontologically problematic since it is binding on an omnipotent being. All of the old questions -- is moral truth logically necessary?, were there ethical rules before the existence of humans? -- and a host of others remain not just unsolved, but insoluble. New ones are introduced as well. Does moral truth exist in heaven? Do moral rights predate the creation of the universe? And, of course, a last question that leads to a quite distinct problem for this version of religious ethics -- Is God, himself, morally bound by moral reality?

If there is such a thing as moral reality that is independent, not only of human attitudes and conventions, but divine existence as well, the whole notion of God's autonomy is called into question. Perhaps the attribute of omnipotence can be salvaged. One could argue that God has the power to do anything he wants, (say, to use Adam's example, to command cruelty for its own sake) but that given his moral perfection and infinite knowledge of moral truth, he would never choose to do this. Even if it makes sense to attribute omnipotence to a God who finds himself in such a situation, however, it seems odd in the extreme to see him having anything approaching free choice in his creative agency. Some of the most important aspects of this world are now the product, not of God's power and choice, but of this independently existing moral constraint. From an ethical point of view, of course, all is well. We are left with all of the advantages of

moral realism, however serious the epistemological and metaphysical questions are. But the theological problems are immense. God's omnipotence, creative autonomy, moral perfection, and claim to our respect and worship, all seem to have changed in ways that are far from trivial. It is quite possible that a theoretically satisfactory theological base could be reconstructed from the assumption of divinely independent moral reality. At the same time, if such a task were undertaken, the resulting product would certainly be very different from traditional theism.

IV. The Circularity of Divine Moral Perfection

If the system of divine commands is definitional of morality, then, in addition to worries about arbitrariness and caprice, there is a second source of theoretical tension. This problem does not have nearly the wide press enjoyed by the *Euthyphro* dilemma, but is in its own way equally serious. Thus, Rachels worries that:

on this view, the doctrine of the goodness of God is reduced to nonsense. It is important to religious believers that God is not only all-powerful and all-knowing, but that he is also *good*; yet if we accept the idea that good and bad are defined by reference to God's will, this notion is deprived of any meaning. What could it mean to say that God's commands are good? If "X is good" simply means "X is commanded by God," then "God's commands are good" would mean only "God's commands are commanded by God"--an empty truism.⁽¹³⁾

The first thing to note, of course, is that we have no circularity problem at all, if we are dealing with a weak version of the divine command theory. If the standards of right and wrong are independent of God's choice, however dependent our knowledge of them may be on the promulgation of divine commands, then God actions and character could live up to these standards in a perfectly meaningful and objective sense. Thus, only strong versions are open to the charge of circularity.

Rachels, in the above quote, phrases the problems in quasi-formal terms as one of logical circularity or triviality. As applied to the divine attribute of moral perfection, it is not so clear that there is any problem. Suppose that the system works in something like the following manner. God stipulates the rules -- the commands and prohibitions -- that are definitive of goodness, and carried to the ultimate, definitive of moral perfection. In order to count as morally perfect a being must always meet the standards $S_1 \dots S_n$. In fact, God's behavior is always in accordance with $S_1 \dots S_n$. There is nothing formally question-begging about this. God objectively satisfies certain standards, and even though he is the author of these standards, his behavior and, hence, his satisfaction of the criteria, is logically independent of his role as author of the criteria.

Our worry in the above example is not one of logic, but rather justice. Suppose that I am filling a temporary position in my department, and am asked to write the job description for a national search to fill the position permanently. I write the job criteria so as to narrowly include my areas of research and teaching expertise. Perhaps I go so far as to stipulate that the successful

candidate must have been born in Guam, educated in California, and be able to play center field on the faculty softball team. It is easy to imagine the job description being written in such way that I am the only candidate who could possibly satisfy the formal criteria for the job. Our moral sensibilities would be offended if the job description were authored by one of my colleagues -- we would easily see that it is a blatant attempt to circumvent the standards of equal opportunity. When I, myself, am the author our sense of outrage is compounded because the exercise is so self-serving. Strong versions of the divine command theory invite a similar worry.

There is a second problem hinted at in Rachels' discussion, however, that does have a more formal cast to it. There are all sorts of practical reasons one might have for obeying God's commands -- fear, desire for social order, and perhaps love and respect. On weak versions of the divine command theory one might obey his commands out of deference to his infinite knowledge regarding moral matters. But what about the commonly accepted proposition that people have a moral obligation to obey the commands of God? Strong versions seem to encounter a logical problem with latter reason for obedience. Here it does seem correct to say that an action's being wrong is logically equivalent to an action being contrary to the commands of God, and hence, the claim that it is wrong to disobey the commands of God does reduce to the trivially sounding formulation -- disobeying the commands of God is contrary to the commands of God.

V. Reason and Authority

One finds the language of commands used in contexts quite different from theoretical accounts of religious ethics. The legal positivist tradition in jurisprudence, deriving from the work of Austin, has included much subtle analysis of the connections between commands and laws.⁽¹⁴⁾ The strategy in what follows is to take very seriously the similarity between the strong divine command theory's model of moral rules as commands from God, and the classical positivist's model of law as commands from the sovereign. More generally, I want to exploit the analogy between moral rules and law. I believe that insights and discoveries in the field of legal scholarship provide surprisingly satisfying solutions to the many of the problems that the divine command theory is alleged to have.

Consider the federal law passed in the late 1970's which required a maximum speed limit of 55 miles per hour (it is unimportant to this example that this law was later modified). Fuel economy and safety were the two reasons offered in justification for this piece of legislation. Some critics, however, questioned whether the change would result in substantial savings on oil imports, or save that many additional lives. In addition, other critics pointed out that there were other social and financial costs associated with such a change in national driving habits. At its most general level, of course, the debate about this law focused on its wisdom. Most of us considered it a good law because we believed it would achieve its stated ends, and because we endorsed those ends as reasonable. The critics believed that the ends might not be achieved, and even if they were, that there were other social ends that outweighed them.

Consider, now, a very different legal controversy. Several recent scandals have raised the interesting question of whether the legislative or judicial branches of the federal government can issue subpoenas which require the executive branch to testify or produce evidence. Here the issue is not one of wisdom, but of constitutional authority. One might argue that handing over the

Watergate tapes would be a good thing, or undermining executive privilege a bad idea, and hence, reintroduce questions of advisability and social consequences. To the degree that our Supreme Court issues rulings on what the Constitution requires, however, this controversy is different in kind from the debate about the 55 mile per hour speed limit.

We can now introduce the following distinction. We praise or condemn laws in terms of their being reasonable or unreasonable. I think the speed reduction was reasonable, my brother-in-law thinks it was most unreasonable. You think we need to introduce protective tariffs, the current administration disagrees. We also praise laws as issuing from legitimate authority, or condemn them as illegitimate. Jones thinks that the congressional veto is constitutional, Smith believes it's clearly unconstitutional. The language of authority is widely used in contexts like the Smith-Jones debate, but I'm not aware of a standard way of characterized my disagreement with my brother-in-law. I am, therefore, introducing the notion of "reason" as technical jargon in the discussion to follow.

Once armed with this distinction, many things become obvious. Laws issued by legitimate authority can be either reasonable or unreasonable. Bad, stupid, or unwise laws are still laws. More importantly for the present discussion, good, wise, or desperately needed social policies do not become laws until they are issued from legitimate authority. The concepts of reason and authority can be applied to actual and potential social policies and rules to produce something like the following matrix:

| | Legitimate | Illegitimate |
|---------------|-------------------|------------------------------|
| Wise | Good law | Should be enacted as law |
| Unwise | Bad law | Should not be enacted as law |

In most contexts where we characterize a law as being arbitrary or capricious our concerns are like the skeptic about the speed limit. We think that stated goals of the legislation are wrong-headed, or we believe that these goals will not be best realized through the law. Basically, our concern is that the law has not been adequately thought through. One thing this can mean is that not enough time and attention was devoted to analyzing and debated the proposed social policy. Often, however, this issue is not time and care, but a simple disagreement with the majority of the legislature's considered judgment. But whatever the precise nature of the criticism it almost always focuses on whether the law is reasonable or not.

The charge of capriciousness when directed against the divine command theory usually has a similar focus. The *Euthyphro* gambit seeks to portray God as issuing moral rules for no good reason at all; the metaphor I used above was flipping a cosmic coin. Once we have carefully distinguished questions of reason from those of legitimacy, however, this charge loses much of its persuasive power. The theist should reject any suggestion that divine commands are arbitrary in this sense. God is said to be omniscient and morally perfect. Presumably he produces moral rules that are maximally rational. God has very good reasons for setting up the system as he has; to do otherwise would be foolish, inefficient, or stupid. God, on this view, is constrained by his

infinite wisdom. But that is a limitation, perhaps like his inability to sin, that most theists will find a way to reconcile.

It is precisely at this point, of course, that the other horn of the *Euthyphro* dilemma is brought into play. If God has compelling reasons for issuing the commands that he does, the skeptic asserts that these reasons are what defines fundamental moral reality, and not the commands which now become mere symptoms. Consider such a strategy applied to the criminal law. Does the state legislate against shoplifting because it is illegal, or is it illegal because of the legislation? Obviously, to construct a parallel argument, the answer must be the former, since the other option would make law arbitrary and capricious. But, since there are very good reasons for making shoplifting a crime, these reasons are true nature of the law, and the actual statutes mere byproducts. Some radical versions of the natural law theory might come close to endorsing such a view of our legal system, but legal positivists would clearly reject it. What is missing is the concept of legitimacy. Statutes against shoplifting become law because complicated events take place within our governmental and legal systems, events that carry legal legitimacy because they accord with a complicated system of secondary legal rules.⁽¹⁵⁾ The legislature has exceedingly good reasons for legislating against shoplifting, and though we hope that these reasons influence our legislators in the decisions they make, they are no structural part of shoplifting statutes. They are law because a legitimate authority, following the secondary rules that define the legislative process, has made them law.

Strong versions of the divine command theory emphasize questions of moral authority, not reason. Wise potential social policies do not become law simply because they are wise. They must be lawfully enacted by legitimate authorities. The divine command theory can be interpreted as saying that a maximally reasonable system of potential moral rules does not become moral reality just because it is maximally rational. Moral reality must be defined from a perspective of moral authority, and according to the theist, God, alone, possesses such moral authority.

The theist believes that God, and God alone, has the authority to issue moral rules and principles. Their status as binding moral requirements are a direct function of God's authority as creator and moral law giver. There is nothing arbitrary nor capricious about such a view of divine commands, though there is something very basic and final. None of this says anything at all about how reasonable those commands are. Theists also believe, of course, that God is omniscient, and therefore can be confident that his moral rules and principles are infinitely reasonable. God's hands are in no way tied by an independently existing moral reality; none existed until he issued his commands.

The *a priori* atheist might be tempted at this point to rephrase the objection. Perhaps it is not an independently existing moral reality that is the problem, but God's hands are tied nevertheless -- he is not free to issue any command he might choose. But what is the nature of this supposed constraint? The way the world is, and God's infinite knowledge of this world. God, of course, created this world, and had full foreknowledge of what it would be like. He has very good (in the epistemological sense) reasons for the commands that he issues -- they are the polar opposite of capricious and arbitrary rules. If God's hands are tied, it is by his intellect -- he is not free to be stupid; a consequence most theists can live with.

There are many obvious analogies between the interpretation of the divine command theory that I am defending here and natural law theory. According to the argument so far, however, we are not simply recycling natural law. For one thing, the present interpretation is silent about the prospects that humans, either professional philosophers or individuals exercising personal conscience, will be successful in discovering what infinite rationality discloses about human behavior in this world. The insight that I want to borrow from the natural law theorist is that facts about the natural world and human behavior may stand in quasi-law-like relationships -- exactly what philosophers and social scientists have always believed. Reasonable moral rules and principles must be constructed in light of these relationships. Divine authority to articulate these rules and principles bridges the is/out gap and allows the existence of a moral reality designed in light of, and in response to, natural reality.

VI. God's Moral Authority and the Rule of Recognition

All this talk of God's authority to issue moral rules and principles brings us to the *a priori* atheist's second worry about the divine command theory. What is God's claim to law-giving authority? Philosophers of religion have answered this question in diverse ways. Geach thinks that it has to do with "Supreme Power."⁽¹⁶⁾ Both Brody and Phillips believe that it is in virtue of God's position as creator, and both stress the analogy with the authority inherent in parenthood.⁽¹⁷⁾ Adams stresses the notion of divine love.⁽¹⁸⁾

I think that God's authority to issue binding moral pronouncements must derive from his moral perfection. But here lies a profound problem. If God's commands are definitive of moral goodness, what sense does it make to say that God, himself, is morally good? This, of course, was Rachels' worry.

We need to once again mine the analogy between legal rules and divinely authored moral rules. Consider the classic question of legal authority. In any system of rules, social, legal, or moral, we need to be able to distinguish valid rules from invalid pseudo-rules. H. L. A. Hart's sophisticated model of legal positivism beautifully explains how any legal system accomplishes this. The key is his distinction between primary rules and secondary rules. Primary rules are those where:

human beings are required to do or abstain from certain actions, whether they wish to or not. . . . [They] impose duties . . . [and] concern actions involving physical movements or changes.⁽¹⁹⁾

Secondary rules are very different:

they provide that human beings may by doing or saying certain things introduce new rules of the primary type, extinguish or modify old ones, or in various ways determine their incidence or control their operations. . . . [They] confer powers, public or private . . . [and] provide for operations which lead . . . to the creation or variation of duties or obligations.⁽²⁰⁾

In Hart's system the authority of the actions of, and rules issued by, legal officials is almost always justified by higher level secondary rules.

Hart's taxonomy is candidly legal, but has direct application to a system of divine moral rules. Prohibitions against killing or taking the Lord's name in vain are clear cases of primary rules. Rules allowing for promising or marriage are secondary. And, of particular relevance, alleged rules conferring authority on papal pronouncements or establishing the divine right of kings would also be secondary. The whole system, however, cannot be justified as authoritative or legitimate in virtue of some ordinary secondary rule, because that rule would, itself, have to be a part of the system of rules it is seeking to justify.

The American legal system is an intimidating and complex system of primary and secondary rules covering such diverse subjects as criminal code, contracts and torts, the composition of legislative bodies, the jurisdiction of appellate courts, and questions of state and federal constitutionality. Consider, however, the rule articulated in Article VI, Section 2 of the United States Constitution.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land.

What is the authority of this rule, or the Constitution, itself? Certainly not the Articles of Confederation. Some might argue that the state ratification process provided some legitimacy. But what is the source of authority for that process? Dworkin, from whom this example is borrowed, argues that the legitimacy of the Constitution is a perfect example of what Hart identified as a "rule of recognition."

The rule of recognition providing the criteria by which the validity of other rules of the system is assessed is in an important sense . . . an *ultimate* rule: and where, as is usual, there are several criteria ranked in order of relative subordination and primacy one of them is *supreme*.⁽²¹⁾

Rules of recognition are not justified in terms of other secondary rules; they are ultimate and supreme. This means that their acceptance has to do with sociological and historical factors, not legal ones. At the time the Constitution was drafted and ratified there was no guarantee that it would be accepted -- *recognized* -- as authoritative for the past two hundred years by ordinary citizens and legal officials, alike. In fact, it was so recognized, and this purely contingent and, indeed, surprising socio-historical fact transformed the mere words "supreme law of the land" into legal and political reality. Hart's more general point is that any system of legal rules must have a basically similar story to tell. If I am correct in stressing the strong analogy between divine commands and legal rules, it is reasonable to suppose that the system of divinely authored moral rules must rest on a rule of recognition.

Many theists have flirted with an insight of an earlier system of legal positivism. Austin defined law as a system of commands issued by a sovereign backed by threats of retribution that are

eventually obeyed as much from habit as fear. Here legal authority is traceable to political, and ultimately physical, power. I have already mentioned Geach's appeal to Supreme Power as ultimate source of God's moral authority. Those theistic traditions that emphasize hell fire and brimstone, or the notion of an angry, vengeful God, carry this ground of moral authority to its extreme. One of Hart's main criticisms of classical legal positivism was that obedience backed merely by fear and blind habit failed to account for the social and moral sense of obligation we commonly associate with valid legal rules. A model of divine orders backed by threats of damnation has an even more difficult time accounting for our sense of moral obligation. The divine command theorist could postulate that senses of fear, helplessness and awe could have been part of what led to unreflective obedience to divine command. As humans became more reflective, however, they came to see that God embodied all of the attributes that warrant the status of moral perfection. He is loving and just, and in virtue of this it makes sense to simply recognize his moral authority as universally binding.

If we accept Hart's insight that no system of rules can be self-justifying, then it becomes less problematic that we can discover no external justification for the divine attribute of moral perfection, nor for God's moral authority to issue divine commands. The theist can claim that one of the essential conditions of being X's being a good thing is that it conform to the standards authored by God. Divine command theorists recognize this necessary condition. Presumably atheists and Buddhists do not acknowledge it, but the divine command theory insists it is always there nonetheless. When the X in question is God himself he still satisfies all of the necessary requirements for being good. The moral obligation to obey the commands of God admittedly introduces a sense of circularity into the system. But, if my adaptation of Hart's legal positivism is applicable here, this is simply the rule of recognition and the fact that no system of rules can be self-justifying. If my earlier argument was successful, we have already acknowledged that divine commands must have content beyond the mere authority of God to issue capricious commands. Since God has good reasons for the commands he issues, the divine command theorist's analysis of goodness includes substantive content beyond the mere issuing of orders. Thus, granting the partial self-certification in the rule of recognition, there are still lots of good reasons for the theist to insist on God's moral perfection and the authority it would provide for his role as supreme moral rule giver.

ENDNOTES

1. See, for example, the excellent collection of papers in Linwood Urban and Douglas N. Walton, editors, *The Power of God: Readings On Omnipotence and Evil* (New York: Oxford University Press, 1978).

2. See, for example, Nelson Pike, "Omnipotence and God's Ability to Sin," *American Philosophical Quarterly* 6 (1969). Reprinted in Paul Helm, editor, *Divine Commands and Morality* (New York: Oxford University Press, 1981).

3. The classic contemporary statement of the logical problem of evil is J. L. Mackie, "Evil and Omnipotence," *Mind* 64 (1955). Reprinted in Urban and Walton, *op. cit.*

4. See, for example, the diverse collection of papers in Paul Edwards, editor, *Immortality* (New York: Macmillan, 1992).
5. Richard Swinburne, *The Coherence of Theism* (Oxford: Oxford University Press, 1977), p. 203.
6. Jeff Johnson, "Inference to the Best Explanation and the Problem of Evil," *The Journal of Religion* 64 (1984).
7. David O. Brink, *Moral Realism and the Foundations of Ethics* (Cambridge: Cambridge University Press, 1989), p. 7.
8. John Mackie, *Ethics: Inventing Right and Wrong* (New York: Penguin, 1977), p. 38.
9. Plato, *Euthyphro*, in G. M. A. Grube, translator, *The Trial & Death of Socrates* (Indianapolis: Hackett, 1975), p. 14.
10. *Ibid.*
11. *Ibid.*
12. Robert M. Adams, "A Modified Divine Command Theory of Ethical Wrongness," in *Religion and Morality: A Collection of Essays*, edited by Gene Outka and John P. Reeder (Garden City: Doubleday and Company, 1973). Reprinted in Paul Helm, editor, *Divine Commands and Morality* (New York: Oxford University Press, 1981), p. 84.
13. James Rachels, *The Elements of Moral Philosophy* (New York: Random House, 1986), pp. 42-3.
14. The classic statement of legal positivism is John Austin, *The Province of Jurisprudence Determined*, abridged as "Law as the Sovereign's Command" in M. P. Golding, editor, *The Nature of Law* (New York: Random House, 1966). The clearest contemporary statement is H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961).
15. See, Hart, *op. cit.*, Chapter Five on the nature of secondary rules.
16. Peter Geach, *God and the Soul* (London: Routledge & Kegan Paul Ltd., 1969). Reprinted in Helm, *op. cit.*, p. 172.

17. Dewi Z. Phillips, "God and Ought," in I. T. Ramsey, editor, *Christian Ethics and Contemporary Philosophy* (London: SCM Press, 1966; and Baruch A. Brody, "Morality and Religion Reconsidered," in *Readings in the Philosophy of Religion* (Englewood Cliffs: Prentice-Hall, 1974). Both reprinted in Helm, *op. cit.*

18. Adams, *op. cit.*

19. Hart, *op. cit.*, pp. 78-9.

20. *Ibid.*

21. *Ibid.*, p. 102.

DIVINE COMMANDS, REASON, AND AUTHORITY

Jeffery L. Johnson

Department of Philosophy

Eastern Oregon State College

La Grande, OR 97850

1. Omnipotence literature.

2. Omnipotence and ability to sin.

3. Logical problem of evil.
4. Personal identity literature.
5. Swinburne, p. 203.
6. Johnson, "Inference to the Best Explanation
7. Brink, p. 7.
8. Mackie, p. 38.
9. Plato, p. 14.
10. *Ibid.*
11. *Ibid.*
12. Adams, p. 526.
13. Rachels, 42-3.
14. Austin and Hart.
15. Hart.
16. 16. Geach, p. 172.
17. Brody and Phillips.
18. Adams.
19. Hart, pp. 78-9.
20. *Ibid.*
21. *Ibid*, p. 102.