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ARGUMENTATIVE DIMENSIONS OF LEGITIMATE AUTHORITY

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The use of authority in arguments has been troubling, because to modern observers its invocation appears to cut off rather than promote rational debate. In my comment I would like to support a perspective highlighted by Professor Goodwin, which sees appeals to authority as implying and inviting arguments which justify as well as criticize reliance on authority. The study of argumentation shares the problem of differentiating between justified and unjustified invocations of authority with the study of politics, where this issue is discussed in connection with the concept of legitimacy. I will argue that juxtaposing the concepts of legitimacy and authority can help us to clarify them mutually; I will contend that both concepts share a common internal structure, which reflects the embeddedness of both in processes of argumentation which intertwine dimensions of operative effectiveness, regulative definition, and optative justification.¹

My starting point is the typology of appeals to authority proposed in Professor Goodwin's illuminating paper. She initially distinguishes between the authorities of expertise and command, and finally adds to these the authority of dignity as a convincing way of explaining the core of Locke's discussion of the *argumentum ad verecundiam*. Just as she wishes to complement rather than disturb this intuitive typology by inquiring into the principle which underwrites it, so I propose to complement rather than disturb her principle by inquiring into the more general considerations which can be seen to underpin her analysis of this typology. And where she focuses on the kinds of negative criticism one may receive for disregarding types of authority, I will emphasize the positive justifications supporting different aspects of authority; criticisms can then be derived by questioning the presence or adequacy of such support. Overall, I will try to show that the typology discussed by Professor Goodwin identifies and explains special cases pointing to more general dimensions of authority and legitimacy. In the process, I will argue for a modified rehabilitation of the criterion of capacity which she puts aside at the beginning of her discussion, after her critique of a distinction of types of authority based on features of their exercise, a critique which I find wholly persuasive.

Professor Goodwin's argument against the capacity criterion is partly based on the observation that it does not provide a clean cut between the different types of authority. I agree with this observation, but will contend that it also applies to her own criterion, inspired by procedures of analytical philosophy, of the different reactions which failure to follow various types of authority will evoke. But I do not interpret this difficulty of devising airtight distinctions as a sign of intellectual failure, but as a result of the complexity of the phenomena to be analyzed. I think that it is not only the case that someone may possess different forms of authority at the same time, as Professor Goodwin acknowledges, but that every basic type of authority cannot be completely understood without reference to the others, that for instance effective command authority cannot exist in the absence of elements of the authority of expertise and dignity, or of the more general dimensions of authority underlying these types.

Let us look at some of the boundary difficulties which Professor Goodwin discusses. She points out that

command authority is based on a right or power due to one's role in some social unit, while the expertise of knowledge is based on being recognized as possessing knowledge in some field; she then observes that expertise is typically also recognized institutionally. I would add to this the point that command authority is also typically expected or even presumed to be based on some form of expertise; as Luther put it, "whom God gives a public office, he also gives the mental capacity to go with it."² What distinguishes the warrant of expert authority from that of command authority is not that one lacks institutional backing while the other has it, or that one is based on knowledge while the other is not, but rather that for expert authority, the knowledge base is primary, and the institutional backing secondary, while the reverse is true for command authority. And furthermore, both these types of authority need a further element: a conviction that expertise and command are ultimately grounded in an acceptable transcendent framework, such as a body of moral or religious principles, that they have what political scientists such as David Easton call "ideological legitimacy."³ The authority of dignity which Professor Goodwin analyzes is, I think, one aspect of this third dimension of authority; and in her discussion she recognizes that experts typically also possess the authority of dignity, and the same may be said of commanders. Dignity is, in turn, typically based on command and expertise, or, to put it more generally, on the possession of institutionally recognized influence and of mental and physical resources, and it is also related to other aspects of ideological legitimacy.

To give an example: Caesar's dignity was based on his military command and on his religious office, the former being more closely tied to expertise, the latter to ideology; and also on his access directly or indirectly to material resources, which for full effectiveness required some institutional recognition, as well as the perception that these resources were not morally tainted, at least not to an excessive degree; furthermore, he could claim ideological legitimation also as a result of the perceived relationship of his family to the gods of traditional Roman religion. And Cicero's dignity would likewise combine such dimensions of operative factual resources, regulative institutional recognition, and optative ideological justification, but of somewhat different kinds and degrees, and in a somewhat different mix, as would the yet again significantly different dignity of Crassus. It is important to emphasize here that these Roman politicians did not merely possess a combination of expertise, command, and dignity, but that each of these authorities was also to some extent constituted by aspects of the other; their dignity, for instance, cannot be understood apart from their expertise and command; and each of their authorities derives its particular complexion from the precise ways in which it depends on and incorporates elements of the others.

Let us look at some other examples. The authority of the military commander would certainly have to be regarded as a command authority. And normally a disregard of that authority would certainly lead to blame for disobedience. Professor Goodwin recognizes that such a disregard could also provoke a charge of imprudence, but tries to preserve the clean distinction between command and expertise by claiming that the ascription of imprudence depends upon, and is secondary to, the ascription of disobedience. But I think this example shows two things which undercut the notion that the typology is analytically airtight:

First, while the charge of imprudence may be based on expertise (the commander knows how to fight successfully rather than losing), it may also be based on a control of resources other than expertise, such as his own ability or the willingness of his soldiers or of his higher-ups to act against someone defying his command. This is not the same as his institutional command authority, because he may have that and yet be physically incapacitated, or his soldiers or superiors may decide that it is too dangerous or politically inopportune to punish those who challenge him. Here we begin to look at authority not merely with the question of analytical philosophy as to what people *say* when someone fails to obey authority claims, but also with the question of political science as to what people *do* when the foundations of authority fail.

This also shows, second, that it cannot be maintained in all cases that the ascription of imprudence depends on the ascription of disobedience; the disobedience will be blameworthy as such only if the physical and mental resource dimension is present to a certain extent: if the commander suffers from a severe physical impairment or a mental breakdown, he may legitimately be relieved of his command. Likewise, his command depends on the perception that the social order in which it is anchored is as a whole legitimate: in successful revolutions, the institutional authority of the *ancien régime* expires, together with its effective control of power and the consensus supporting its legitimacy. Therefore, while it is true that access to factual and ideological resources depends on institutional command authority, the reverse is also true: command authority requires access to factual and ideological resources; the dependence is reciprocal rather than unidirectional.

Let me illustrate this further with the examples of the garage mechanic instructing his addressee to "twist this," and the Pope announcing dogma *ex cathedra*. While the mechanic's authority vis-à-vis a customer may be that of expertise, vis-à-vis an apprentice it would be that of command. Yet an apprentice would not be blamed for disobedience if she realized that the master mechanic had given her a command which would lead to a blow-up, and thus refused to twist: a failure of expertise undercuts the command authority. This is clearly distinct from a situation in which the command authority of the mechanic is ended on a formal basis, as when the apprentice is no longer an apprentice, or the mechanic has lost his position. And his command authority may also lapse because of lacking resources, for instance in relation to an apprentice whom he cannot effectively punish, e.g. because she is the garage owner's daughter, even though I concede that in this case she might still be blamed for disobedience.

But if a later Pope or Church Council disregards the authoritative pronouncement of an earlier Pope, we do not blame them for disobedience, even if we cannot avoid the apparent conflict by the expedient of maintaining by means of ingenious distinctions that there is no real discrepancy between the two pronouncements. This in spite of the fact that the authority of the Pope is recognized as infallible, and that there is no formal limitation of authority with regard to different addressees. But even though the formal command authority of his pronouncements persists beyond the grave, it is now more vulnerable. A deceased Pope no longer controls his own or the Church's resources, and there is also a presumption that a later divergent pronouncement is more truly in accordance with the word of God and the faith which provide the ideological foundation for papal authority. Similar considerations apply to the highest judges in a jurisdiction, or to highly respected experts. We do not necessarily charge them with disobedience or error when they deviate from the normative and empirical claims established by their predecessors. The case of judges makes it particularly clear that here we are not dealing with a formal limitation of command authority, a formal authorization of later courts to override earlier decisions by virtue of their own superior command authority. Because when overruling is not done *sub silentio*, which also tends to be the preferred mode in the church context, it is justified as a matter of *error* on the part of the earlier court: the *expertise* of the earlier court is impugned, and this in turn prevents the earlier decision from continuing to exercise the usual command authority of precedent, which is generally regarded as fully binding on subsequent as well as contemporaneous courts.






The official construction is that a lapse of expertise nullifies a particular command, or at least makes it subject to overruling, which shows that in all other cases the presence of expertise must be assumed in order to complete the substance of command authority, beyond the institutional backing which establishes that authority formally. And likewise a complete change in ideological outlook could be invoked to overrule an earlier decision as normatively misguided in a fundamental way. Examples would be the treatment of cases from the days of slavery in the time after its abolition, or of precedents from the Third Reich in the Federal Republic of Germany.


Recognizing this optative-ideological dimension of authority also helps us to understand instances of authority which Professor Goodwin invokes as creating difficulties for a capacity-based typology of authority, because they seem founded on neither command power nor on knowledge-based expertise. She mentions specifically the examples of Jesus, Napoleon, and Gandhi. I think it can be argued that these are examples of a type of authority which is primarily based on the control of ideological resources, which admittedly makes the concept of "capacity" perhaps somewhat more capacious than in common parlance. The quality of "charisma," which also figures prominently in Max Weber's scheme of forms of legitimate authority,⁴ can thus be understood as an ideologically-based ground of authority: its holder is seen to embody fundamental principles of the community which recognizes this authority, be they related to the God of the Torah, to ideas of the divinity of reason and the glory of the *Grande Nation*, or to ideals of independence, self-sufficiency, and democratic self-determination. And it is significant that the three leaders mentioned actually very much emphasized in their discourse their links with these normative principles and traditions.


But it should be noted again that this kind of optative-ideological authority does not exist in a vacuum and is interdependent with regulative—institutional and operative—factual dimensions of authority. Jesus, Napoleon, and Gandhi were parts of cultures which gave special institutional recognition to religious-spiritual or political-military leaders, and they had at their disposal theological, strategic, and legal expertise, as well as educational and oratorical talents, and the ability to inspire strong loyalty in their adherents. David Easton calls such legitimacy "personal,"⁵ but I think that this term is too limiting, since the primary ground of authority is precisely the perceived special link of the person to transpersonal forces or principles.⁶ And especially in the case of Jesus and Gandhi, an important aspect of their optative-ideological authority was their dignity, distinct from Cicero's Roman dignity and yet also continuous with it, as Professor Goodwin has pointed out in another context.⁷

I agree with her conclusion that as a result of her paper we are in a position to treat our students better by separating more carefully the authority of command, the authority of expertise, and the authority of dignity. And I think that we can treat them better still, and perhaps even hope for reciprocal recognition, if we make clear that these types of authority are aspects of more general and interdependent operative-factual-effective, regulative-definitional-institutional and optative-justificatory-ideological dimensions of legitimate authority.

Notes

1. For my derivation of these categories from an analysis of the classical *status* system see Hanns Hohmann, "The Dynamics of Stasis: Classical Rhetorical Theory and Modern Legal Argumentation," *The American Journal of Jurisprudence*, vol. 34 (1989), pp. 171-197; there I also suggest the applicability of these categories to the analysis of legitimacy: see *ibid.*, p. 196 n. 86. 
2. *Wem Gott ein Amt gegeben, dem gibt er auch Verstand dazu.* 
3. See David Easton, *A Systems Analysis of Political Life* (Chicago: University of Chicago Press, pb. ed. 1979 [1965]), pp. 289ff. 
4. See Max Weber, *Economy and Society*, edd. & tr. Guenther Roth & Claus Wittich (New York: Bedminster Press, 1968), pp. 31ff. 
5. See Easton, *op.cit.*, pp. 303ff. 

6. Easton's concept of "structural legitimacy" and Weber's notion of "legal-rational" legitimacy roughly correspond to the dimension of authority which I describe here as regulative-definitional-institutional. The dimension of operative-factual-effective authority has no clear counterpart in Weber or Easton, because they tend to insulate legitimacy as a normative concept from factual questions of effective power derived from the use of more concrete resources; Easton specifically draws a distinction between direct support (factual) and diffuse support (normative). But I think that we need to recognize the continuity and interdependence between factual and normative bases of authority. 

7. In her dissertation *Dignity and Civic Persuasion in Cicero's Republic*, (Ph.D., Communication Arts, University of Wisconsin-Madison, 1996). 

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