

THE ANATOMY OF COMMANDS:

A PHENOMENOLOGICAL ANALYSIS OF COMMAND STRUCTURE

By

William S. Mandrick
The University at Buffalo

A thesis submitted to the
Faculty of the Graduate School of State
University of New York at Buffalo
in partial fulfillment of the requirements for
Degree of

Master of Arts

Department of Philosophy

Contents

Chapter One: Commands

§ 1 The Phenomenological Foundation of Command Structure	4
§ 1.1 Preface to the Ontology of Commands	
§ 1.2 Artifacts and the Evaluation Process	
§ 1.3 Searle's Account of Institutional Facts	
§ 2 The Phenomenological Structure of Commands	14
§ 2.1 The Source and His Authority	
§ 2.2 The Recipient	
§ 2.3 Utterance and Uptake	
§ 2.4 Chain of Command	
§ 2.5 Classification	
§ 2.6 General (Standing) Commands vs. Time Specific Commands	
§ 2.7 Specifications	
§ 2.8 Context or Preconditions	
§ 2.9 Chronology and Expiration (Period for Being in Force)	
§ 2.10 Target and Commander's Intent: The Letter of the Command vs. the Spirit of the Command	
§ 2.11 Obtainability and Reasonableness	
§ 3 The Problem of Command Inference	31
§ 3.1 Jorgensen's Dilemma	
§ 3.2 The Obedience Analogy	
§ 3.3 Rescher's Theory of Command Termination	

§ 3.4 Theories On How Commands Correspond To Reality

§ 4 Conclusion	39
----------------	----

Chapter Two: The Soldier as an Institutional Fact

§ 5 Introduction	41
------------------	----

§ 6 Searle's Social Ontology and the Issue Of Combat	43
--	----

§ 7 Legal Presuppositions	46
---------------------------	----

§ 8 Statehood	48
---------------	----

§ 9 The Ontology of the Combatant	50
-----------------------------------	----

§ 9.1 Irregular Forces

§ 9.2 The Levee en Masse

§ 9.3 The Franc-tireur

§ 9.4 Partisan Resistance Fighters

§ 9.5 Guerillas

§ 10 Conclusion	55
-----------------	----

§1 The Phenomenological Foundation of Command Structure

§1.1 Preface to the Ontology of Commands

It is clear that the act of commanding is to be characterized as other-directed. But this does not exhaust its distinctive character... We have already seen in the example of forgiving that not all other-directed acts are in need of being heard... A command is neither a purely external action nor is it a purely inner experience... Commanding is rather an experience all its own, a doing of the subject which according to its nature has in addition to its spontaneity, its intentionality, and its other-directedness, also the need of being heard... in order to fasten [itself] in [ones] soul... (Reinach, pp. 19-20)

This essay is a phenomenological examination of *commands*. Edmund Husserl and Adolf Reinach were the first to investigate the previously undiscovered province of philosophy that analyzed such phenomena as promises, commands, and other social acts. Later authors, such as John Searl and J.L. Austin, unwittingly renewed the Husserlian and Reinachian tradition. In *Promisings and Other Social Acts* Kevin Mulligan states that, “these cases of doing something by saying something are, and give rise to, changes in the world” (p. 30). However, the workings of the authors mentioned include commands as just one example of the many social acts to be analyzed, and they thereby gloss over some of the features specific to this case. This work will examine commands specifically, in order to uncover the essential features involved.

We will identify the essential elements of a command in order to differentiate the legitimate from the counterfeit. A legitimate command structure includes the following 11 elements:

- 1) The *source* of the command and the *authority* bestowed upon him.
- 2) The *recipient* and his *subordinate posture*.
- 3) The *utterance* (from the source) and the *uptake* when the interlocutor receives the command.
- 4) The *chain of command* that a command must travel.
- 5) The *positive* or *negative* nature of the command.

- 6) The *standing* ('do it always') vs. *time specific* ('do it now') nature of the command.
- 7) The command's *specifications*—either explicitly or tacitly provided in the utterance(s).
- 8) The *context* or *preconditions* wherein the command is appropriate.
- 9) The *period for being in force*, i.e., until the command has been executed or is no longer appropriate.
- 10) The *commander's intent*.
- 11) The *obtainability*, i.e., feasibility, and *reasonableness*, i.e., legality, of the command.

With these elements in mind consider the following: a command that never reaches its destination is simply an empty utterance; a command that lacks authority is unenforceable; a command that is unobtainable is inane; and a command that is unreasonable is not binding. It is the coming together of the elements listed that creates a new ontological state; a state from which an obligation arises.

Before presenting a detailed analysis of the above listed elements I wish to make some preliminary remarks pertaining to the line that this ontology will follow. I treat commands as institutional facts—more complex than simple artifacts because they presuppose the latter. More precisely, the ontology of command structure presupposes a theory of institutional facts, which in turn, presupposes social facts. Further down the structure, the theory of social facts is built upon the phenomena of collective intentionality. Finally, the entire structure rests upon a theory of artifactualism, which presupposes individual intentionality. Therefore, we start our investigation with a brief explication of Dipert's theory of artifactualism, and how it pertains to performative utterances. We will then move our way through Searle's theory as it is found in *The Construction of Social Reality*. Finally, we will examine the eleven constituent elements

of commands.

§1.2 Artfactualism and the Evaluation Process

Because commands are intentional features of the world, the first order of business will be to account for the constitution, creation, and identification of an artifact. The ontology of artifacts starts with man's intentionality—the study of how human thought and action effects the external world. In contrast to philosophical endeavors that try to explain how the world ‘out there’ effects man's mind, phenomenology starts internally and works outward. As Dipert states:

Artifacts are the residue of intentional activity. But so are sweat, sawdust, and footprints. What seems distinctive about artifacts is that they are specifically contemplated by the acting agent as means and as part of what artifact describes the artifact in the way its creator conceived of it. Specifically, an object is contemplated by an agent, and some of its properties are intentionally modified (or perhaps, intentionally left alone); the production of an artifact is the goal of some intentional activity (1993, p. 15)

This simple description of artifacts is the starting point for any evaluation we make. Some argue that only artifacts can be evaluated, leaving the natural world beyond the pale of our assessments; thus, Searle's contention that "nature knows nothing of functions". The evaluation of artifacts requires that we are able to identify their intentional features. It is then a simple move from considering the creators intent to making judgments as to an artifact's worth. Therefore, the creation of any artifact presupposes some intentional act on behalf of the creator. Individually created artifacts are a matter of one person's intentions. Collective intentionality is required when creating more sophisticated artifacts ranging from primitive languages to space shuttles.

When evaluating artifacts we make conclusions about effectiveness, function, or fulfillment of purpose. We speculate as to the author's intent if the artifact is communicative or we say things about the worth of an artifact if it has been built for practical purposes. Anything that falls into the spectrum of the non-natural is evaluated in this sort of light. From sticks intentionally used to fend off intruders to paintings,

computers, and governments we constantly make judgments about the world of man-made phenomena in which we live. In some cases the artifacts we make impact us aesthetically, making life more pleasurable. In some cases our lives depend on the ability to make sound evaluations about the artifacts we employ. Because evaluating artifacts is a life enhancing process, it is important to examine the ontological features of the synthetic world—the world of bookends, atom bombs, promises, contracts, and commands.

Individually created artifacts are easy to evaluate if the creator's intent is obvious. According to Dipert, evaluations are performed in two ways: by first-hand or historical knowledge of the creator's intent or by speculating as to what his intentions were. The second approach to evaluating artifacts is pragmatic; we do not have first hand or historical knowledge of the creator's intent but the artifact itself displays a purpose that fits in with the current perspective, for example the case of ancient pottery.

Artifacts derived from collective intentionality may be more difficult to create and evaluate because we are no longer able to examine, or speculate about, any single person's intent. In general, the creation and evaluation process becomes increasingly difficult as the number of participating intentional agents increase. Group efforts can get bogged down under thick layers of competing or conflicting objectives; it becomes very difficult to define goals, create objectives, and evaluate the outcomes when there is no clearly defined intent. Historically, there are examples of successful military operations involving large numbers of participants where the intent of the commander was clearly defined. In some cases the operations were ill conceived, but the outcome was successful because everyone understood the commander's intent. Nowhere is this more apparent than in an institutional environment like the military.

Dipert's theory maintains that the failure of any complex system is caused by high level objectives that were "unclearly or inconsistently conceived" (p.152). Consider an army task force, wherein commanders at the same level have different operational objectives. An Infantry Commander has vastly different objectives than the Quartermaster and Air Cavalry Commander. The changing and adumbrative nature of military operations requires a heuristic model. Dieter Munch calls for a "multidimensional" ontology for complex systems such as the military:

Development is itself a process, in which the object changes...thus we cannot talk about the system as an end product, since it is always evolving in time...it is very important that during the different stages of development every participant knows at which stage he is. What we need is an ontology of artifacts...So if we want to give a complete description of a thing, according to Aristotle, we have to make statements according to the different categories: what substance it is, what qualities it has, what activities and passions there are, what temporal and locational determinations can be made, and so on... (1998, The International Seminar on Applied Ontology at the University at Buffalo).

§ 1.3 Searle's Account of Institutional Facts

It is tempting to think of social objects as independently existing entities on analogy with the objects studied by the natural sciences. It is tempting to think that a government or a dollar bill or a contract is an object or entity in the sense that a DNA molecule, a tectonic plate, or a planet is an object or entity. In the case of social objects, however, the grammar of the noun phrases conceals from us that fact that, in such cases, process is prior to product (Searle 1995, p.36).

The problem with social acts that are intended to cause compulsory behavior is that they are ultimately unenforceable. A lunatic can reject the laws of physics, but gravity still holds him to his chair. If, however, someone is determined to reject orders from a legitimate source of authority, then no sanctions can compel him to act. Searle asks if a piece of land can really be someone's private property or if making noises

through the mouth is really making a statement or a promise? He concludes that these are not real facts, and this line of reasoning applies to commands as well. In *Philosophy: Who Needs It*, Rand states:

“In answer to a man who was telling her that she’s got to do something or other, a wise old Negro woman said: “Mister, there’s nothing I’ve got to do except die...Reality confronts man with a great many “musts,” but all of them are conditional; the formula of realistic necessity is: “You must if-” and the “if” stands for man’s choice: “-if you want to achieve a certain goal.” (1974, p. 99).

Nevertheless, truly remarkable feats have been accomplished under the command of such leaders as Alexander, Patton, Montgomery, etc. If the laws of nature are not the compelling attribute of commands then we are left with the task of elucidating those ontological features that do create obligations—the kind of obligations that, in some cases, require people to sacrifice their lives.

In *The Construction of Social Reality* Searle attempts to establish the position that there are no naturally occurring functions. He argues against the notion that the whole of nature is the product of some grand creator’s teleological preferences. Because we assign functions to the events of our world, the sun does not, in reality, have the function of warming the earth, nor does the heart function to pump blood. Instead, these naturally occurring phenomenon are reducible to mere cause and effect relationships, wherein the sun heats the earth, the heart pumps blood, and gravity keeps us fastened to the earth. To say that naturally occurring phenomenon have a function is to introduce our relative value system into an otherwise valueless universe of mechanical processes. We inhabit a universe of “brute facts” upon which we assign functions relative to our interests as intentional agents—the primary step in the creation of social facts.

Functional assignments fall into two categories. The primary concern for this essay is the assignment of agentive functions. These are, more or less, artifacts such as a

stone used for a paperweight. Non-agentive functional assignments involve naturally occurring phenomenon that happen to be of value to mankind, e.g., the function of the heart is to pump blood. Intentional agents also assign special agentive functions to the markings and sounds that constitute language. The creation of social facts, and ultimately institutional facts, presupposes man's ability to impose agentive functions upon objects. Primary examples include tools that can fulfill their intended purpose "solely by virtue of their physical structure". More sophisticated examples are institutional facts, such as currency or governments, that cannot perform their intended function without it being collectively imposed—a dollar is not worth the paper it is printed upon unless people think of it as having value and treat it as such.

The next step in the development of social facts is the imposition of collective intentionality and the resultant formula: "*X counts as Y in context C*". This formula marks the transformation of brute facts into social and institutional facts. The "X" represents the brute fact, which is to be transformed into the "Y" social fact in context "C" where everyone accepts the practice. This is sometimes referred to as the biological vs. societal distinction. For the purposes of this essay, the "X" represents an utterance or a written message, which counts as "Y" a command, in the context of "C" everyone recognizing the source of the command as a legitimate authoritative figure.

The institutional fact represented by the "Y", in this case a command, is not a matter of mere convention. The mode of transmission is conventional, e.g. an encoded message, but the context in which the command is given and the resulting state of affairs is not. Institutional facts will always contain some arbitrary elements manifested in the physical features, e.g. the use of paper for money instead of dried fish. The constitutive rules of institutional facts, however, are not arbitrary in that way. The constitutive rules

that create the position ‘Division Commander’ are not arbitrary in the way that the two stars on a Division Commander’s hat are arbitrary symbols of his position.

Searle uses the example of money to illustrate a potential problem for his theory. If a dollar bill counts as money in the context of everyone believing it to be money and treating it like money then it seems as though his theory is circular. If a command is legitimate because everyone believes it to be so, then we are left with a self-referential definition—it is a command because it is believed to be a command. Only when people think of such objects as being contracts, money, marriages, or commands can they be that which they are, whereas, a stone remains a stone even if no one ever thinks of it. In contrast to brute facts, Searle states that, “...for social facts, the attitude that we take toward the phenomenon is partly constitutive of the phenomenon” (p. 32). I will return to this problematic feature of commands shortly.

Institutional facts presuppose brute facts, upon which the function is imposed. Money can take any number of forms, but it must take some form. Likewise, commands must take some physical form such as an utterance or symbols on paper. Without brute facts to build upon there could be no institutional facts; no money, governments, positions of authority, or language. Furthermore, institutional facts exist only in relation to other institutional facts. For example, positions of authority can only exist within an institution such as the army, which can only exist in a state or nation that supports a military and the laws in support of that authority. This interrelationship of institutional facts results in a “complex of interlocking institutional realities” that includes everything from promises and marriage to contracts, governments, and militaries.

The next step in the creation of institutional facts requires the collective imposition of an agentive function onto some symbolic brute facts. Consider, for

example, the document upon which a commission is printed. It states:

...Know ye that, reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of..., I do appoint him, Second Lieutenant, in the United States Army...This officer will therefore carefully and diligently discharge the duties of the office to which appointed...And I do strictly charge and require those officers and other personnel of lesser rank to render such obedience as is due an officer of this grade and position...

Documents of this type do not grant mystical power to their possessor. Nor do these type documents create a claim against others. Rather, it is the collective imposition of a status function, and the continued acceptance of that function, upon the document that creates its institutional potency. Status functions collectively imposed upon objects create powers not otherwise present in the physical attributes of that thing.

People do not, in most cases, deliberately set out to create new institutional facts. Instead, institutions evolve out of necessity without the participants even thinking about the formal steps involved. Leadership roles in combat evolved from the need for warring clans to organize their efforts. The few prehistoric hunters who displayed exceptional skills were naturally earmarked for leadership roles in combat. If they distinguished themselves through acts of bravery, agility, and intelligence the others would follow them as a matter of survival—not some deliberative process. At some point in the evolution of leadership roles, rank insignia and manner of dress would distinguish the best warriors. Then the words used to describe these prehistoric leaders became actual titles. Keegan describes the collective imposition of status as a natural and necessary process for man's survival. He states:

...the individualistic display of primitive pitched battle...must have given way under competitive pressures to more unified effort. Unification predicates leadership, and the organization of hunting parties, which was central to primitive society, provided a model from which leadership could be translated to the battlefield... Hunting-band leadership, when brought to the battlefield, would have initiated the process of distinguishing some warriors from others...Transgression into hostile territory would, moreover, of itself require the direction of a powerful central authority. Empirical evidence supports this scenario...In either case, whether of short- or long-range warfare, leadership would have been at a premium, and those who possessed the necessary qualities would have achieved or been thrust into it (1987, p. 10).

Institutional facts are a more evolved class of social facts because they require more than just collective intentionality—the sole requirement of social facts. Although collective intentionality is a necessary constituent of institutional facts, it is not itself sufficient. In addition, institutional facts require the collective imposition of an agentive function on objects that cannot perform the intended function based solely on their physical makeup. The hunting parties mentioned above were social facts. Promises, contracts, and commands are institutional facts.

Finally, I would like to apply Searle's defense, pertaining to the claim that his theory is circular, to commands. To say that a certain utterance is a command because everyone believes it to be a command does appear to be a self-referential definition. He uses the example of money, claiming that we do not need the term "money" in our definition of those objects that we buy things with, pay our debts, etc. Rather, all that is required is that everyone is treating certain objects as currency, regardless of what we call it. Likewise, we do not need to use the term "command" in our definition of commands. It is enough that everyone believes that certain utterances count as authoritative statements that must be complied with.

§2 The Phenomenological Structure of Commands

§2.1 The Source and His Authority

He may be king or priest; Alexander the Great was both. He may be diplomat; in their different ways Marlborough and Eisenhower excelled as much at conciliation as at strategy. He may be thinker rather than doer Moltke the Elder's qualities were intellectual rather than executive. He may command by surrogate authority of a monarch, as Wellington did, or by endorsement of a democratic assembly, which gave Grant his powers. He may be owed obedience only for as long as his decisions bring victory, the uneasy lot of generals in the Boer free states. He may be demagogue-turned tyrant, and yet sustain his military authority, as Hitler did almost until five minutes past midnight (Keegan, 1987, p. 2).

Every command must come from an authoritative source that has been sanctioned by an even higher source. Imperatives take the form of a command, however they lack a source, e.g., thou shalt not steal. It could be argued that these moral imperatives originate from God or society, whereas Nicholas Rescher maintains that there is a distinction between commands, which have a source, and moral imperatives (i.e., commandments) which are sourceless. He states that, “apart from far fetched theories regarding the nature of their sanction, moral imperatives fail to be commands precisely because of their lack of source” (pg. 10). One cannot command oneself via the ‘little voice inside’ which, in turn, takes its cues from moral imperatives. If the little voice inside tells a fellow to ‘stop coveting the girl next door’ then it could be said that he ‘commanded’ himself to stop lust for his neighbor, but this would be a misapplication of the concept.

I will exclude as sources of commands such items as placards that order ‘do not enter’ and posters that command ‘Give Your Soul to Jesus’. Other sources of commands, such as the Torah or the New Testament, will remain open to debate. In contrast to these documents, written operations orders are included in the definition because they represent the *expressed* orders of a commander. Moreover, every subordinate operations order,

written under the high order, is simply an extension of the high commander's expression. As such, when the lieutenant issues his orders he is, ipso facto, transmitting the orders from higher command. That is not to say that the lieutenant is simply a mouthpiece or transmission device of high command; he is a legitimate source for binding commands. Because this topic requires elaboration I will return to it later in the section entitled *Chain of Command*.

The way in which authority is bestowed, or acquired, proves to be a distinguishing factor in the creation of obligatory commands. As Keegan explains in the passage above, the acquisition of authority can come about in several distinct ways. If the authority is acquired through a legitimate process then the ensuing commands are forceful. Any utterance that has the potential to be a legitimate command must come from a recognized, accepted, and authoritative source. There is a distinction between utterances that are forceful - creating a contingent obligation - and utterances which are intended to do so but lack authority. The former are forceful—binding the interlocutor to a future event—while the latter utterances are quasi-commands lacking force. In *The Logic of Commands* Rescher writes:

Generally speaking, the source should have some entitlement or authority for giving a command to its recipient—i.e., he occupies some status vis a vis the recipient that puts him into a position to exact compliance or at least to elicit cooperation (e.g., he is the recipient's parent or teacher or commanding officer)...Moreover, a command generally has some justification—i.e., the source should be in a position to provide a rational and reasonable answer to the question of why he issued a certain command. A command can thus be 'questioned' by its recipient both as regards the authority of its source and his grounds for giving it (pg. 16).

This means that the same utterance in one situation can create an obligation while failing to do so in another situation. If I am told 'Go to location X and stand fast' by my commander an obligation comes into existence. The same utterance by someone who has no authority over me creates no such obligation; a command given by a general has no

force over a civilian. The same may be said about a command given by an officer outside one's chain of command. The lowliest private is not necessarily obliged to follow orders issued by a superior outside his chain of command. The recipient, upon hearing an 'order' from someone outside his chain of command may be obliged to disregard it; outside commands can and do conflict with obligations to his rightful chain of command. Imagine the chaos that would ensue if two platoons were within earshot of each other and everyone was obliged to follow all orders from anyone higher in rank. Marching, drills, and tactics (as well as any other group effort) would be made impossible if all audible commands were to be followed.

The creation of honorific positions (positions of authority) requires collective agreement. In *The Construction of Social Reality* Searle sees the totality of institutional reality in terms of a "rather simple skeletal structure". This includes conventional powers such as *Division Commander*. He states that, "we have nothing but the ability to impose a status, and with it a function, by collective agreement or acceptance" (p.112). The elements of this creation process include an already existing institution, the use of that institution in the creation process, the continued existence of that which is created and finally a status indicator. This legitimizing process is how an angry mass of combatants becomes a regiment, clans come together to form states, community members are elected to form governments, and individuals are placed into positions of authority.

This creates problems for multi-national coalitions; they must establish legitimacy based on the 'collective agreement' requirement. But, whose collective agreement is required? Which nations are included, and whom in the participating nations must the collective acceptance come from? If the multinational coalition's objectives conflict with those of other sovereign nations, then whose interests overrides the others? What happens when there is a split in support for a given objective and factions arise? Like Thesus' ship, the identity and legitimacy of any government—the ultimate source of delegated authority—is ever changing. Because this problem is worthy of its own

discussion I will not elaborate upon it here. Rather, consider Searle's brief formulation of the problem:

Because the status is constituted by its collective acceptance, and because the function, in order to be performed, requires the status, it is essential to the functioning that there be continued acceptance of the status...One of the most fascinating-and terrifying-features of the era in which I write this is the steady erosion of acceptance of large institutional structures around the world. The breakdown of national identification in favor of ethnic tribalism occurs in places as various Bosnia, Canada, the former Czechoslovakia, Turkey, and many American Universities. In several African countries there is no way to tell where the army ends and the armed bands begin or who is a "military leader" and who a "warlord." In Russia the instability is such that anything one might say with confidence now about the relations among the state, the military, the secret police, and organized crime, for example-is likely to be out of date by the time you read this. The temptation in all these cases is to think that in the end it all depends on who has the most armed might, that the brute facts will always prevail over the institutional facts. But that is not really true (p. 117).

§2.2 The Recipient

Every command has a recipient, be it an individual or group, which receives orders directly or by transmission through an intermediate source. The identity of the recipient need not be explicitly stated in the command; it is sometimes implied by the context of the command. The recipient does not necessarily need to be a person; one may command his computer (or his dog). Rescher states, "Jesus commanded the waves... addressing a command to a computing machine (by means of its program) is not to stretch the properties past permissible limits—at any rate we shall assume that it is not so in the rather liberal and broad sense of 'commanding' laid down above. One can certainly address commands to animals" (pg. 11). Typically the recipient is not also the source of a command, although in many cases commands given to a group (such as standing orders)

will include the command giver as a recipient of his own orders. The standing order to ‘clean and oil weapons every morning’ will most likely include the source as a subject of his own orders.

According to Rescher, commands addressed to groups fall into two categories. The first is *distributive*—when the command applies to each and every member of the group (e.g., “every one of you chaps raise your right hand!”). The second is *collective*—when the command applies to a sub-group within the group (e.g., “some of you chaps carry that table over there”). Other *source to recipient* scenarios include:

Individual to Individual

Sergeant to private: On your feet!

Individual to Group (collective)

Lieutenant to Platoon: cease-fire

Individual to Group (distributive)

Jesus to Disciples: Go ye into the world...!

Group (Collective) to individual

Cease and desist order from court to individual

Group (collective) to Group (collective)

Court order to a corporation to divest itself of certain corporate holdings (in violation of antitrust statutes)

Group (collective) to Group (distributive)

Court order to residents of some area to vacate it for public purposes

Group (distributive) to Individual

Crowd to Pilate: Let Barrabas go free

Group (distributive) to Group (collective)

Demonstrators at city counsel: lower our taxes

Group (distributive) to Group (distributive)

Demonstrators to group of U.S. visitors: go home, Yankees!

Legitimate command structures require voluntary participation by a prior act of subordination. As Mulligan puts it, "Reinach implies also that a command requires not

only a state of submission or subordination, but an actual prior act of submission..." (p. 61). This act could be formal, e.g., an oath or implied—as in the mere participation in a political system. This prior act is not the type of which a gun is held to someone's head—nor any other form of coercion. I maintain that the authority over troops cannot be transferred to a foreign command structure and still maintain its legitimacy; it cannot be parceled out to several command structures and remain binding.

The prior act of submission requirement also implies that conscientious objectors would not be obligated to participate in a war effort. However, I would argue that their continued participation in the day-to-day activities of the state acts as the "prior act of submission". One's continued citizenship symbolizes a general acceptance of the customs and laws of the state in which they live; it is the implied act of submission required for voluntary participation in that nation's military. This is similar to the reason Socrates chose to accept his punishment rather than seek exile. In *The Trial of Socrates*, Stone investigates the debate between Socrates and the Laws of Athens found in the *Crito*:

Implicit in this debate is the notion of a contract between the state and the citizen. The Laws argue that if the citizen accepts the terms of the contract when it suits him, he must also accept the obligations of the contract when it goes against him. This, of course, was Socrates' argument for refusing to escape.

Now imagine a stranger commanding that some fellow 'fetch him a cab'. Although it would be nice of the person to do the fetching, he is in no way obliged to do so—no contingency is created by the 'command'. The scenario could be more dramatic, but the outcome would still not change. Positions of authority do not entail omnipotence, and the C.E.O. of Ford Motor Company could, very well, get his nose bloodied attempting to order a group of hooligans to turn down their music. The same goes for the highest commander in the military. When he removes his uniform at the end of the day,

along with it goes his authority; he cannot 'command' his neighbor to mow his lawn. This same impotence applies to acts of coercion. Threats might very well motivate someone to comply with a command, but they do not create obligations.

§2.3 Utterance and Uptake

Lord Lucan read the order 'carefully' with the fussy deliberateness which maddened his staff...It seemed to Lord Lucan that the order was not only obscure but absurd: artillery was to be attacked by cavalry: infantry support was not mentioned, it was elementary that cavalry charging artillery in such circumstances must be annihilated. In his own account of these fatal moments, that he hesitated and urged the uselessness of such an attack and the dangers attending it, but Nolan, almost insane with impatience, cut him short and repeated the final message he had been given on the heights...and with those words the doom of the Light Brigade was sealed (C. Woodham-Smith, 1954, pp. 227-233).

The intent of a command, also referred to as the target, must be clearly defined. It must be heard and understood by the recipient or interlocutor. Military history is filled with vignettes in which unclear or unheard commands cause catastrophes. When the intended message (i.e., the command) is stated by the source it is open to interpretation by the recipient(s). Because the 'given command' is an oral representation of the commander's thought processes (i.e., his intent) a process of decoding must be performed by the recipient. Reinach states that:

...in distinction to other spontaneous acts...such as making a resolution it (commanding) presupposes in addition to the performing subject a second subject to whom the act of the first subject is related in a very definite way...the command is according to its essence in need of being heard (vernehmungsbedürftig) . It can of course happen that commands are given without being heard. Then they fail to fulfil their purpose. They are like thrown spears which fall to the ground without hitting their target (p. 19).

In contrast, consider other types of *'other directed'* acts such as hatred, love, admiration, or forgiving. They need not be proclaimed by the first party or acknowledged by the person at whom they are directed. These feelings can exist completely unnoticed by the person at which they are directed. As such, these are not what Reinach refers to as social acts. Social acts are defined as those acts which are active, intentional, directed at someone, and in need of being expressed and heard; once they are announced to the other person they "fasten themselves in his soul." Most social acts are simply the exchange or expression ideas. Commands differ from most social acts because they are not simply expressive—they must be "grasped" by the recipient as well. Reinach states that:

A command is neither a purely external action nor is it purely inner experience, nor is it the announcing (kundgebend Ausserung) to another person of such an experience. This last possibility seems to be the most plausible. But it is easy to see that commanding does not involve an experience which is expressed but which could have remained unexpressed, and also that there is nothing about commanding which could rightly be taken as the pure announcing of an internal experience. Commanding is rather an experience all its own, a doing of the subject to which in addition to its spontaneity, its intentionality and its other directedness, the need to be grasped is also essential...(p. 20).

Commands create a certain type of change in the world - aimed at producing some future desired event. A contingent obligation (efficacy) is created when the respondent hears the command, whereas the social act of informing—e.g., 'I admire Margaret Thatcher'—does not produce a similar corresponding obligation. Once the contingent event occurs the obligation dissolves. Reinach says, "A certain action now stands there as commanded or requested, and under certain conditions...as when the addressee of a command has performed the social act of submitting to the person who gives the command, there arise obligations of a definite kind" (p. 23). Commands maintain an

“inverse” relationship with promises. A Division Commander’s order to ‘occupy hill 714’ creates an obligation on the part of his subordinates. The promise to his wife and children to ‘be home for the holidays’ creates an obligation on his own behalf.

§2.4 Chain of Command

Commands must follow some path, however short it might be. It may travel from the source directly to the recipient or it could travel a distance comparable to the oral history of the Iroquois—passed down through generations. Following an order from its origin down to the recipient[s] can easily turn into a myriad with many echelons and literally thousands of participants. As the command makes its way down the myriad, from source to recipient[s], it must maintain a strict path in compliance with the ontology. If the command strays from this path it is rendered illegitimate upon arrival at the level of execution. It is miraculous that any transmission makes its way intact down the entire chain of command to be carried out at the company and platoon level. Consider the following example: ‘W’ commands ‘X’ to command ‘Y’ to command ‘Z’ to execute action ‘A’. This entails ‘W’ commands ‘Z’ to execute action ‘A’. Or in the logical notation of Mark Fisher:

$$Owx((Oxy)(Oyz(A))) \text{ is equivalent to } Owz(A).$$

If the chain of command is broken for whatever reason (e.g., illegitimate source, unreasonableness, or unmanifested preconditions) then we are left with a pseudo or quasi-command. To illustrate consider the following scenario supplied Rescher:

Suppose an armed forces scientist of country A, who is a major, is on the enemy payroll, and directs a team of several captains, loyal to country A, who are working on project P under his command. Suppose further that one day our traitorous major gets an order from the enemy embassy: ‘Order your captains to stop working on project P.’ Has the embassy ordered the captains to stop work on P? Does this even make sense given the absolute loyalty of the captains to country A? (p.15)

Breakdowns in the transmission are not limited to the above scenario (i.e., illegitimate sources); misinterpretations, embellishments, distortions, and even completely lost transmissions make the command’s journey a perilous one. For this reason, which will be discussed at length in section ten, the *commander’s intent* acts as a trump over all of the explicit commands in an operation. Without this trumping action an operation would not survive ‘first contact with the enemy’.

§2.5 Classification

Commands fall under one of four following classifications. The first two classifications have to do with the positive or negative nature of what is expected. Commands will either compel the recipient to act (‘get up’) or restrict the recipients actions (‘don’t move’). We call these *positive* or *negative* commands. The second two classifications deal with the *specific* or *general* nature of the command. Some commands are *specific* (‘Go to hill 853 and set a defensive perimeter facing due North’). Little is left to the imagination as to what the commander expects, and no interpretation or creativity is allowed on behalf of the recipient. Other commands are *general* (‘get first

platoon in shape for the 30k road march next month'). These commands do not dictate a specific course of action; they dictate a state of affairs to be realized. The recipient of such a command is entrusted to use his discretion, creativity, and technical knowledge to achieve the desired state. Rescher makes the distinction thus:

A performance command orders a certain particular set of activities, while a realization command orders the achievement of a certain state of affairs without...specifying anything whatever as to the set of activities by which this is to be achieved ('look about for your glasses!' versus 'Find your glasses!'). A state-realization command typically leaves open to its addressee a vast range of alternative courses of action in compliance: 'see to it that the window is opened!' (he need not even do it himself), 'make pile (1) larger than pile (2)!' (he may add to (1) or take away from (2) or do some combination thereof) (pp. 18-19).

§2.6 General (Standing) Commands vs. Time Specific Commands

Some commands remain in effect in the absence of authority. The command to 'remain at your assigned post until properly relieved' is understood as a standing order. Other commands specify the time frame in which to perform the intended action such as 'move to position alpha by 0430 hrs. tomorrow'. Unlike the imperatives mentioned above, which lack a genuine source, standing (general) orders do qualify as legitimate commands under our definition. Commands that require compliance within a certain period are referred to as 'do-it-now' commands, whereas standing orders are referred to as 'do-it-always' commands. Other *time specific* (do-it-now) commands include, 'run to the water tower and back' or 'get in shape for the 10K run next month'. Not all time specific commands are to be completed immediately; they have a time frame in which to be executed that could be as long as months or years.

In contrast, *standing orders* ('do-it-always' commands) are not mandated within a specific context, and there is no requirement to restate them once they are learned by the recipient. Instead, they exact compliance whenever the appropriate conditions are present. They include such commands as 'keep weapons pointed down range' or 'remove head-gear when indoors'. I would also include standard operating procedures (S.O.P.'s) as being standing orders. Everyone is expected to understand and comply with S.O.P.'s without being re-ordered to do so.

§2.7 Specifications

How an order is to be executed—the commander's expectations pertaining to the manner in which it will be carried out—is stated either explicitly or tacitly. In some cases the commander will give precise (i.e., categorical) specifications such as 'attack the enemy position with heavy artillery, followed by one company of mechanized infantry, then secure the perimeter with light infantry in hasty fighting positions'. Here, the specifics include the mode to be used (heavy artillery, mechanized infantry, and light infantry), the procedures or execution sequence, and the final end state (securing the perimeter with hasty fighting positions).

An order with tacit expectations—all orders contain some tacit expectations—would be more like a 'state realization' command with little explicit guidance. When a lieutenant is told 'finish the road march with zero heat casualties in your platoon' he understands that everyone must fill their canteens, a water tank will be in tow, the platoon will stop to change socks every 6-7 miles, the medic will carry extra I.V. bags, etc. Tacit expectations are built into every command, from the most mundane ('guard this') to the most extensive (a division operations order). Consider the simple order given at

company level ‘be prepared to deploy at any time within the next 24 hrs.’. This simple command sets off a truly remarkable chain of events, each of which is a tacit expectation. Weapons are to be drawn and oiled, ‘A’ and ‘B’ bags are to be packed in accordance with standard operating procedure, rations issued, vehicles at the ready, rehearsals and briefings conducted, communications equipment drawn, ad infinitum. Moreover, each of these individual expectations come with their own set of tacit expectations which makes for nothing short of a myriad affair; the miracle of any organized effort.

§2.8 Context or Preconditions

Commands must be carried out at the appropriate time and in the appropriate context. The order to ‘engage the opposing force when they enter sector bravo’ sets the precondition for a time specific (do-it-now) command. The standing order to ‘maintain a clean weapon’ means that ‘when your weapon becomes dirty, clean it’. Note that both of these commands are conditional in the sense that if the opposing force never enters sector bravo then no engagement will take place, and if one’s weapon never gets dirty then it need never be cleaned. More immediate orders (‘go shine your brass’) imply that one has met the precondition of having tarnished brass. All commands are conditional in the sense that they must be performed within the appropriate context—otherwise they are meaningless.

§2.9 Chronology and Expiration (Period for Being in Force)

The contingent state created by commands will always terminate in one of two

ways; fulfillment of the command requirements or becoming inappropriate—hence, countermanded. Once the command requirements have been met the contingent state is said to have been dissolved. If a command becomes inappropriate then it is countermanded—e.g., ‘set an ambush at coordinates 47295427’ when the enemy has already passed through. Rescher refers to the status of these commands as “chronologically inoperative”. Standing (general) orders do not terminate in this manner—they remain in effect until the appropriate authority commands otherwise. These commands bear a striking resemblance to the ‘sourceless’ imperatives mentioned above.

§2.10 Target and Commander’s Intent: The Letter of the Command vs. the Spirit of the Command

The target of any command is comprised of three essential elements which pertain to what it is the commander wishes to accomplish. Consider the command ‘move to sector bravo along route victor and set a 360 degree defensive perimeter by 0430 hrs.’. First, it is an *action specific command*—as opposed to a *state realization* command. Second, it contains the *manner of execution specification*—indicating the manner in which the action will be performed, or the state to be realized. Third, it is qualitatively positive—creating a compulsion to act. This entails that the command ‘effective immediately, no soldiers are to enter the Kitty Kat Lounge for any reason’ is (i) *action specific*, (ii) *manner of execution specific*, and (iii) *qualitatively negative*. By contrast, ‘remain stalwart during the battle’ is: (i) a *state realization* command (i.e., as opposed to an act specific command), while (ii) the *manner-of-execution specifications* are tacit rather than explicit, and it is (iii) *qualitatively positive*. Rescher refers to these three

elements as the *command requirement*:

The command requirement corresponds to the idea of ‘what it is that the command instructs its recipient to do or avoid doing (when once it becomes operative in the case of a conditional command)... a (pure command – in the technical sense of the content of a command or ‘the command given’— is a composite specification of :

- (i) the command requirement
- (ii) the command execution precondition, if there is to be one.
- (iii) the character of the command as either one-shot (‘when-next’) or standing (‘whenever’).

...the performatory giving of a command thus involves, in addition to the command itself three further factors: (i) a source who gives this command to (ii) the recipient in (iii) some specific circumstance or on some specific occasion (p. 28).

The commander’s intent maintains a trumping power over the ‘letter of the command’. During any operation the intent trumps any specific order which is in conflict with it. The best-conceived plans are subject to the countless contingencies of real world situations, hence, such sayings as ‘no plan survives first contact with the enemy’ and ‘adapt and overcome’. That is why the commander’s intent always trumps in these conflicting situations; it is the spirit of all orders. If the intent is to defeat the enemy, but the path to victory is clearly different than the one planned upon, then one must be ready to execute those actions in compliance with the commander’s overall expectations, i.e. to win. However, this is not a matter of disobeying orders. On the contrary, to follow orders that were clearly inappropriate would be a dereliction of duties. Similarly, the spirit of our laws is to protect the citizenry. Therefore, if following the letter of the law would cause catastrophic injuries one would be obliged, in these type situations, to

disregard them. A soldier would be obliged to disregard an order which ran contrary to the commander's intent just as one would be obliged to run a stop sign to avoid causing a fatal crash.

§2.11 Obtainability and Reasonableness

The nature of the instructions given to the enlisted men and junior officers that evening by the senior officers was at best ambiguous in regard to the distinction between combatant and non-combatants. All troops were supposed to be familiar with the Geneva Convention, which makes it a crime to harm any non-combatant... Whether they were, in fact, familiar with the convention is another matter. It is probable, however, that at least some of the troops were not familiar with the Law of Land Warfare from the U.S. Army Field Manual, which specifies that orders in violation of the Geneva Convention are illegal and not to be obeyed (Peck 1983, p. 213).

A binding command must be both obtainable and reasonable. Obtainability refers to the likelihood that the command requirement can be achieved. The order 'go to position Alpha and stand fast' is obtainable. The order to 'foot march to position Alpha by morning' when it is 100 kilometers away is not, and one could not be held culpable for failing to follow it. Likewise, one would surely not be held culpable for failing to singly defeat an opposing battalion. *Reasonableness* refers to what is within one's jurisdiction to command. The ensuing action caused by the command must fall within the parameters of the authority delegated by the higher sanctioning source. The order 'defend position Charlie' may be reasonable, whereas the order to 'kill all women and children in the village' is unreasonable. One could not be held culpable for refusing to comply with such orders. An order to massacre innocent civilians is outside any delegated authority and fails to meet the definition of a command. Therefore, unreasonable or unlawful orders do not create any obligation on behalf of the subordinate. In similar terminology, Rescher states that:

It might be in order to develop some taxonomy of inappropriate commands. These would include (perhaps among others): ...*overreaching* commands which require of the recipient more than can reasonably be asked of him...that which is physically impossible. for him ('Henry lift that eight!' where it weighs 1000 pounds)...and *absurd* commands which can be of two types, either (i) making a requirement which the recipient cannot meet because it is based on a false presupposition ('Henry, drive your car to the house!' where Henry has no car), or (ii) making a requirement which no-one whatsoever can meet because this is logically or physically impossible ('Henry, divide 2 into 113 without a remainder!') (p. 17).

Surprisingly, Rescher omits any mention of illegitimate commands stating that, “the only things which a command can appropriately require are those actions...that lie within the area of conscious human control...anything which lies within the power of men to do or not to do can serve as a command requirement” (pg. 29). The massacre of a village is “realizable”, but the commands to carry out such a mission are both overreaching and unreasonable. Therefore, I would add to the above taxonomy any commands that would violate the Geneva Convention Code or international law. Any command that violates human rights is overreaching and unreasonable; no commander has the jurisdiction to order the intentional killing of non-combatants.

In the spectrum between what is reasonable and what is outrageous—or illegal—lies a gray area. Historical examples of military commands that fall into this category are the catalysts for debates. Is a pilot guilty of disobeying a truly binding order for refusing to bomb a target primarily inhabited by civilians? Again, binding commands must be within the capabilities and authority of the person(s) carrying them out. The massacre at Mylai is just one example of many orders that were not obligatory.

§3 The Problem of Command Inference

§3.1 Jorgensen's Dilemma

It remains to consider one other mark of social acts—their indifference to truth and falsity...Austin's first theory of speech acts...begins with a contrast between constatives, which can be true or false, and performatives, which can only be (in)appropriate...And indeed Marty had already noted that, pace Husserl,...commands can be neither true nor false (Mulligan, 1987, p. 46).

Rescher defines command inference as an argument composed of premises that are commands—with an occasional assertoric premise—and a conclusion that is also a command. An argument with all command premises is *homogeneous*; an argument that contains a combination of command and assertoric premises is *heterogeneous*. Henri Poincare maintained that an imperative, i.e. a command, syllogism must contain at least one imperative premise in order to be valid. Consider the following valid command inference:

When your weapon becomes dirty, clean it.

Your weapon is now dirty!

Clean your weapon!

The above is a heterogeneous inference, wherein the second premise is an assertoric statement rather than a command. It appears to be a straightforward case of valid command logic, however, it does not meet the truth requirements of standard assertoric logic, i.e., if the conclusion is true, then the premises must also be true. Jorgensen's Dilemma states that commands can be neither true nor false, e.g., clean your weapon. In response to this Rescher maintains that, "In developing a theory of valid command inference we would therefore we well advised to be prepared to dispense with

the straightforward considerations regarding truth and falsity that form the mainstay of the analysis in the case of assertoric inference” (p. 75).

§3.2 The Obedience Analogy

In response to the above dilemma Mark Fischer states that “obedience values” in commands are analogous to the more common truth-values in statements. Rescher rejects Fischer’s analogy, maintaining that obedience is “ill suited” to serve as an element of validity; an assertion can be true or false without ever being verbalized, whereas a command cannot be obeyed if it is never issued. However, this alone does not disqualify the analogy, and Rescher goes no further in justifying his dismissal of *obedience* as an element of valid command inference.

I would object to Rescher’s dismissal because analogies are intended to portray similitude, as opposed to precision, in their comparisons. One would not object to the analogy ‘stripes are to a tiger as spots are to a leopard’ by saying that stripes are an “ill suited” example because they are elongated and thin while spots are circular. The analogy is not being forwarded as a comparison of geometric likeness. Rather, it is being used to compare the camouflage patterns of felines, and does so quite effectively.

§3.3 Rescher's Theory of Command Termination

Having dismissed the obedience analogy Rescher goes on to formulate his own theory of valid command inference. Some preliminary discussion pertaining to his terminology is in order; the terms to be considered include *command coverage*, *command decomposition*, and *command termination*.

There are three ways in which a command is said to *cover* other commands. First, when a command is directed at a group of recipients it is said to “cover” any individual in that group. The command ‘Platoon, attention’ covers the command for Sgt. Johnson—who is a member of the platoon—to come to attention. Second, when a command requirement such as ‘clean all of these weapons’ calls for the realization of several subordinate actions it then covers the command to ‘clean this individual weapon’—which is part of the group. Third, commands that specify the preconditions for execution cover each instance the preconditions are met; the command ‘whenever your weapon becomes dirty, clean it’ covers the command ‘your weapon is now dirty, clean it’.

A covering command such as ‘clean your weapons every day’ is *composed* of all the covered commands within it, e.g., ‘clean your weapons Monday’. The covering command is more general, whereas the covered command will specify the recipient(s) of the command, the requirement(s), the precondition(s) for execution, and any combination of the three. *Command decomposition* is the complete taxonomy of all covered commands within the covering command.

Commands can be decomposed in three ways. *Addressee decomposition* happens when a command is given to a group, e.g., first platoon, wherein each member is expected to perform the same task, e.g., ‘clean your weapons’. Once the command is

issued it is as though each and every member of the platoon had received the command individually; it is then “A-decomposed”. Notice, however, that the command requiring first platoon to ‘set a defense’ cannot be addressee decomposed because the task cannot be performed individually. Rather, the command is addressed to the entire group collectively—as opposed to each individual in the group.

A command can also be decomposed when it contains two or more requirements. For example, the covering command addressed to a lieutenant to ‘move first and third gun squads to the staging area’ can be decomposed into the two separate, i.e., covered, commands ‘move 1st squad to the staging area’ and ‘move 3rd squad to the staging area’. The command is then considered R-decomposed.

The *preconditions* for command execution can also be decomposed so that the covering command remains applicable every time the preconditions are met. The command to ‘road march 15 kilometers every Monday and Friday this month’ can be decomposed to ‘road march 15 kilometers every Monday this month’ and ‘road march 15 kilometers every Friday this month’; the command covers every day or combination of days stated in its preconditions. Preconditions might include days, hours, enemy disposition, enemy composition, or command signals, e.g., green flares mean shift or lift fires in a platoon S.O.P. Terrain changes also mark the manifestation of new preconditions; crossing roads, or open spaces, is a precondition for the command ‘cross two at a time, at irregular intervals’. The commands need not be stated every time the preconditions are encountered. These commands are P-decomposed.

In some instances a covering command must be A, R, and P decomposed simultaneously, in which case the amount of decomposition will be greatest. When a captain commands his three lieutenants to ‘perform a 15 kilometer road march, with your

respective platoons, every Monday and Friday this month' we see that all three types of decomposition are necessary. The covering command begets covered commands such as 'Lt. Johnson, ensure that the first squad of your platoon performs a 15-kilometer road march next Friday'—just one of the hundreds of possible variants which can be derived from that single composite command.

The addressees in this case are the three lieutenants so that the composite command is immediately A-decomposed into three separate, i.e., covered, commands. The requirement to perform a 15-kilometer road march can be decomposed to cover the three platoons, the four squads in each platoon, and each individual in the four squads. The precondition to do the road marches every Monday and Friday of the month means that each individual week and day, or combination thereof, is covered. Rescher states, "It should be remarked that a command covers every command which figures in its decomposition. As a result, a command cannot be terminated unless all of its decomposition-commands are terminated" (p. 70).

Command termination is a simple concept that closely resembles the concept of acting in compliance, i.e., obedience, with the command requirement[s]. In *Imperatives and their Logics*, Moutafakis states that commands are said to be, "terminated, rather than as true, when...successfully acted upon" (p. 117). After all of the decomposed commands—which make up the composite or covering command—have been executed to completion they are then "terminated". According to Rescher, command termination is the condition under which validity is established in command inferences. Command termination is the equivalent of truth as found in assertoric syllogisms. Validity is established in command inferences when the conclusion is tacitly or implicitly contained in its premises in one of three ways:

- (i) Anyone who overtly gives the premise commands may legitimately claim (or be claimed) to have implicitly given the command conclusion.
- (ii) Anyone who overtly receives the premise Commands may legitimately claim (or be claimed) to have implicitly received the command conclusion.
- (iii) Any course of action on the part of their common recipient which terminates the premise commands cannot fail to terminate the command conclusion. (pg. 78)

§3.4 Theories On How Commands Correspond To Reality

What these are we may hope to discover by looking at and classifying types of case in which something goes wrong and the act...is therefore to some extent a failure. The utterance is then, we may say, not indeed false but in general *unhappy*. And for this reason we call the doctrine of the things that can be and go wrong on the occasion of such utterances, the doctrine of the *infelicities* (Austin 1955, p. 14).

In *The Logic of Moral Discourse* Paul Edwards considers the viewpoint of C.H. Langford, who maintains that commands can be analyzed in terms of what it is they refer to if reduced (i.e., converted) to an assertoric statement. This means that the command ‘when your weapon gets dirty, clean it’ can be converted to the assertoric statement ‘when his weapon becomes dirty, he will clean it’, which, unlike the command, can be proven to be true or false. Langford states that:

...[as is] stated in textbooks on logic that to give a command is not to express anything true or false. Consider, a command of the form, "John close the door," and suppose this command actually to be given on a certain occasion. Suppose, further, that on the same occasion someone remarks, "He will close the door." When we consider what observations would determine whether or not this command was obeyed, and what observations would determine whether or not the corresponding prediction was true, we see that these are indistinguishable, and that in fact the two sentences have the same sense, or express the same idea, namely, that of John's closing the door. To be sure, if John did not close the door, we should say that the person who made the prediction had been in error, but should not say this of the person who gave the command (p. 125).

Edwards rejects this notion maintaining that it confuses two ways in which the phrase "in the same sense" is used. To illustrate, reconsider the statement 'when your weapon becomes dirty, clean it'. Now compare it to the statement 'when your weapon becomes dirty, disassemble it, apply solvent, scrub the moving parts, wipe it down, apply oil, and reassemble'. These two statements "have the same sense" because, by definition, 'clean your weapon' and 'disassemble your weapon, apply solvent, scrub the moving parts, wipe it down, apply oil, and reassemble' mean the same thing. Neither, however, can be proven true or false.

Next, consider the prediction that 'Sgt. Johnson will clean his weapon' with the command 'Sgt. Johnson, clean your weapon'. Of these two statements only the prediction can be proven true or false. Now the facts wherein Sgt. Johnson obeys the command are the same facts that make the prediction true or false, but to say that these two sentences "have the same sense" is misleading. Edwards maintains that Langford uses the phrase "in the same sense" in a way that, "two sentences mean the same if the referent of one is identical with the objective of the other." He concludes that even if a command is obeyed it does not make it true.

I maintain that commands do correspond to states of affairs in a way that makes them true or false. I also agree, to a point, that the truth or falsity of commands is

discoverable via a conversion process. However, the conversion must be into assertoric, i.e., factual, statements—not predictions such as “he will clean his weapon”. Predictions are subject to outside variables, which makes them inappropriate as determinants for truth or falsity as it pertains to commands. Even if the command for Sgt. Johnson to clean his weapon is converted into the prediction that ‘he will clean his weapon’ we are still no closer to determining the truth or falsity of the order. Sgt. Johnson may be run over by a tank in which case the prediction is rendered false—a false prediction that has nothing to do with the appropriateness of the order. As I will explain, converting commands into assertions— assertions as to why the command is appropriate—does uncover their correspondence with states of affairs. The commands can then be evaluated in terms of truth or falsity.

Reinach maintained a realist commitment to truth makers. Kevin Mulligan states that, “Reinach is committed to an old fashioned, realist and univocal notion of truth...he distinguishes sharply between acts that do and acts that do not “fit” states of affairs... orders do not fit facts (p. 46). In *How to Do Things With Words* (HTW) Austin claims that performatives, such as commands, do correspond to states of affairs in “complicated ways” - ways that make commands true or false. We are able to assess the truth or falsity of performatives because they are “grounded” in certain states of affairs. A command is grounded insofar as the action it requires is pragmatically—or teleologically—justified. A command must always be justified by facts; facts that are represented by assertions. The assertions can be (dis)proven. This rule is compatible—even complimentary—with Rescher’s ontological requirement that a command be justified. Recall the quote from above wherein he claims that:

Moreover, a command generally has some justification - i.e., the source should be in a position to provide a rational and reasonable answer to the question of why he issued a certain command. A command can thus be 'questioned' by its recipient both as regards the authority of its source and his grounds for giving it (p. 16).

The command to 'clean your weapon' is *grounded* upon the fact that dirty weapons malfunction, a fact that is empirically verifiable. The rule can now be expressed in its enhanced form: commands must correspond to, that is to say, be grounded upon, empirically verifiable facts that justify or require their execution. This is how commands "fit" states of affairs.

§ 4 Conclusion

In the preceding chapter I have shown several problematic features of commands. First, by what authority do multi-national coalitions acquire their power? Because positions of authority require the collective impositions of a status, we must ask from where does the collective agreement originate, and is it legitimate? Second, how do command syllogisms fit states of affairs if they are not subject to truth or falsity? Finally, what is the role of commands in the "multidimensional" (i.e., multi-echelon) system? For example, high level commanders must be able to reconcile national policy with military strategy. In turn, mid-level commanders must be able to interpret strategic guidelines and create sound tactical objectives. The outcome is decided at the lowest levels of participation, where the will of a government is imposed by individual acts, including acts of violence.

Objectives are easily obscured due to misinterpretations of what the overall objectives are. One ontological problem the military faces is the interface between their

government's objectives with those of the military itself. History gives many examples of unclear political objectives causing military problems. Communication gaps between the three levels of command create “stratification” which may result in a “decoupling”. Rapidly changing scenarios on the battlefield make it nearly impossible for commanders at the tactical level to wait on decisions from the policy level to trickle down through the strategic level to the front lines. Consequently, tactical commanders may react to the opposing forces in a manner that is not compatible with national policy objectives. This decoupling sometimes results in conflict escalation at the tactical level. To prevent increased stratification, and the decoupling which may result from it, strategic and tactical level commanders must know how much authority has been delegated down to them. Bouchard (1991) states:

Stratified crisis interactions provide a mechanism for inadvertent escalation not under the control of national leaders. In an acute crisis, in which strategic or tactical interactions between the two sides have become decoupled from political level control, an escalatory spiral can be triggered at the strategic or tactical levels of interaction, which under certain circumstances can cause the crisis to escalate uncontrollably to war. An escalation spiral can be touched off at any of the three levels. If it starts at the political level, with national leaders making the escalatory decisions, it encompasses all three levels (p. 48).

These problematic features were brought to the fore by applying the discipline of phenomenology to command structure. It is remarkable what is uncovered when one examines common social terms in order to uncover their essence. In the next chapter I will apply this same technique to two other military terms: combat and the combatant. As will be shown the two terms cannot be defined independently of each other, and the process is not unproblematic.

Chapter Two

The Ontology of Combat: The Soldier as an Institutional Fact

§5 Introduction

The endeavor to distinguish combatants from civilians and thus to improve the latter's chances of protection in wartime has become the driving concern of contemporary International Humanitarian Law development. The line of distinction has been drawn sharper than ever before, but the difficulties of observing it remain as marked as ever. They may even have become worse. The official legal definition of civilian has itself become so awkwardly questionable that the case for permanently parenthesizing the word retains a certain force...(Best, 1994, p. 257).

This chapter deals with the ontology of combat. More specifically, it is concerned with the constituent elements of the combatant. First, there is a need to distinguish the combatant from the civilian. As will be shown, the present distinction (e.g., the definition found in International Humanitarian Law) is problematic. It is not within the scope of this paper to establish those who should be granted civilian (i.e., protected) status. Rather, I wish to call attention to the need for a practical ontology pertaining to the distinction. Second, The term combatant denotes those who are distinguished from terrorists, thugs, and murderers. This too is a problematic distinction, which lacks a sufficient ontological foundation.

This work will also define the elements of warfare as opposed to, e.g. riots. Terrorists are not combatants in the same sense that riots are not revolutions. Soldiers participate in wars—thugs participate in illegal acts of violence. Combatants are bound to and protected by international law. Terrorists, thugs, and the franc-tiruer are subject to the local laws of the state in which they commit their crimes. This means that if captured

the combatant is protected by the Third Geneva Conventions of 1949—the terrorist is hung in the town-square.

There are several ontological issues involved in the topic of combat. What are the criteria for hostile actions to be a war? What is the status of civil unrest in the face of governmental illegitimacy—i.e., what distinguishes a riot from a revolution? What is the status of minority groups who resort to violent means in a sovereign state; are they freedom fighters or simply terrorists? To be sure, the defining features found herein will not elucidate all problematic case scenarios. They will, however, act as a foundation for the debate in these paradoxical cases.

There are also several questions pertaining to the ontological status of the individual participant in a hostile act. What does it mean to say that a combatant has a certain status, —e.g., exemption from criminal prosecution for killing his enemy? More generally, what is a combatant—i.e., what goes into the making of a soldier? How does the combatant differ from the terrorist? Again, there will be borderline cases in which the established criteria will require amendments, but we cannot even begin to discuss them until the ontology is in place. Among other things, we will consider issues such as the status of civilians taking up arms against an occupying force. Oppenheim (19??) states:

Private individuals who take up arms and commit hostilities against the enemy do not enjoy the privileges of armed forces and the enemy has, according to a customary rule of international law, the right to treat such individuals as war criminals. But they cease to be private individuals if they organise themselves in a manner which, according to the Hague Convention, confers upon them the status of members of regular forces (p. 574).

In what follows we will examine these and other relevant topics for the twofold ontology. Three necessary presuppositions for this ontology include a general social ontology, a certain legal framework, and a general ontology of statehood. We will begin

our inquiry with these three topics followed by the binary ontology. I use the term binary because the process of defining the combatant and defining combat are necessarily connected—they cannot be defined independently of each other.

Finally, throughout this piece I will be using certain technical terms derived from the fields of ontology, international law, and military history. For example, the term *belligerent* is taken from international law, meaning the legally distinguished combatant. Likewise, the term *belligerence* is meant to distinguish internationally recognized hostilities from an acts of terrorism.

§6 Searle's Social Ontology And The Issue Of Combat

Being a *soldier* is an institutional fact because it requires the collective imposition of status upon an individual. Without this status a person would be considered a murderer for intentionally killing another. Consider acts of violence found in nature—e.g., a black widow killing her mate. Also consider random acts of violence such as passionate murder. These have no phenomenological aspect; they are purely acts of nature (i.e., “brute facts”). The violent actions in war, on the other hand, have a phenomenological aspect. War is an institutional fact—a status imposed upon violent action. A thousand murders over the span of a year do not constitute a revolution. Revolutions require an intentionally coordinated effort, and the same is true of battles and wars. Riots are not wars no matter how many people get injured or killed, and the participants are not combatants. Searle pointed out that musicians practicing the same piece at the same time, but in different rooms, do not constitute a symphony.

Being a soldier requires compliance with Searle's formula *X counts as Y in context C*. This means that a person carrying out violent action (the X term) counts as

a soldier (the Y term) in the context that he is collectively recognized, treated as, and behaves like a combatant (the C context). Individuals are collectively recognized as combatants when they comply with the fourfold requirement established by the Third Geneva Convention of 1949. The C context is established by the following criteria. First, the combatant must be part of a chain of command that is responsible for its subordinates' actions. Second, they must have a fixed distinctive sign, recognizable at a distance, which distinguishes them as such. Third, they must carry arms in an open manner. Fourth, they must conduct their operations in accordance with the laws and customs of war—e.g., not intentionally killing civilians.

As will be shown throughout the essay, Searle's thesis proves to be inadequate when dealing with the *quasi-civilian*, the de facto state, or, in some cases, the sovereign state. In other words, some civilians will turn out to be combatants even though they fail to meet the criteria set by the formula. Furthermore, some non-recognized states will manage quite effective militaries, yet fail to meet the *collectively recognized* requirement. Finally, some sovereign states will fail to maintain an effective defense system of any sort, yet they will meet all of the requirements set down by the Searlean thesis; their military will amount to an armed circus. In short, Searle's thesis would ascribe the title *counterfeit* to the effective system while granting legitimacy to the ineffective system. We shall return to this later.

We are not here interested in uninhibited conflicts that involve indiscriminate violent acts, mass murder, or wanton destruction. Rather, we are interested in warfare governed by the constraints of constitutive rules. In war political objectives are the goal, not complete destruction as in the case of genocide. The term war presupposes that there are constitutive rules; if there were no rules we would call it something else—perhaps a

massacre. War is, by definition, a civilized act requiring that the participants follow rules. Without the constitutive rules, the acts of violence would not be a human phenomenon, nor would they constitute a war. It is only when rules are applied to hostilities that the phenomenon of war emerges. Individuals who commit random acts of violence are not soldiers, and their actions are not war-like.

As stated in the first requirement the participants in a violent action must answer to someone. This prevents individual ventures akin to banditry. Requirements two and three distinguish the participants from each other and from the non-participants. Combatants who hide in civilian clothing and conceal their weapons cause innocent civilians to be put in danger because they can no longer be discriminated as such. They are also at an unfair advantage over those who abide by the restrictive codes. This amounts to cheating in warfare. The final requirement mandates that all participants in a war effort must comply with the established rules, otherwise they forfeit the privileges that go along with being deemed a lawful combatant. Likewise, if a participant in a game continuously commits gross violations of the rules he will no longer be worthy of his status as team member. One could argue that his style of play does not even constitute, e.g. Football, Hockey, etc.

Combatants can wage war and be attacked by the enemy, but cannot be tried as ordinary criminals if captured. Conversely, non-combatants can neither be lawfully attacked nor commit acts of hostility against combatants; they would be liable as war criminals. Simply stated, this means that persons involved in a conflict must choose to be in one of the above two classifications. Citizens cannot kill or wound members of the opposing force while pretending to be non-combatants. The many different ways that a person can participate in a hostile effort leaves a question as to how they should be

treated if captured by the opposition. Between the clear-cut cases, such as regular soldiers and outright criminals, there exist mercenaries, foreign volunteers, guerillas, rebels, and other forms of irregular fighters.

§7 Legal Presuppositions

Franciscus de Victoria deduced from natural law that all states as itself governing bodies had certain rights with respect to war. Indeed, in regard to defensive war, where a country has been invaded, even private citizens could enter a conflict without further warrant...With respect to offensive war, every nation had the right to declare it and to wage it (Wells 1990, p. 154).

This ontology presupposes a legal framework higher than common law or local custom. The legal presupposition is akin to international or natural law. It is meant to apply in scenarios that transcend the boundaries of these lower forms of jurisprudence. It is necessary to examine two additional requirements pertaining to natural and international law. First, who can declare war? Second, for what reasons can war be declared? As to the first question, it is clear that not all groups with collective ideas can declare what would classify as a war. As to the second question, it is clear that not all reasons for resorting to violence result in a state of war.

Membership in an internationally recognized (sovereign) state is not a requirement for attaining legitimate combatant status. Revolutions are started and fought by those who reject membership in the established state. Likewise, reasons for starting a war are not limited to exclusively state vs. state issues. This ontology acknowledges non-juridical entities as being capable of declaring a recognized act of war. This includes groups oppressed by tyranny or colonialism—groups who are considered to be terrorists by their oppressors. Han states:

The law of war does not apply to acts commonly considered to be acts of terrorism. However, recent developments in the humanitarian law of war seem significant. States whose sympathies lie with alleged offenders exercise their legal powers of autointerpretation to claim occasionally that some individuals or groups of violent political acts possess soldiers' privileges to kill and to receive prisoner of war treatment when captured (1984, p.158).

The 1977 protocols to the 1949 Geneva Conventions put into writing the legal procedure by which “the authority representing a people engaged against a High Contracting Party” can attain juridical recognition. It applies in cases of colonial domination, alien occupation, or racist regimes, whereby the rights of self-determination are denied to certain groups. It is possible for these groups to acquire international recognition as belligerents by aligning with, and abiding by, the regulated system of international conflict. Han goes on to state that, “...It seems clear that a shift to the highly regulated regime of international armed conflict was believed to be a major advantage to those struggling for an approved cause whom a defending government would prefer to classify as “terrorists” or “criminals”” (pg. 158). International law trumps local custom in cases where juridical recognition has been determined. Otherwise, these groups would be treated as common criminals. Berman (1983) would have us apply a universal context to legal questions of war:

In periods of crisis we need a larger vision. Oliver Wendell Holmes Jr., once said to a class of law students: “Your business as lawyers is to see the relation between your particular fact and the whole frame of the universe.” Behind that statement lay Holmes's tragic vision of life, born of the war. He knew that without a universal context particular facts are wholly precarious (Law and Revolution 1983 p. vii).

§8 Statehood

Whereas the quasi-state has recognized territorial borders, a seat at the UN, and the ability to participate in intergovernmental organizations, in many cases it does not effectively control large swathes of its own countryside. Though it seeks recognition, the de facto state, on the other hand, has been denied its seat at the UN and its place at the international table...the quasi-state is legitimate no matter how ineffective it is. Conversely, the de facto state is illegitimate no matter how effective it is...the de facto state...is a functioning reality that is denied legitimacy by the rest of international society (Pegg, 1998, p. 5).

The issue of statehood is vital to this ontology in several respects. The sovereign quasi-state, which maintains international recognition, will have the authority to raise a 'legitimate' military but may lack the power to employ it in any meaningful way; its deployment would be more like a parade than a military action. On the other hand, the de facto state, which lacks international recognition but maintains effective control over a substantial territory, will have the power to employ a military force, yet lack the authority to do so. What then is the status of military operations conducted by the de facto state? Can their members attain combatant status if the international community does not legally recognize their state?

Another way of posing the paradox is to consider the de facto state that fails to attain "juridical recognition" but meets the criteria required for sovereign statehood. They operate outside the boundaries of international legitimacy and cannot, therefore, raise a legitimate military or conduct internationally recognized military operations. Are they then to be viewed as terrorists if they use violent means to assert their rightful place? If they meet all of the criteria as outlined by international law—i.e., overt carrying of arms, organized chain of command, distinctive uniforms, and compliance with the laws of war—then they should be considered legitimate combatants. Of this paradox Pegg asks:

“if sovereignty is now granted as a moral right and not earned on the battlefield or through a demonstrated capacity to govern, and if existing state boundaries acquired such a sanctity as to ‘freeze’ the political map, then what happens to the various groups who are fundamentally dissatisfied at the way they have been ‘frozen’ off the political map and denied admission to the exclusive club of sovereign states? (p. 4).

The practice of bad ontology, pertaining to political or geographical entities, creates the illusion of world order. It is here that we see the incompleteness of Searle’s ontology. A recognized state qualifies as sovereign given his formula “X counts as Y in context C”. If the international community recognizes, accepts, and treats (e.g., Cambodia) as a sovereign state then by definition they qualify as the “Y” term. But, as we have already established these states are ineffective and by all standards illusory. They are, so to speak, counterfeit states. This is the main objection to those who maintain that social phenomenology is purely conventional. Conventionality implies arbitrariness and a non-natural approach to social theory.

According to Roth (1999) a state becomes sovereign based on the *de facto* or *effective control test*. Successful revolutions are self-justifying, i.e. revolutions are considered to be appropriate means to governmental change. He states that, “...The government brought into permanent power by a revolution or coup d’ etat is, according to international law, the legitimate government of the state...victorious revolutions...are to be interpreted as procedures by which a national legal order can be changed” (p. 137). The *de facto* state is, therefore, considered a legitimate state because it maintains the capacities required to remain sovereign.

§9 The Ontology of the Combatant

War consists largely of acts that would be criminal if performed in time of peace – killing, wounding, kidnapping, destroying or carrying off other people’s property. Such conduct is not regarded as criminal if it takes place in the course of war, because the state of war lays a blanket of immunity over the warriors (Wells, 1990, P. 260)

We now turn our investigation to the different classifications of violent actors—those who are combatants and those who are criminals. We find in the professions many examples of the blanket of immunity mentioned above. Medical doctors cut into the flesh and inject chemicals into the bloodstream—two acts that would be criminal if committed by the lay person. Investors spend other people’s money and police take away liberties—two more examples of acts that would be considered criminal outside the context of those professional roles. Likewise, the combatant finds himself participating in acts of sanctioned violence and is accorded similar immunities. It is these *contexts* which drive our social ontologies. For example, states maintain militaries, employ them in accordance with international law, and hold them accountable for violations of the code of conduct.

The *limits* to the blanket of immunity are what create the ontology of, e.g., combatant, doctor, attorney, or artist. Social ontology, therefore, requires the concepts of *categories, context, and limitations*. When an individual operates outside the limits of his or her professional context he or she ceases to be, for example, a soldier. Soldiers who slaughter innocent civilians operate outside the limits of their ontological category. It cannot be said that they commit these acts as combatants — the terms combatant and murderer are mutually exclusive.

The distinction between combatant and non-combatant is by no means decisive. The desire to exclude non-combatants from the effects of combat requires that they be identifiable; their identity, however, is problematic. Best (1994), uses the term *quasi-civilian* to denote those who participate in war by offering financial, political, psychological, manufacturing, or distribution support. He asks if it is right that they share in the same protections granted to the “entirely and indelibly innocent”. Can an entire civilian populous be considered a vital military target if it is viewed as the supplier, manufacturer, and distributor of war materials—the opposition’s civilian populous supplies future combatants? Finally, can one ethnic, religious, or ideological group view their opposition as a *class enemy*, thereby making the entire population a target for destruction? Best concludes that:

...Some war-making mentalities perceive no civilians to be protected; the law’s distinction between civilian and combatant is unreal to them. Others perceive some so-called civilians who ought not to be protected; the more imaginative of them might go on to argue that, by the same token, some so-called combatants better deserve protection. All can agree that the nature of war is such that even civilians who undoubtedly deserve protection cannot in fact be guaranteed it (1989, p.262).

§9.1 Irregular Forces

Non-regular combatants, that is those combatants who are not members of the regular armed forces, are usually called “irregular combatants”...Historically these fall into two groups; the *levee en masse* and the *franc-tireur*. (Best, Geoffrey 1989, p. 111).

§9.2 The Levee en Masse

Our first technical term pertains to civilians who take up arms in order to resist occupation by hostile outside forces; they are the *levee en masse*. The natural inclination to defend one's self in this situation is legitimized by Article 2 of the Hague Rules of 1907. When the inhabitants of a sovereign territory organize themselves into a militia, prior to an attempted occupation, they are granted belligerence status. In *Armed Conflict and the New Law*, Meyer states that, "...it is clear that irregular troops in these circumstances forming a *levee en masse* would be accorded combatant status if they complied with the two conditions namely the overt carrying of arms and respect for the laws of war" (p. 111).

9.3 The Franc-tireur

The doctrine of the German High Command had been Expressed before the war in paragraph 3 of the Ordinance Of 17 August 1938. This text laid down the death penalty "for activities as *franc-tireur*" for anyone who, without being part of the enemy forces, carried arms or engaged in acts of combat against members of the German Army. In applying this text, underground resistance fighters were generally executed, at least in the early stages. (Best, Geoffrey 1989, p. 114).

The other category of irregular combatant is the *francs-tiruers*. This includes civilian saboteurs, who perform clandestine operations against the enemy—i.e., operations conducted in civilian dress with concealed weapons. By definition civilians do not bear weapons openly, nor do they wear uniforms. The civilian saboteur is at an unfair advantage, and he puts the civilian population at risk. Meyers states:

The term was certainly so understood by the Prussians who rose as irregulars against Napoleon's army. However, in their turn the Prussian government in 1870, when faced with francs-tiruers acting on behalf of France executed them. When it was pointed out that the francs-tireurs were only doing what the Prussians had done in the previous war, Bismark is reported to have replied, "True, and we can see the trees on which you hanged them" (p. 112).

The *franc-tireur* fail to meet Searle's requirement that for something to be what it is, in a phenomenological sense, it must be believed to be the thing in question (e.g., a soldier). Therefore, in order to be a soldier everyone must believe that the person in question is in fact a soldier. Hence, the requirement that combatants wear dress that distinguishes them and that they carry arms in an open manner—the only practical way that soldiers can be identified. Shooting at people, setting up ambushes, and blowing up buildings is not sufficient to make someone a soldier. Likewise, a spectator who runs onto a game field tackling a player is not considered a participant in the game; he does not meet the criteria to be a team member.

§9.4 Partisan Resistance Fighters

It was previously stated that the *levee en masse* is required to form prior to occupation by a hostile force. In WWII the French resistance movement, known as the "Forces francaises libres" or FFL, were considered *franc-tireur* because Germany had occupied France prior to their formation. Consequently, when captured they were treated as criminals and executed. The Franco-German Armistice Agreement of 22 June 1940 forbade the formation of French resistance fighters. The German government, who authored the document, considered them as *francs-tireurs*. In order for the FFI to be recognized as legal combatants the French military would have to adopt them as part of

their constituency. However, it was only after the momentum of the war shifted in favor of the allies that Germany agreed to consider the FFI as combatants. Best states that:

It was only after the allied landings in Normandy that the so-called “Forces francaises de l’interieur” (FFI) were, given some sort of legal status by the ordinance of the “Comite francais de liberation nationale” dated 9 June 1944. That ordinance stated that the FFI formed an integral part of the French Army. Members of the FFI then wore distinctive armlets stamped and distributed on behalf of the Headquarters Supreme Allied Expeditionary Force, were trained by officers parachuted in for the purpose, and placed under the nominal command of a French Army Officer (p. 114).

§9.5 Guerillas

The legal status of guerillas is difficult to establish; their status cuts to the heart of the problem of categorization. They certainly are not civilians, yet the ascription of terrorist or criminal may not be appropriate in many circumstances. One question pertains to those who are subjected to unbearable conditions by their state—at what point then are they recognized as belligerents. Recognition is the main ingredient of Searle’s formula “X counts as Y in Context C”. In order for “freedom fighters”, the X term, to count as belligerents, the Y term, they must have that status collectively imposed upon them. The Y term identifies the imposed status that grants the power to perform *legal* combat operations; they become combatants in the C context that they are believed to be so. But, whose collective recognition do they need to gain belligerence status?

Several characteristics of the guerillas prevent them from falling within one category or the other. Best states:

In recent years however guerilla fighting would seem to have been characterised by

1. the fact that the activities of guerillas are generally coordinated with a regular army
2. the diversity of training of the fighters.
3. The mixed nature of the composition of forces used, whether made up of nationals or foreigners, or even renegades and deserters.
4. the diversity of their methods of combat going from clandestine actions to open fighting, with very often every excess imaginable for example sabotage, assassination, the taking of hostages and attacks against the civilian population.

Other categories of hostile actors defy classification as well. Mercenaries and spies operate in the gray area between combatant and criminal. More so, the entire realm of covert operations straddles the line of demarcation between combat operations and criminal activity—a subject worthy of its own ontology.

§10 Conclusion

The goal of developing these ontological definitions is not simply to develop the taxonomy of problems that the military must face. Rather, we should be in the business of unifying those elements of military science, international law, social theory, and linguistics which contribute to a better understanding of the phenomenological character of the military. In this chapter we have discovered several problems in defining combat and the combatant.

First, we see that Searle's social theory proves inadequate in determining statehood. His theory would grant sovereign status to nation-states that fail to meet the effective control test—i.e., quasi-states. Furthermore, his theory would deny sovereign

status to de facto states that meet all but one of the criteria, namely, international recognition. We are faced, then, with a paradox; some states can legitimately declare war but lack the power to do so, while other states that have the power to fight wars will lack the (juridical) recognition to do so. Finally, we see the problem pertaining to the status of quasi-civilians, the Levee en Masse, and the the Franc-tireur.

Bibliography

- Austin, J.L. (1962), *How To Do Things With Words*, Cambridge (MA): Harvard University Press.
- Berman, H. (1983), *Law and Revolution*, Cambridge (MA): Harvard University Press.
- Best, G. (1994), *War and Law Since 1945*, New York: Oxford University Press.
- Bouchard, J. (1991), *Command In Crisis*, New York: Columbia University Press
- Dipert, R. (1993), *Artifacts, Art Works, and Agency*, Philadelphia: Temple University Press.
- Edwards, P. (1955), *The Logic Of Moral Discourse*, Glencoe (IL): The Free Press.
- Han, H. (1984), *Terrorism, Political Violence, and World Order*, Lanham (MD): University Press of America.
- Keegan, J. (1987), *The Mask of Command*, New York: Viking Penguin Inc.
- Meyer, M. (1989), *Armed Conflict and the New Law*, London: British Institute of International and Comparative Law.
- Moutafakis, N. (1975), *Imperatives and their Logics*, New Delhi: Sterling Publishers Pvt. Ltd.
- Mulligan, Kevin (1987), *Speech Act and Sachverhalt*, Hingham (MA): M. Nijhoff Publishers.
- Munch D. (1998), *Multidimensional Ontology of Artifacts and its Application to Complex Technical Systems*, Applied Ontology: An International Conference on Law and Institutions in Society, April 24-25, The University at Buffalo, New York.
- Oppenheim, L. (1952), *International Law*, 7th Edition, Vol. II.
- Peck, S. M.D. (1983), *People of The Lie*, New York: Simon and Schuster
- Pegg, S. (1998), *International Society and the De Facto State*, England: Ashgate Publishing.
- Rand, A. (1982), *Philosophy: Who Needs It*, New York: Penguin Books Ltd.
- Reinach, Adolf (1983), *The Apriori Foundations of the Civil Law*, Josef Seifert and John Crosby (eds.), Irving (TX): Alethia, Vol. III.

Rescher, N. (1966), *The Logic of Commands*, London: Routledge & Kegan Paul Ltd.

Roth, B. (1999), *Governmental Illegitimacy in International Law*, Oxford: Clarendon Press.

Searle, J. (1995), *The Construction of Social Reality*, New York: The Free Press.

Stone, I. (1988) *The Trial of Socrates*, New York: Doubleday

Wells, D. (1990), *War Crimes and Laws of War*, Lanham (MD): University Press of America.

Woodham-Smith, C. (1954), *The Reason Why*, New York: McGraw-Hill Book Co.