Austin Outline

Austin suffers a bit from an excess of clarity. The sentences and paragraphs are all fairly clear, but he can get so detailed that it's easy to lose track of what exactly he's doing. I wrote this outline to help me keep my bearings.[1]

1   Lecture I

In this lecture, Austin advances his central claim that law is a kind of command. He also argues that commands involve threats of force and that obligations consist in being threatened.

1. Definition of "law." (10-13)

   "A law … may be said to be a rule laid down for the guidance of an intelligent being by an intelligent being having power over him." (10)

   A list of things that are properly called laws by this definition and those that are improperly called laws because they do not fit the definition (10-13).

2. Claim: laws are commands. (13)

   "Every *law* or *rule* … is a *command*. Or, rather, laws and rules, properly so called, are a *species* of commands." (13)

3. Analysis of "command." (13–18)

   "the ideas or notions comprehended by the term *command* are the following: 1. A wish or desire conceived by a rational being, that another rational being shall do or forbear. 2. An evil to proceed from the former, and to be incurred by the latter, in case the latter comply not with the

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[1] John Austin, *The Province of Jurisprudence Determined* (1832; London: Weidenfeld and Nicolson, 1955).

wish. 3. An expression or intimation of the wish by words or other signs." (17)

Austin argues that commands, duties, and sanctions are all logically equivalent (e.g. 14 and 18)

He also maintains that duties do not depend on the efficacy of the sanction (cf. Paley) and that rewards cannot be sanctions (cf. Bentham and Locke). (15–17)

4. Claim: laws are general. (21–23)

This is a commonly accepted claim about the law; Austin offers his distinctive interpretation about what it means. He distinguishes between two kinds of commands: (1) laws (or rules) and (2) occasional (or particular) commands.

In what way are laws general (as opposed to particular)? Austin argues that only commands that apply to a general category of *actions* are laws (21–22). He disagrees with Blackstone's claim that laws must apply to *people* in general. Example: Parliament could pass laws that govern only those who occupy a particular government office (23).

5. Analysis of "superior" and "inferior." (25–26)

It is generally said that laws are addressed by superiors to inferiors. Austin uses his command theory to offer his interpretation of what this means. It does not refer to differences in rank, wealth, or virtue. The relevant difference is power.

> "the term *superiority* signifies *might:* the power of afflicting others with evil or pain, and of forcing them, through fear of that evil, to fashion their conduct to one's wishes. … In short, whoever can *oblige* another to comply with his wishes is the *superior* of that other, so far as the ability reaches: The party who is obnoxious to the impending evil, being, to that same extent, the *inferior*." (24)

(Before the 19th century, "obnoxious" usually meant 'vulnerable.')

6. Laws that are not commands ("imperative") (26–29)

    Three cases that do not fit the command theory. These are legislative acts that explain laws, repeal laws, or impose 'imperfect' duties. Austin thinks these are minor cases.

7. Apparent exceptions to Austin's theory (29–31)

    Austin takes up two cases that appear to be inconsistent with his theory in order to show that they do not pose genuine problems. (1) Laws that seem to confer rights without duties (he maintains rights always come with duties). (2) Customary law (he maintains custom is made law only if it is enforced by the state).

2   Lecture VI

This lecture is devoted to identifying a sovereign, that is, the kind of superior power that makes laws.

A sovereign, S, is an individual or corporate body with two qualities (193–94).

1. The "bulk" of the members of a society are "in a habit" of obeying $S's$ commands.

2. S is not in the habit of obeying any other human beings (as opposed to habitually obeying God).

Most of this section consists in examples that Austin uses to illustrate this claim.