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Command Theory, From Description To Distortion

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Abstract

This article revisits the intellectual relationship between John Austin's command theory of law and H. L. A. Hart's interpretation of that theory in *The Concept of Law*. It argues that modern legal philosophy's understanding of Austin is filtered almost entirely through Hart's presentation—a presentation which, while methodologically sophisticated and rhetorically compelling, systematically distorts the structure and meaning of Austin's original framework. The study employs an analytical-descriptive approach grounded in primary textual comparison, aiming to reconstruct Austin's actual theory from his *Lectures on Jurisprudence* and measure its congruence with Hart's representation.

The paper begins by situating Austin's project within nineteenth-century legal positivism, emphasizing his commitment to defining law as a phenomenon of political sovereignty rather than moral obligation. For Austin, law properly so called is a command issuing from a sovereign who is habitually obeyed, backed by the threat of a sanction, and directed toward the conduct of subjects. This sovereign—not the moral content or social acceptance of rules—founds the obligatoriness of legal norms. In this framework, law's authority and law's coerciveness are not identical but inseparable: coercion is the empirical sign of sovereignty's normative supremacy.

Hart, however, reconstructs this position in a way that substitutes linguistic and logical analysis for institutional-political explanation. In Chapter II of *The Concept of Law*, he introduces Austin through the now-famous figure of the "gunman situation"—a man pointing a gun at another and demanding compliance under threat. This image, used to illustrate "commands backed by threats," becomes Hart's prototype for the Austinian conception of law. Yet, as the article shows, this move involves a crucial categorical error: it replaces Austin's notion of law as *the acts of sovereignty* (a political and institutional concept) with law as *coercive utterance* (a linguistic and episodic concept).

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Abstract

The first part of the paper reconstructs Austin's own distinctions. Austin differentiates between the concept of command and the concept of law in the general sense, as well as between laws properly so called and laws improperly so called. His emphasis on generality, stability, and institutional promulgation shows that a law need not be an immediate, personal imperative, but rather a standing order of the sovereign's will addressed to the community. Austin's sovereign acts are not momentary threats; they are *settled expressions of authority* embedded within the machinery of governance.

The second part examines Hart's report of these ideas. Hart's analysis begins linguistically—by asking what sort of sentences can be called “imperatives”—and then moves to the sociological: which social circumstances make these imperatives law-like? In this transition, Hart isolates the element of coercion and associates it with the gunman's threat, claiming that Austin's model of legal obligation rests upon this simple relation of command and obedience. What follows, according to the paper, is an analytical *detachment* of the law's coercive content from its political source.

To clarify this distortion, the article introduces a methodological analogy: when one defines a concept, one relies on *primary* and *secondary* notions (or, in the author's terms, *direct* and *indirect concepts*). The indirect concepts serve explanatory purposes but do not form part of the essence. If a theorist replaces the primary concept with one of its theorems or explanatory conditions, the entire theory is misrepresented. The author contends that Hart performs precisely this substitution. In centering his presentation on coercion, Hart mistakes an indirect explanatory aspect of Austin's theory for its constitutive element. This yields what the paper calls the “first act of distortion.”

In the second act, Hart attempts to “correct” the deficiencies of the gunman analogy by adding four features that genuine laws purportedly have and the gunman's order lacks: generality, durability, applicability to the public, and habitual obedience by the majority. Yet Hart simultaneously insists that these traits must be loaded into the same model of a coercive command. The result, from the author's perspective, is a hybrid creature: still hostage to the paradigm of threat, but burdened with properties that belong to the institutional dimension of sovereignty. This analytical conflation erases the layered structure of Austin's original account—where features like stability and generality pertain to the *sovereign power* and its legislative process, not to the bare command as such.

The third act of distortion, according to the paper, occurs when Hart encapsulates his presentation with a synthetic formula: “general orders backed by threats, issued by a person habitually obeyed.” Here Hart displaces Austin's straightforward definition—“laws properly so called are the commands of the sovereign”—with a novel language that removes the sovereign from the center. The formula is rhetorically elegant but conceptually misleading: by introducing “habitual obedience” as a sociological criterion and “general orders”

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as a linguistic description, Hart transforms a juridico-political definition into a behavioral regularity model.

The remainder of the article traces the effects of this misrepresentation on post-Hartian jurisprudence. The first consequence is the marginalization of Austin's command theory itself. Legal philosophers and students henceforth encountered Austin primarily through Hart's critical lens. As scholars such as Bix note, most readers now recognize Austin only because Hart used him as a foil for his own theory, portraying him as an obsolete precursor rather than as a systematic legal realist in his own right. The second consequence is the ascendancy of Hart's own model of law as a system of primary and secondary rules—presented as the necessary corrective to Austin's "gunman" conception. By defining his own theory in opposition to this straw version of Austin, Hart secured an unearned consensus around the limitations of command theory.

The article also argues that subsequent theorists, even those sympathetic to Austin—such as Joseph Raz—remained trapped within Hart's interpretive matrix. Although Raz recognized that Austin's theory rested on sovereignty rather than coercion, his own reconstruction still replaced Austin's layered conceptual structure with derivative linguistic relations, repeating the confusion between the source of law and the mode of its expression.

Beyond the historiographical dimension, the author identifies a deeper philosophical cost of this transition: the loss of the sovereign element in the explanation of legal obligation. Once the source of normativity is relocated from political authority to social practice or linguistic convention, the problem of law's binding force becomes increasingly opaque. Without reference to an *originating will*—a sovereign whose command constitutes obligation—the analytic school was compelled to invent substitute doctrines such as Hart's "rule of recognition," social commitment theories, and Finnis's later refinements on obligation and authority. The paper maintains that these substitutes indirectly attest to what Austin and Kelsen had already captured: that the law's compulsive character cannot be explained without acknowledging the political act of commanding.

In its final section, the paper situates Hart's misrepresentation in broader methodological perspective. It proposes that the enduring influence of *The Concept of Law* arises not only from its analytic precision but from its strategic pedagogical framing. In academic teaching, Hart's narrative provides a disciplined sequence: first, a flawed yet plausible model (Austin); second, its breakdown under philosophical scrutiny; third, a superior replacement (Hart's own "union of primary and secondary rules"). Such didactic ordering secured Hart's dominance in Anglo-American jurisprudence and rendered alternative models—particularly sovereignty-based ones—anachronistic.

Yet the author cautions that Hart's authority rests partly on a rhetorical paradox. The same "gunman situation" that Hart uses to caricature Austin arguably originates with Hart himself: there is no

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	direct textual evidence of Austin equating law with coercive threat. Thus Hart's critique of the "gunman" is, at bottom, a critique of his own rhetorical construct. When Hart later confronts difficulties similar to those he attributed to Austin—such as explaining why law binds beyond habitual obedience—he dismisses them as tolerable imperfections within an otherwise functional system. The supposed "failure" of Austin thus becomes the foundation of Hart's own immunity to analogous objections. In conclusion, the article contends that the command theory, properly understood, continues to offer a clear and coherent account of the legal phenomenon: law as the articulated will of political authority, binding upon subjects by virtue of that authority, not by social consensus or linguistic description. The "imperative backed by sanction" captures not merely external compulsion but the structural nexus between command, power, and duty within a political order. Hart's portrayal, by severing that nexus, obscures both the simplicity and the profundity of Austin's insight. Recovering the original architecture of the command theory thus restores a missing dimension of modern jurisprudence—the acknowledgment that legal obligation is, at its root, a function of sovereign will, and that the authority to legislate remains the ultimate "fountain" of law.
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