

The Limits of Loyalty and Obedience
for Military Professionals

by

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Should I always be loyal to my commander and obey his order, regardless of its unlawfulness, or are there times when I must have the courage of my convictions and refuse to obey, thereby committing an act of disloyalty? This is the apparent dilemma faced by a military professional upon receiving an unlawful order. There is one rule of thumb which can be appealed to in such cases: we have a duty not to obey unlawful orders. Recent military history has borne out the fact that this rule is commonly recognized and enforced. There is a limit to obedience. But the situation seems to become less clear cut when we consider the loyalty a subordinate ordinarily feels for a commander (or other senior officer). Naturally, questions arise in this regard: What is the role of loyalty in determining obedience to any sort of superior orders? What happens to loyalty in the case of unlawful orders? In other words, what are the limits of loyalty?

The tug we feel from both conscience and loyalty is great, and often equal, no matter how large or small the principle at stake. The perceived conflict between the two is never easily resolved when we're in the thick of things. The emphasis here needs to be on the word "perceived". For I think it will become clear in the course of my paper that the source of what is commonly seen as a dilemma rests on a flawed notion of the true object of loyalty. In reality, disobedience need not be equated with disloyalty.

The route I've selected for getting from misperception to reality is perhaps a bit winding, but necessarily so. By way of establishing some guideposts I intend to present some basic

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ideas about the object and the nature of loyalty itself based on Andrew Oldenquist's paper entitled "Loyalties." In addition to this, I will try to present his thoughts within a military framework. In doing so I hope not only to clarify the nature and object of loyalty but also show how it ties in with obedience, and from this perspective go on to discuss the limits of both loyalty and obedience for military professionals.

Oldenquist on Loyalties

Oldenquist characterizes loyalties as defining "moral communities or domains within which we are willing to universalize moral judgments".² He depicts these domains not as hierarchical in structure but instead as concentric circles with the self at the center. Within any such domain:

A loyalty defines a moral community in terms of a common good and a special commitment to the members of the group who share this good. The members, along with certain conventional, institutional structures, and often a geographical location, together constitute the community that is the object of my loyalty.³

These moral communities which constitute the objects of my loyalty take different forms, and each of us is a member of many such moral communities. My family, my friends, my work unit, my nation, and even my species are only a few of the possible domains to which I belong simultaneously.

In keeping with the notion of concentric circles Oldenquist describes loyalties to these various communities as being either "narrow" or "wide". Whether they are one or the other depends on where the bounds of the community lie in

relation to me and other communities to which I belong. For example, family loyalty would be the narrowest loyalty for most people because it is the smallest community which includes the self. Loyalty to the United States is a wide loyalty. Somewhere between these two lie loyalty to my friends, my neighborhood, and so forth.

Oldenquist states that we use loyalty as a basis for making normative judgements, just as we use egoism and impartial morality. Also, although loyalty is itself a separate category of the normative, it contains elements of both egoism and impartial morality. These elements surface when disputes arise between two communities or within a single community.

Loyalty resembles egoism in the sense that I do have a personal interest at stake. But whereas an egoist acts in such a way as to attempt to produce the most favorable outcome for herself, someone who is loyal acts in such a way as to attempt to produce the most favorable outcome for her object of loyalty. The former case displays a "me first" attitude, the latter a "mine first" attitude. As Oldenquist points out, when I have a loyalty toward something I have somehow come to view it as mine.⁴ The fact that the object belongs to me is one of the reasons I value it.

Unlike egoism, however, actions based on loyalty will occasionally entail great personal risk and self-sacrifice. Oldenquist suggests that it may be this potential for self-sacrifice involved in loyalty that causes it to be mistaken for a type of impersonal morality. But the aspect of

the agent's sense of "possessing" the object keeps loyalty from being thrown in with impersonal morality, thus requiring it to be considered as a category unto itself.

This aspect of "possessing" the object of loyalty should not be mistaken as the sole basis for the formation of a loyalty. To assume this is to make loyalty out to be a mere bias void of rational considerations, something more akin to racism. Oldenquist makes a clear distinction between the two:

Racism is negative, being much more concerned with hatred of other races than with pride in one's own... Loyalty is positive and is primarily characterized by esteem and concern for the common good of one's group.⁵

Furthermore, he states that "loyalty, like any norm, can be rationally faulted if it depends on ignorance of facts".⁶ Some of these "facts" include the presence or absence of certain values, for Oldenquist's picture of loyalty does not exclude qualities which are thought of as having intrinsic worth. Freedom, happiness, rationality, and so forth are valued for their own sakes, and they are taken into consideration when one is deciding whether to embrace a community as "mine". That is, before accepting a community as mine it must have features which make it worth having.⁷

Another important feature of loyalty is the possibility of sharing the object. Whereas all actions performed out of self-interest are of concern to the agent alone, more than one person can take an interest in an object of loyalty. The potential for a shift from "me first" to "mine first" to "ours first" promotes the flourishing of society and societal

values.⁸ It facilitates the functioning of a society by encouraging cooperation in order to achieve a common goal and the common good.

The ways conflict between and within communities are handled reflects the dual nature of loyalty. When there is conflict within a single community the impersonal morality characteristics of loyalty become evident. When disputes arise between members of a certain domain, the members tend to universalize moral judgments to settle the dispute. Competition between two communities brings out the egoistic features of loyalty. Each of our loyalties, therefore reflects one of these two types of characteristics depending on the source of the clash, whether from within or without.

To illustrate these two aspects of conflict resolution based on loyalty, Oldenquist uses the example of a domain consisting of a university. All departments of the university receive equal access to resources provided one of them does not have a particular need which warrants special consideration. Relying on a system akin to impartial morality each department chairman makes an internal distribution of resources. As Oldenquist points out, "at issue are fairness and relevant differences, as part of a system of social morality operating within a miniature moral community."⁹ On the flip side of the coin egoistic features would be revealed if the dean decided to divert some of the philosophy department's financial resources

for example, in order to increase another department's budget. The chairman of the philosophy department would most likely fight very hard to keep her budget intact if for no other reason than because she did not want her department to suffer a budget cut.

This example illustrates yet another problem often faced because of the fact that we hold simultaneous membership in several communities. Conflicts between narrow and wide loyalties arise. The question of which loyalty triumphs presents a not-unfamiliar tension. In the above example the philosophy department chairman who is about to be stripped of some funds is caught between her wide loyalty to the university and the narrower loyalty to her department. Here the dean may use a rather utilitarian-sounding argument, which appeals to the department chairman's loyalty to the university as being the "greater good", and asking her to make a relatively small sacrifice on behalf of her individual department in order to ensure the good of the whole.

The chairman suddenly is forced to choose which loyalty support. An instant willingness on her part to release the department's resources probably would be construed by members of her department as disloyalty, at least to some extent. However, if she remains unmoved by arguments for the "greater good" she would be faced with accusations by the dean and other department chairmen of disloyalty to the university.

The difficulty of determining which loyalty takes precedence when two or more of our loyalties clash supports Oldenquist's description of loyalties as concentric circles

rather than as levels within a hierarchy. The utilitarian argument mentioned in the previous example assumes a hierarchical structure by its insistence that the one loyalty always takes precedence because it represents the "greater good". Oldenquist argues against this approach by saying that it simply "is not obvious that wider loyalties always take moral precedence over narrower ones".¹⁰ Experience shows that there are times when a narrow loyalty, such as to one's family, is recognized as deserving to take precedence over a wider loyalty, such as to one's neighborhood or nation. The claim, under the utilitarian argument, that the greater good must be served often implies that this is so because the good of the whole will also result in the good of its parts. But this is not always true.

Those who rely on the utilitarian argument often attempt to justify the assertion that wide loyalties override narrow ones by claiming that impartiality would lead to acceptance of such a conclusion. But, as Oldenquist indicates, what these individuals are advocating is not true impartiality. Instead it is "merely an invitation to give one's loyalty to a larger whole with which someone identifies".¹¹ In order to be truly impartial equal weight would have to be given to each of our loyalties; it is not humanly possible for each of us to have the same amount of concern for every domain to which we belong.

Narrow loyalties frequently are the stronger ones. The relative strengths of various loyalties depend in large part on what Oldenquist calls the "nature of the description" which applies to the community. Each community bears a different

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description. Oldenquist's use of the word "description" seems closely linked to the size of the community, in the sense that the word used to label the community by definition reveals something about the size and therefore how the agent fits (and what role she plays) in that community. The larger the population of the community the smaller her role and the weaker her loyalty to that community. For instance, he states, I have extremely weak galaxy-member loyalty relative to species loyalty to family loyalty.¹² Thus the utilitarian argument that narrow loyalties count for less because they count for fewer does not hold up under close scrutiny.

Along the same lines, there are times when it is morally acceptable to act in keeping with narrower loyalties such as loyalty to one's family. Furthermore, recognizing obligations to a narrow loyalty can be accomplished without feelings of disloyalty to a wider loyalty. But just as the wider loyalty does not always have to outweigh the narrow loyalty simply by virtue of its being wide, neither does the narrow loyalty always take precedence by virtue of its smallness and narrower description. There is no formula for determining which type of loyalty should win in such conflicts. The outcome depends, according to Oldenquist, on three basic considerations: how much is at stake in each community; the possibility of a given action satisfying both loyalties to different degrees; and the relative "strengths" of the loyalties themselves.

Oldenquist's Notions in a Military Context

If we look at Oldenquist's characterization of loyalty from the perspective of the military profession we'll see that ordinary experience bears out his key points. The Army, for instance, fits his definition of a community which constitutes an object of loyalty. Every echelon within this branch of service right down to squad level also constitutes such a community, each one nested in the others--like the concentric circles Oldenquist also mentions. Members of the entire Army community share many aspects of a moral community. Although unit missions vary we have a common overall mission, the defense of the nation. Our conventions include such things as wearing a uniform and saluting. The Uniform Code of Military Justice (UCMJ) is one example of a key institution within the military, for it unites all service members under one body of laws.

The fact that the Army consists of a hierarchy of units and people within those units does not undermine Oldenquist's notion of concentric circles. Differences in echelon or rank do not affect the strength of a loyalty in such a way as to increase its pull as one goes up the chain of command. On the contrary, I am likely to feel more loyal to my company, for instance, than to my division.

The internal hierarchical structure of the Army also has no bearing on whether it takes precedence over the other communities in which I hold simultaneous membership. The Army recognizes that family loyalty, for instance, frequently takes precedence over military loyalty. The practice of granting

compassionate reassignments and allowing sole surviving sons to separate from service best illustrates this.

My membership in some of these circles--most notably my family--was not something I had any say in determining. This is not true of communities such as the Army, especially now that there is no draft. In this case, I voluntarily joined. The fact that there was a decision involved relates back to a process Oldenquist mentions: before an object can become an object of loyalty I must see it as mine somehow; and before I consider it mine I must believe that there are certain features which make it worth having. These features consist of values and ideals I hold in esteem as part of my personal value system before becoming an Army member. Thus the idea of desirable features, along with the fact that I accept it as mine, together form the proper environment for the formation and maintenance of loyalty.

The features that make it worth having, in this case, encompass a range of values which are both explicitly stated and implied. The UCMJ and Geneva-Hague treaties, for example, provide a canon of positive law which also embody certain underlying moral principles. By taking an oath upon commissioning I accept membership in the Army, thereby promising to uphold these values. It is this upholding, or support, which is the impetus behind the notion of loyalty. I express this support in a number of ways. One manifestation of my loyalty within the realm of the military is obedience to lawful superior orders.

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At times, however, there appears to be a conflict between the duty to be loyal and the duty to obey. One question which arises as a result of this apparent conflict is whether individual loyalties within a community are possible. That is to say, is a unit commander correct in demanding loyalty to himself? Is it something actually owed to him? If so, is the nature of that loyalty different from the loyalty owed to other members of the unit, as a moral community? Or is the common notion of loyalty to a leader a mistaken one?

Within a military setting it is tempting to say that loyalty to a superior officer is unique in that a subordinate's loyalty entails obedience. That is, it is widely held that a subordinate has a duty to be loyal to his commander, and if he is loyal then he will necessarily obey orders.

Taken apart from loyalty, the requirement to obey has features peculiar to the military in that a failure to obey is a criminal offense punishable under the UCMJ; possible penalties range from forfeiture of pay to confinement in a military prison, depending on the nature of the offense. Such penalties stand in sharp contrast to the types of punishment faced by an employee of a civilian firm. Within the environs of a corporation like IBM, for instance, the most severe penalty a worker may face under similar circumstances is the loss of his job. The consequences of failing to obey an order in a military environment also are more serious than those resulting from such an action in a civilian environment. In the military, particularly under combat conditions, failure to

obey could result in the unnecessary loss of lives. Nothing in the civilian sector can parallel the sense of urgency required under such circumstances.

However, this is not to say that the military demands blind obedience. To think that this is so is to harbor a serious misconception. It is the duty of a service member to obey all lawful orders. A soldier cannot be punished under the UCMJ for failing to obey an unlawful order. History is rife with cases, some better known than others, of military personnel who have faced charges of war crimes as a result of following unlawful orders given by their superior officers. The likes of Hess, Yamashita and Calley tried to avoid, or at least mitigate, their punishment by hiding behind this mistaken notion of a duty to obey out of loyalty to a superior officer. Yet their attempted defense failed in each case. Their claims diminished neither the seriousness of their crimes nor the severity of their punishment.

Such historic events underscore the fact that it is recognized and accepted that there is a duty not to obey certain types of orders. Considerations of a subordinate's loyalty to his commander become incidental after the fact, when compared to primary factors such as the character of the order, its illegality or immorality and whether the subordinate was aware of this. These more crucial considerations indicate that a claim of loyalty to a superior in and of itself is not sufficient to justify following an unlawful order.

Furthermore, to use loyalty as a justification for an action known to be unlawful is to make loyalty out to be something completely void of moral value. For a subordinate to say "I obeyed out of loyalty to my commander" is tantamount to saying either: 1) by virtue of his being a commander he has authority to give orders, and this authority is the source of some absolute duty to obey him; or 2) "My commander, right or wrong"; that is, the "mine" aspect of loyalty is emphasized while the impartial morality aspect is ignored.

This convoluted notion of making obedience to a commander revolve around loyalty to my commander raises the question of whether, if I do have a duty not to obey unlawful orders, I also have a duty to be disloyal to the superior who gives that order. Or, less harshly stated, by carrying out my duty to not obey when the character of the order demands it, am I not being disloyal to my superior?

Here I would like to suggest that the character of an order falls into the category of impartial moral considerations of the type Oldenquist claims are used to settle disputes within a community. Just as resources are distributed within a university based on considerations of fairness and justice, so too must impartiality come into play in the decision of whether to obey superior orders. In the case of superior orders impartiality takes the form of determining the order's lawfulness.

In addition to this it is necessary to know the actual object of loyalty. If we accept Oldenquist's thesis, that the proper object is a community, then we can accept loyalty to the

unit rather than loyalty to the commander as the normative consideration for obedience and see that there is no conflict between an alleged duty to be loyal to my commander and the real duty to obey him.

Loyalty to the community demands the support of the various laws, both moral and positive, that must be upheld in order for the community to flourish. Regardless of the structure of the community, everyone within it, by virtue of membership, has a duty to be loyal to everyone else in that body of membership which constitutes the community. A unit commander, then, despite the hierarchical structure of the unit, has the same duty to be loyal to the community as the lowest-ranking soldier in the unit. Furthermore, this means that just as PFC Smith has a duty to be loyal to LTC Jones, LTC Jones has a duty to be loyal to PFC Smith. A commander's position in the chain of command gives him different abilities when it comes to how he upholds community laws: he has the authority to enforce--ensure other members uphold-- them by means of judicial and nonjudicial punishment. But he has equal responsibility for following these laws. In this respect he is on equal footing with every other member of the unit. As a result, a subordinate's loyalty to his commander is of an indirect sort, in that loyalty is due him only because his lawful orders carry out the spirit of the community's laws.

If we say then that any member of the community who reneges on his agreement to support the body of laws is being disloyal to the community, we would have to say that it is the superior officer who gives the unlawful order who is being disloyal, not the subordinate who recognizes the order as unlawful and thus

refuses to comply with it. Should the subordinate carry it out, believing it to be ^{an} lawful, but thinking that his act fulfills a duty to be loyal to his commander, then it becomes clear that he has a misplaced sense of loyalty. For if the subordinate were to realize that the correct object of his loyalty is his unit, he would see that upon receiving the unlawful order, refusal to comply would actually fulfill his duty to be loyal--to the community. Therefore, in disobeying the superior officer's orders he is not committing an act of disloyalty to that officer, because no extraordinary loyalty is due him as an individual merely on the basis of his position within the chain of command. The loyalty due him has its source in his support of the community's laws, and when he fails to support these laws by giving an unlawful order the officer gives up the right to expect any sort of loyalty from other members of the community.

In closing, I hope I've managed to clarify several significant aspects of loyalty. First and foremost its proper object is a community. In order for any community to attain its goals and achieve the common good (all of its members must support its various conventions and institutions. Support is manifested in different ways, depending on the nature of the community. Within the military one institution is the Uniform Code of Military Justice; support of it can be manifested by obedience to a superior officer whose orders are in line with the law. When a subordinate receives an order which is unlawful, however, he has a duty to disobey that order. Disobedience should not be equated with disloyalty under such circumstances. Since it is the community which is the proper

object of loyalty, and an officer may demand loyalty only to the same degree as any member of the community can demand it from any other member, in that each upholds the foundations of the community; by giving an unlawful order the officer gives up his right to expect loyalty from subordinates. As a result, any subordinate who refuses to obey an unlawful order should do so without concern for being disloyal to his superior officer. His disobedience is in fact an act of loyalty toward its proper object, in this case the military community.

Footnotes

1. In several places throughout my paper I use the word "commander", but it should be understood as being interchangeable for these purposes with "superior officer".
2. Andrew Oldenquist, "Loyalties", J. Phil. vol. LXXIX, no. 4 (April 1982), p. 177.
3. Ibid., p. 177.
4. Ibid., p. 175.
5. Ibid., p. 177.
6. Ibid., p. 177.
7. Ibid., p. 178.
8. Ibid., p. 176.
9. Ibid., p. 178.
10. Ibid., p. 181.
11. Ibid., p. 181.
12. Ibid., p. 182.