



Relations of Responsibility (2011)

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This is an author eprint, which may not incorporate final edits.
The definitive version of the paper is published in

R. Cruft, M. Kramer and M. Reiff (eds), *Crime, Punishment, and Responsibility: The Jurisprudence of Antony Duff* (Oxford: Oxford University Press 2011)

doi: [10.1093/acprof:oso/9780199592814.003.0006](https://doi.org/10.1093/acprof:oso/9780199592814.003.0006)

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Relations of Responsibility

JOHN GARDNER

‘To be responsible,’ says Antony Duff,

is to be answerable; answerability is to a person or body who has the right or standing to call me to account. ... Claims of the form ‘*A* is responsible for *X*’ are therefore incomplete: they must be filled out by specifying ... to whom *A* is responsible for *X*. That specification need not be explicit ... but it must be available. (Duff 2007, 23–25.)

Duff associates me with the opposite view. I can see why. I have claimed on more than one occasion (some of the occasions are collected in Gardner 2007) that responsibility is basically what it sounds like: an ability to respond. More precisely it is the ability to give an account of oneself, to respond to the question ‘Why did you do that?’ with a true statement of one’s reasons for having done it. I have denied that this ‘basic responsibility’ (as I have called it) is relational. There is nobody to whom it is owed. For an ability cannot be owed to anyone. What can be owed to someone, however, is the *exercise* of an ability. And this is surely what Duff has in mind when he stands up for his relational idea of responsibility. In Duff’s sense, *A* is responsible if and only if (a) *A* has the ability that I call basic responsibility and (b) someone, call her *B*, has a right that this ability be exercised by *A* (perhaps, but not necessarily, at *B*’s option). If there is no (b) and no *B*, there is no responsibility in Duff’s sense. But there is in mine.

Duff and I have no real quarrel here. I agree (Gardner 2007, 194) that there is a sense of ‘responsible’ that meets Duff’s relational specification. In today’s political lingo, the word ‘accountable’ is often reserved for it. Likewise, Duff agrees (Duff 2007, 23) that there is a sense of ‘responsible’ that meets my non-

relational specification. More interesting is the question: which is the more basic idea of the two? Duff thinks that the non-relational responsibility that I call basic 'can be explained in terms of relational responsibility' (Duff 2007, 23). If he means that one can specify what the ability is only by specifying what it takes to exercise it, then clearly he is right. To understand any ability one needs to understand what it is an ability to do. In this case it is an ability of A to give an account of herself, which requires that there be someone to give an account of herself to. Yet what I call basic responsibility is not an ability of A to give an account of herself only to someone in the role of B, i.e. to a person who has a right that she do so. It is an ability of A to give an account of herself to anyone who cares to listen. So at least an aspect of responsibility in Duff's sense – the relational aspect – does not need to be grasped in order to understand what I call basic responsibility. Does it follow that basic responsibility is logically prior? I don't think so. The best conclusion to draw, I think, is that the two senses, although closely related, are relatively freestanding; neither has logical priority over the other.

Logical priority was not, in any case, what I had in mind when I called basic responsibility 'basic' (Gardner 2008, 140). I meant only that being basically responsible is a condition of being responsible in some nearby senses, including Duff's. Recall what it takes to be responsible in Duff's sense. One must meet the basic responsibility condition (a), then the relational condition (b). Responsibility in Duff's sense is basic responsibility plus.

Indeed it is arguable – in terms that Duff himself favours (Duff 1988) – that basic responsibility is not just a condition but a *precondition* of what he calls responsibility. That is to say: unless condition (a) is satisfied the question of whether condition (b) is satisfied does not arise. At the same time, there is clearly a sense in which reflection on condition (a) already raises the question of whether condition (b) is going to be satisfied, or whether (in other words) there is going to be someone in the role of B to whom A owes her self-explanation. How so? Basic

responsibility, as I have explained (Gardner 2007, 277), is an ability that is also a propensity. Those who are capable of explaining themselves cannot but want to do so. Wanting to do something is not, normally, a reason to do it. But things are different where, as a rational creature, one cannot but want to do something. In that case one has without further ado some reason to do it. It follows that any act of self-explanation is, all else being equal, rationally defensible. Alas, all else is rarely equal. Often there are weighty reasons to keep quiet: one may add insult to injury by explaining; one may dig oneself into deeper trouble; one's self-explanations may be boring or irritating to others, etc. More saliently for present purposes, even when all else is equal, what is rationally defensible is not always rationally required. Further arguments are needed to establish that one is bound to explain oneself, and if so when and to whom and to what extent and in the face of which accusations and subject to what privileges and so on.

It is at this point that Duff's concerns come to the fore. Who is B such that B has a right that A explains herself, or in other words such that A owes B a duty to do so? And (a different question) who is B such that B has the right to require A to explain herself, or in other words such that, at B's option, A acquires a duty to do so? These questions and others similar to them arise as soon as we begin to think about A as a responsible agent. Duff is right to emphasise that, when responsible agency is under discussion, relational questions are never far away.

Duff is also right to emphasise the very great moral and political importance that attaches to these relational questions. People's claims to be entitled to an explanation, or to be entitled to demand one, may well be illegitimate, even obnoxious. Such claims are often used to oppress and bully people, to eat away at their confidence, to trick them into self-incrimination, or otherwise to put them on the back foot. In this vein I tend to think that the cult of 'accountability' is a plague of our age, lending false legitimacy to a host of petty and mean-spirited

attitudes, and symptomising as well as perpetuating an ideology of mutual suspicion which is the enemy of social progress (Gardner 2007, 198–200). In this I may, for all I know, take a harder line than Duff. It would certainly be a challenge for him to take a harder line than me. But be that as it may, I share with Duff the deeper premiss that those who expect or demand that we account for ourselves cannot be assumed to have the right to do so, and can aptly be met with familiar sceptical questions: What business is this of yours? Who are you to pull me up for this? Why should I justify myself to you? Of course it is not always prudent or polite to state the questions so baldly. But as Duff observes (Duff 2007, 25), that doesn't mean that they don't arise. They arise not only in respect of nosy neighbours and officious bystanders, but also in respect of police officers and other officials who are employed to call the rest of us to account. And they arise, as Duff emphasises, even in the case of courts of law. Even when one clearly has some self-explaining to do, one may well ask what gives this court, that court, or for that matter any court, the right to hear it, let alone to demand it.

Thus far, then, there is little to differentiate my views from Duff's, to whom, indeed, I owe much of my own (still very incomplete) understanding of the subject. But some genuine and possibly far-reaching disagreements lurk behind this united front.

One disagreement concerns the exact reading of 'none of your business' and similar ripostes. I tend to think that all reasons are ultimately the same reasons for everyone. Some reasons, of course, are such that they only leave logical space for a particular person to conform to them. If I promise or decide or threaten to ϕ then, assuming my doing so gives rise to a reason to ϕ at all, it is a reason for me to ϕ that is not a reason for others to ϕ . But even here, in my view, the reason is still a reason for everyone to contribute to my ϕ ing, to care about my ϕ ing, to regret or be anxious about my not ϕ ing, etc. Elsewhere (Gardner 2007, 62) I have expressed this by saying that even reasons that are 'personal in respect of conformity' are 'impersonal in respect of attention'.

In a sense, then, everyone's conformity to every reason is everyone's business. But only in a sense. For there are plenty of reasons – themselves impersonal in respect of attention – why each of us should attend more to some reasons and less to others. Not all of the uses to which our limited rational energies can be put give an equal return on the investment. Some are self-defeating, even counterproductive. What's more, even among uses that would repay themselves if made selectively, trying to make all of them (in proportion only to their impersonal rational importance) is a recipe for not getting anywhere with any of them. These facts of the human condition mean that, to be rational, each of us needs to have his or her own special relationships and pursuits, each of which carries a distinctive set of rights and duties (or, as Duff prefers to say, its own 'responsibilities': Duff 2007, 31). This makes 'mind your own business' an intelligible stricture, but only when shorn of the dramatic implication that one has no reason to attend to another's business; the implication is only that one's reason to attend is insufficient to give one a right or a duty to do so.¹

Duff, by contrast, warmly embraces the dramatic implication. It is a theme of his work generally that reasons are not, or at least need not be, impersonal in respect of attention:

We surely have no reason, not even one outweighed by countervailing reasons, to criminalise such undoubted and serious wrongs as the betrayal of a friend's confidence, or the demeaningly contemptuous dismissal of a colleague's ideas. I am of course answerable for such wrongs to those whose business they are – to my friends, or to my colleagues. But a central liberal claim is that such wrongs are, 'in brief and crude terms, not the law's business' (Duff 2007, 48).

¹ I am reassured to see that Michelle Dempsey, in her contribution to this volume, independently reaches the same verdict on the strength of views that, as she notes, she and I share about reasons.

Nor is the point restricted to the law:

When I become aware of a stranger's moral misconduct toward her friend or her parents, I do not think it my business to intervene, or to call her to answer for what she has done: my attitude is not that I have some reason to call her to account, since we are both moral agents, but better reason not to interfere; it is *ab initio* that it is not my business (Duff 2007, 49).

Needless to say, I share Duff's view that a stranger's immorality toward her friend or parents may (correctly) strike me *ab initio* as none of my business. The question is: how are we to interpret that verdict? I interpret it to mean that it is not my place to interfere. I have no standing in the matter. I have no relevant right or duty. The question of whether I have such a right or duty arises, however, only because there is a reason for me to intervene and I need to decide (or it needs to be decided) whether or not I am to act on it. If there were no such reason, there would be nothing for me to attend to in the stranger's immorality, and hence nothing for me to take any attitude to, whether *ab initio* or otherwise. I can decide to mind my own business only because the stranger's reason to desist from or account for her immorality toward a friend or parent is impersonal in respect of attention, and so raises the question of what I, as a fellow rational creature, am to do in response. The most frequently correct answer is: butt out.

There is nothing in this way of looking at the matter that should disquiet believers – and I take Duff to be one of them – in the deeply personal character of friendship, parenthood, and similar relationships. Nothing I have said casts doubt on my earlier proposal that reasons may be personal – and I mean irreducibly personal – in respect of conformity. My being your friend is a special reason (I will call it a 'relational reason') for *me* not to deceive or upset *you*, and it exists on top of the various ordinary non-relational reasons that everyone has not to deceive or upset anyone. Only I can conform to this relational reason; it

makes no sense, from the point of view of this reason, to expect someone else to do the non-deceiving or non-upsetting on my behalf. And I can conform to it only in how I act towards you, in your capacity as my friend: it is not a reason for me to go about not deceiving or not upsetting people who are not my friends (even if they are other people's friends). It is the combination of these two features that makes the reason relational.

To my mind, as I think to Duff's, the existence of such reasons is beyond doubt. All I am adding here, *pace* Duff, is that even these reasons are still impersonal in respect of attention. Everyone has the same reason – which is relational as between you and me – that I, as your friend, should not deceive or upset you, as my friend. For other people apart from me it is obviously not a reason not to deceive or upset you themselves but a reason to contribute to *my* not deceiving or upsetting you. Yet it is the same reason: namely, that I am your friend. In spite of that it remains an open question how much energy others should put into my not deceiving or upsetting you. The suitable amount depends on numerous contingencies. It depends, notably, on how helpful the proposed 'helpful' interventions would really be, and what other valuable relationships and pursuits the intervener would have to neglect or sacrifice to make them. This last remark reveals that relational reasons may also figure in the case for or against a third party's intervention. A third party who is friend to both of us has a special reason, a relational reason, to help us in our friendship, a reason which is, once again, personal in respect of conformity but impersonal in respect of attention. And when we start to focus on that relational reason, the same questions quickly come round again. What is a fourth party, say a friend to the third party who is not a friend to either of us, to do to help the third party to help the two of us in our friendship? Again relational reasons as well as non-relational ones may figure in determining the answer. And so on for fifth parties and for sixth parties and, in the final analysis, for everyone in the world.

This acknowledgement of the existence of relational reasons brings us to a second major difference of opinion between Duff and me, and the one that will be the main focus of attention in the balance of this essay. Duff thinks that a relational case needs to be made for any given A to be responsible to any given B. For him, in other words, relations of responsibility between A and B exist for relational reasons. They exist on the strength of some other reason-giving relationship that already holds between A and B. In the case of the criminal justice system, for Duff, the relationship in question is normally that of a citizen to her own country: A is a citizen and B is a relevant authority (say a police officer or a prosecutor or a court) of the ‘polity’ of which A is a citizen. I add ‘normally’ because (says Duff) this doctrine of civic responsibility ‘requires an immediate qualification’:

[T]he criminal law of a decent polity covers temporary residents of, and visitors to, the polity as well as its citizens. ... Such visitors should, as guests, be accorded many of the rights and protections of citizenship, as well as being expected to accept some of its responsibilities and duties. In particular, they should be bound and protected by the polity’s law’s including its criminal law. If they commit what the local law defines as a public wrong, they must answer for it to the polity whose law it is. This is not to revert to a geographical principle that grounds jurisdiction in the territorial location of crime: what makes normative sense of jurisdiction is still the law’s identity as the law as a particular polity, whose members are its primary addressees. But given such a polity ... its laws can also bind and protect visitors to the polity and its territory (Duff 2007, 54-5).

We can see here just how resolutely Duff adheres to his general thesis that relations of responsibility exist for relational reasons. For the exception he makes to the doctrine of civic responsibility remains faithful to that general thesis. A relational reason is still needed, he thinks, to explain the criminal responsibility of tourists, recent immigrants, *Gastarbeiter*, and (presumably) undocumented aliens: the polity is their host, and they are responsible to its police and courts ‘as guests’ – meaning not as

guests of just anybody, but as guests of that same polity. So tourist A is responsible to (the authorities of) polity B on the strength of the fact that B is A's host and A is B's guest. And citizen A is responsible to (the authorities of) polity B on the strength of the fact that B is A's polity and A is B's citizen. These cases do not have the symmetry of the case in which A is B's friend and B is A's friend, but they do share precisely the relationality.

Duff does not, I think, bring out as clearly as he might that his account of responsibility is relational in two quite distinct ways. First, there is the conceptual relationality: A is responsible, in the sense that interests Duff, only if there is some B to whom A is responsible. Second, there is the justificatory relationality: where there is some B to whom A is responsible, Duff tends to think, A's responsibility to that B is on the strength of some other relationship that A has with that B (e.g. as B's friend or B's citizen or B's colleague or B's guest or B's hairdresser). One may part company with Duff regarding either of these two theses while having no quarrel with him regarding the other. As I said before, I have no quarrel with him regarding the first. There is, to repeat, an important sense of 'responsible' such that A is responsible only if there is some B to whom A is responsible. But I part company with Duff regarding the second thesis. I doubt whether there need be any relational reasons for A to be responsible to B. What's more, I doubt whether there normally are such reasons for A's responsibility to the criminal courts.

In saying this I am allowing, of course, that sometimes there are relational reasons for A to be responsible to B. A is responsible to her friends because they are her friends. The closer the friendship, the further into her life this responsibility extends. A's closest friends are there, *inter alia*, to put her on the spot about her treatment of her grandma, about her choice of holiday destination, about the sustainability of her spending patterns, about her commitment to recycling, and about the quality of her haircut. The wide potential scope of A's responsibility to her

friends, as compared with the narrow potential scope of her responsibility to the criminal courts, reflects several important differences between the two cases. I will emphasise one here. A's responsibility to her friends, *qua* friends, is not based on their authority over her. This is not to say that A's friends never have any authority over her. Sometimes they do. For a start, they sometimes have the authority to call A to account, to impose upon A a duty to explain herself which she would not have owed them apart from the fact of their imposing it upon her. However, this authority-to-hold-responsible does not come of any wider authority that A's friends have, as friends, to determine the adequacy of A's self-explanations, or to determine the standards to which, in accounting for herself, A is to be held. Things are different with criminal courts, and with many other officials and institutions of the criminal justice system. Their authority to call A to account – such as it is – comes only of whatever authority they have to apply the rules of the criminal law to A, and to make rulings on A's criminal guilt in the light of any account A may give of herself relative to those rules. It follows that the business of justifying A's being responsible to the criminal courts begins, although naturally it does not end, with the task of justifying the authority of the criminal law over A. The same is not true, I repeat, of A's responsibility to her friends.

It seems to me that this point is taken by Duff. At any rate, he seems to share my view that the problem of responsibility to the criminal courts is closely bound up with the problem of the authority of the criminal law that those courts administer. So Duff's oft-repeated question 'to whom and as what are we criminally responsible?' (Duff 2007, 27) is sometimes restated as a question about the criminal law's authority over us:

The criminal law speaks to those whom it claims to bind: it speaks of what kinds of conduct constitute crimes, and of what will be demanded of us or imposed on us if we engage, or are accused of engaging, in such conduct. ... What we must now ask ... is a set of

crucial questions about the way in which the law addresses us: as what we are addressed ... and by what or by whom? (Duff 2007, 43).

Admittedly it is possible to understand Duff here as suggesting that the law's authority over us relies for its defence on our (independently defended) responsibility to its institutions and officials, rather than *vice versa*. Such a view is associated with Stephen Darwall (Darwall 2010, 258-9), to whose views on the whole topic Duff's are in certain respects similar. However, here I will read Duff as advancing the more plausible view that one way in which A can become responsible to B in respect of A's ϕ ing is by B's having authority over A in respect of A's ϕ ing. If that authority is legitimate, then it makes A's having ϕ ed into B's business in the sense required for B to have the right (or at least the right to require) that A explain A's having ϕ ed.

Are the normal reasons for B to have authority over A relational ones? The following three truths, at least when aggregated, may lure us into granting too quickly that they are.

First, authority is conceptually relational. Nobody holds or exercises any authority except over someone. While the proposition that A is responsible for ϕ ing need not imply the existence of some B (or some Bs) to whom A is responsible - it may refer to basic responsibility - the proposition that B has authority in respect of ϕ ing does indeed imply the existence of some A (or some As) over whom B has that authority. Authority exists only as a relation between persons. What does not follow is that those relations exist for relational reasons, i.e. that there needs to be some other relationship between A and B such that B has the authority he has over A. The conceptual relationality of authority (to repeat a point we just made about responsibility) does not entail or even suggest any justificatory relationality.

Secondly, because authority is a relation between persons, the reasons that a legitimate exercise of authority gives us are all personal in respect of conformity. B requires or permits A to do something, and, except inasmuch as B also requires or permits

this, A can't pass the task to someone else to perform in A's stead. If an authority requires me to stop and report any road accident to which I am party or witness, that means that I – not just someone – must do the stopping and reporting. Never mind that my stopping and reporting is superfluous because a hundred others have already done so under the same directive (which was addressed to them as well as me). But notice that we are talking here of the reasons that are *given* to each of us by the authority. These are obviously not the same as the reasons that count in favour of the authority's legitimacy. Possibly the main reason for the authority's legitimacy is the conjunction of the following facts: that someone (it matters not who) should stop and report each road accident; and that the best way to make sure that someone does so is to require each and every one of us to do so. Then the giving of a reason that is personal in respect of conformity is rendered legitimate by the existence of a reason that is impersonal in respect of conformity. The personal feature, in other words, does not trace back into the justification for it. But one may easily assume that it does, which makes the offering of a relational justification all the more tempting.

Third, and perhaps most importantly, criminal courts (and other officials of the criminal justice system) are not just people exercising their authority. They are *authorities* exercising their authority. Here criminal law differs from private law. Authority is of course held and exercised by the plaintiff in a civil matter when she issues proceedings, files an application for summary judgment, settles the case, etc. But this does not turn her into an authority. Being an authority means holding and exercising authority in a standing role as an authority-holder. This can tempt one to think that an authority also has a standing *relationship* with those over whom it holds and exercises its authority. One may think that if someone's role as an exerciser of authority over me belongs to their wider role as an authority, then their relationship with me as an exerciser of authority also belongs to a wider relationship with me as an authority over me.

Then one naturally gives the wider relationship as a (relational) reason why these exercises of authority are legitimate *vis-à-vis* me. This, however, piles nonsequitur upon nonsequitur. That B has a standing role as an authority does not entail or suggest that B has a standing relationship of authority with those As with whom B's authority-role brings B into contact. And even if B does have a standing relationship of authority with some or all of those As, the fact that the exercise belongs to that standing relationship does not mean that the standing relationship is part of what justifies the exercise. It may be precisely the other way round: B may have a standing relationship of authority over some As only because B's various exercises of authority over those As are independently justified (for non-relational reasons).

I do not think that Duff peddles either of these nonsequiturs, but arguably he encourages both. He makes much of the idea that responsibility, understood relationally, is specific to roles. That is why he asks 'to whom and *as what* are we criminally responsible?' The concrete examples of roles that he gives are all of them relationship-roles, i.e. they place A and B in their responsibility relationship by reason of some other relationship that holds between them. Thus he writes:

I have responsibilities as a teacher to my students and colleagues, as a parent to my children, my partner, and others who have a proper interest in how I treat my children, as a footballer to my team-mates; as a neighbour to my neighbours, and so on (Duff 2007, 37).

With the exception of the unspecified 'others who have a proper interest in how I treat my children' all of these are relationship-roles giving rise to relational reasons. That much is revealed by the possessive determiner 'my' that recurs throughout the passage. Does this already soften us up for the conclusion that there must be some similar 'my' that designates, and hence some similar relational reason that legitimates, the authorities that hold authority over me? If so, we should resist. With few exceptions, the criminal courts have authority over me, to the extent that

they do, irrespective of whether they are my courts, irrespective of whether they administer my law, and irrespective of whether this is my country. Indeed the criminal law's legitimate authority over me is normally the same, and normally exists for the same reasons, whether I am a citizen, a resident, a tourist, an official guest, a secret migrant hiding in a truck, or someone brought here against my will by trafficking or extradition. It does not depend on any other relationship between me and the law and there are, special cases apart, no relational reasons involved.

I say 'special cases apart' because some people do of course form special bonds with the law of a particular legal system. For example, they take oaths of allegiance or fidelity to the law of a certain country upon accepting a public office in that country (e.g. as judges or MPs) or upon becoming naturalized as citizens of that country. It is tempting to think that the effect of becoming naturalized as a citizen must be to put one in the same moral position relative to one's newly adopted country as if one had been born into its citizenship. But that is far from the case. I am a British citizen by birth. However, I have never done anything to acquire any general obligations towards British law or its institutions or officials. Not only did I perform no act of commitment; I also did not commit myself gradually, in the way that one commits oneself to one's friends. Since I made no commitment, I do not betray any commitment by sailing through a red traffic light in Oxford on my bicycle. Things are different for my partner, who is naturalized as a British citizen. She is morally bound to stop at the red light because at her naturalization ceremony she solemnly promised to do so.

This is not to say, of course, that I am not morally bound to stop at the red light. It is only to say that unlike my partner I am not morally bound to stop at the red light in virtue of any commitment I made to do so. I may well be morally bound to stop at the red light all the same. But if so that is for the same non-relational reason that I am morally bound (to the extent that I am) to stop at similar traffic lights in France, Russia, Thailand,

Chile, Iran, and Canada. It is because and to the extent that it is dangerous to sail through red traffic lights on a bicycle. Or, to spell the claim out a bit more fully, the law of anywhere regarding traffic lights anywhere has legitimate authority over me to the extent that my treating it as having legitimate authority over me helps to prevent traffic accidents (and other bad consequences such as gridlock and road rage) anywhere. And the same, *mutatis mutandis*, is true of the law relating to insider trading, narcotics, theft, gambling, homicide, kidnapping, etc. Irrespective of whether I have any relationship with the legal system in question I am bound by its laws because and to the extent that treating them as binding on me will help me to avoid doing bad things, be they universally bad things (such as killing people) or locally bad things (such as driving on the left in a country where everyone else drives on the right).

This, you will have realised already, is none other than a crude rendition of Joseph Raz's famous 'normal justification thesis', the most influential modern attempt to provide a general explanation for the possibility of legitimate authority being exercised over those (most of us) who have not made any special commitment to be bound by authority. In its general form the normal justification thesis says this:

The normal and primary way to establish that a person should be acknowledged to have authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding, and tries to follow them, than if he tries to follow the reasons which apply to him directly (Raz 1985, 299).

Naturally the normal justification thesis has its critics, a number of whom over the years have emphasised its lack of attention to relational reasons for favouring one purported authority over another. Raz replies (Raz 2006, 1030) that the thesis gives attention to relational reasons just as it does to all other reasons. It

attends to them as yet more reasons that the authority may help one to conform to. But this does not satisfy the critics, who think that it moves relational reasons out of their necessary and general role in the justification of legitimate authority, and into a merely contingent and occasional role (e.g. Darwall 2010, Hershovitz 2010).² One way to understand these critics' objections is this. There is, they think, no other way to conform to the relational reasons that link a particular authority B to a particular authority-user A than by A's treating B as an authority. That is the role in which the A has a relationship with B. So there is no question of whether following B's authority is a better way to conform to those relational reasons than would be trying 'to follow [those] reasons ... directly'. Following the authority's directives *just is* following the reasons directly. So if the normal justification thesis is satisfied in such cases it is satisfied trivially. And such trivial satisfaction is a pyrrhic victory for Raz: it only goes to show that his normal justification thesis is an empty vessel into which any justification for authority at all can be poured.

My own view, as I have already made clear, is that these relational reasons – the ones that relate a particular A to a particular B already occupying the role of an authority – are (unlike other relational reasons) not covered by the normal

² I am ignoring here a more conspicuous complaint that Darwall and Hershovitz make about Raz's normal justification thesis, namely that it is only capable of establishing the legitimacy of theoretical authority, not that of practical authority. This complaint is not echoed, so far as I know, in Duff's work. Addressing it here would take us too far afield. Suffice it to say that the complaint gains some of its traction from the idea that practical reasons (or at least moral reasons, or at the very least reasons of moral duty) differ from theoretical reasons in being normally relational. If one rejects this idea then one is less likely to be carried along by the Darwall-Hershovitz argument that the normal justification thesis lacks an essential ingredient that any adequate defence of practical authority must include. Nevertheless the Darwall-Hershovitz argument also has some independent appeal, and Raz has rightly made a modest concession to it (Raz 2010, 300-301).

justification thesis and so cannot serve to trivialise it. They figure, rather, in certain abnormal justifications for deferring to authority. Or as I put it before, they arise in 'special cases' such as those of the naturalized citizen, the MP, and the judge. Duff's position on this point is not so clear. On the one hand, as we saw already, his discussion of the question 'to whom are we responsible?' seems to put relational reasons in the driving seat. We Lilliputians are responsible to the criminal courts of Lilliput, and more generally to Lilliputian criminal law, primarily because this is *our* country and we are *its* citizens. Meanwhile, as visitors to neighbouring Blefuscu, we Lilliputians are responsible to the criminal courts and criminal law primarily because the Blefuscuns, complete with their courts and their law, are *our* hosts and we are *their* guests. Since Duff sometimes restates his views about A's responsibility to B, *umgekehrt*, as views about B's authority over A, it is reasonable to conclude (as we concluded above) that he gives the same relational reasons the same pride of place in establishing the legitimate authority, such as it is, of the criminal courts and criminal law. This conclusion puts Duff on the side of Raz's critics in regarding these relational reasons (citizens' reasons, guests' reasons, etc.) as the normal reasons for the legitimacy of an authority, and hence in rejecting Raz's normal justification thesis as either trivial or false.

Yet when Duff comes to confront the problem of the criminal law's legitimate authority in its own terms, his discussion takes a very different turn. He gives three reasons for laws that create 'endangerment' offences, such as speeding and drink-driving, to be acknowledged as legitimately authoritative (Duff 2007, 170-1). Importantly, he doesn't claim that all three reasons need to be present together to establish the legitimacy of the law's authority in a given case. He thinks that any one of them will suffice. His point is that between them the three reasons are capable of covering enough cases to make at least some such endangerment laws generally legitimate, i.e.

legitimate in their application to more or less everyone who breaches them.

[S]ome [laws creating endangerment offences] ... specify[] safety precautions that everyone should take, in contexts in which we should not trust our own judgment: given the risks involved in the activity and our proneness to misjudgment, we should follow simple rules ('Don't exceed speed limits'; 'Don't drink and drive'), rather than allowing ourselves to decide on each occasion how fast to drive or how much to drink before driving [*Reason 1*].

[W]e owe it to each other not merely to *ensure* that we act safely, but to *assure* each other that we are doing so, in a social world in which we lack the personal knowledge of others that could give us that assurance; we provide such assurance in part by publicly following public safety-protecting rules, such as the speed limit [*Reason 2*].

[A] driver who claims to know that he can safely ignore such rules claims a certain superiority over his fellows: '*they* must obey the rules, because they cannot be trusted to decide for themselves, but *I* need not'. What is wrong with such a claim is ... that it is a denial of civic fellowship: a recognition of fellow citizenship (and of the dangers of allowing exemptions to the law) should motivate me to accept such laws even if I know that they are unnecessary in my case [*Reason 3*].

Reasons 1 and 2 fall squarely within the normal justification thesis. Reason 1 is strictly speaking only a justification for using rules, not for using the particular rules issued by legal authorities. It leaves open the possibility that a given driver's personal rules are better than those of the legal system. But reason 2 – which introduces the coordinating role of the law – explains why the rules contained in the law should at least sometimes be favoured over the personal rules of the driver. It is because other drivers will be adjusting their actions, and in particular their use of the legal rules, in the light of the expectation of use of the legal rules by each. In some cases use of legal rules is suboptimal if others are not using the legal rules but optimal if they are. So whereas Duff lists reasons 1 and 2 as two separate reasons for deferring to

the law's authority, each sufficient in its own cases, I would tend to think that both must be present together in a single case before deference to the law's authority would be justified.³

Be that as it may, however, the relevant implication remains the same. Even for Duff, it seems, some people are sometimes responsible to some criminal courts, and more generally to the officials and institutions of some legal systems, not as citizens or as guests or as participants in any other relationship, but merely as drivers of vehicles. The case for my having that responsibility as a driver may depend on there being other drivers on the road apart from me but it does not depend on any relational reasons that connect me in advance of our driving encounters with those other drivers, or that connect either me or those other drivers, in advance of our driving offences, with the relevant legal system. The other drivers need only be present on the roads and forming expectations of my actions based on what they know of the law, such that if I defy those expectations there may be accidents or other unfortunate encounters between us. For these purposes it matters not whether I, a Lilliputian, am driving in Lilliput or in Blefuscu, or whether the other drivers are Blefuscuns or Lilliputians or indeed Brobdingnaggians, or whether they are residents or tourists or villains on the run from Laputa. From the point of view of reasons 1 and 2, which have no relational aspect, it matters not who we are to each other or to the law.

Things are different with reason 3. It is a reason of 'fellow citizenship'. Or so we are told. On closer inspection things are not quite so clear. What are we to make, first, of the parenthetical words 'and of the dangers of allowing exemptions to the law'? It is certainly arguable that such dangers are not covered by the normal justification thesis. For it is arguable that such reasons do not count in favour of the law's legitimate

³ Compare Raz 2010, 300-301 on the need for reasons (sometimes) to be accumulated in order to satisfy the normal justification thesis.

authority over the driver, while she is driving, at all. Arguably they only count in favour of the law and the driver conspiring to pretend that the law had legitimate authority over the driver in order to avoid creating incentives for vexatious denials of the law's legitimate authority by other drivers (or other people more generally). All criminal justice systems known to me have devices such as prosecutorial discretion, jury nullification, unconditional discharge, and prerogative pardon, to reduce the burden on the defendant of any such pretence. Be that as it may, however, there is nothing remotely relational about any of this. The 'dangers of allowing exemptions to the law' presumably include dangers to everyone, or at least to every user of the roads, and not only to the citizens of the driver's polity, or those otherwise related to her. So the case for mentioning them as an aspect of 'civic fellowship' is obscure. If they are a reason to acknowledge the authority of the law – which I doubt – then they warrant separate treatment, as a (non-relational) reason 4 on Duff's list.⁴

But this still leaves us with the main thrust of Duff's reason 3: that the person who regards herself as above the speed limit displays a haughty, and hence morally obnoxious, attitude to her fellow citizens. Surely, if anything is a relational reason for deferring to the authority of the traffic laws, this is one? Again I think that a closer inspection is called for. Let me conduct that inspection and mention a few doubts to which it gives rise.

(a) Duff moves quickly from talking of our attitude to our 'fellows' to talking of our attitude to our 'fellow citizen[s]'. But it seems more natural to think that the attitude we take, when we hold ourselves to be uniquely or especially above the traffic laws, is an attitude to our fellow *drivers*. 'I am an excellent driver,' think many drivers, 'and the other drivers are idiots. The rules

⁴ Matthew Kramer has pointed out to me that Duff may have intended the parenthetical words to refer back to reasons 1 and 2 on his list, and not to form part of reason 3. But so far as I can see they do not fall under 1 or 2 either.

are for them, not for me.’⁵ Does anybody look upon the other drivers specifically as *citizens* for this purpose? If not, then Duff’s invocation of ‘fellow citizenship’ is mysterious.

(b) Even the bare word ‘fellow’ may lay a false trail. It may draw us prematurely into the thought that we are already in some relationship with that balding bloke in the Toyota Corolla which explains why we shouldn’t be taking a superior attitude towards him at the traffic lights. In fact, drivers are a group joined only by non-relational reasons. Just *qua* drivers they are nothing special to each other apart from their particular driving encounters. So there is no relational reason for them to approach those encounters in any particular way, with any special care for other drivers beyond what should be displayed to strangers generally in situations in which one is capable of posing a grave danger to them. Some may think that drivers have a special reason to take care of each other on the roads beyond the reasons they have to take care of pedestrians, cyclists, bus passengers, lost dogs, and other road users. That may be the view peddled (one hopes satirically) by the petrolheads on *Top Gear*. It is also implicit in the early history of the Automobile Association.⁶ But it is clearly immoral. That may lead us to ask: Is it any less immoral to take the view that, while driving, one has a special reason to take care of one’s fellow citizens beyond the reason one has to take care of other road users in general? Surely one should not be thinking of the roads as a place of fellowship. One should be thinking of them as a place of great danger, to be approached with great care, even-handedly extended to all actual and potential users.

(c) Even if there is a genuinely relational aspect to reason 3, and even if it passes moral muster, there remains a doubt about

⁵ According to research by McCormick et al (1986), 80% of drivers think they are ‘above average’ when eight dimensions of evaluation are consolidated.

⁶ *Betts v Stevens* [1910] 1 KB 1.

its relevance to the problem of the law's legitimate authority. In sketching out reason 3, Duff talks as if one by this stage needs a reason for disobeying the speed limit. Some drivers, he thinks, may have the reason that they (unlike most other drivers) know better than the law, and in acting for that reason, he thinks, they display an objectionably narcissistic attitude. But the problem of legitimate authority is really the other way round, as Duff's own treatment of reasons 1 and 2 shows. The basic question is: What reason does the speed limit give anyone to defer to it? If the answer in my case is none, then I do not need a reason to ignore it. I may ignore it in the same way that I might ignore a man on stilts in a top hat shouting 'doom, doom' (which is to say: it's hard to ignore as a roadside display, but easy to ignore as a guide to action). Since I don't need any reason to ignore it as a guide to action – it isn't a reason and doesn't need to be defeated by any countervailing reasons – Duff can't really help himself to the assumption that I am ignoring it for narcissistic reasons.

It is true, of course, that when my speeding case gets to court I'll be asked to give my reasons for ignoring the speed limit, on pain of losing my licence or paying a fine. Then I may decide – lacking the courage to ignore the law now that it is challenging me more directly in the person of the judge – to concoct some story of why I did it. My story may, as Duff suspects, have an inevitably narcissistic flavour, stressing my special driving skills or my uniquely expert judgment about road conditions, etc. And this may get me out of one kind of odium at the price of landing me in another. But Duff can't rely on *this* to support his picture of me as a narcissist lording over my fellow citizens or fellow drivers. For it assumes that I am responsible to the court, and hence owe the court an explanation for my speeding. Whereas surely I am not responsible to the court, and do not owe them an explanation for my speeding, unless, while I am speeding, the law of speeding has legitimate authority over me. And that is the very thing that reasons 1 to 3 are supposed to help to establish.

We have been moving slowly, and with some trepidation, towards the conclusion that Duff's account of the legitimacy of the criminal law's authority, and hence of our responsibility to the criminal courts, contains less relationality – less reliance on relational reasons – than it is advertised as containing. We are not after all responsible to the criminal courts primarily as citizens of our polity, or as guests of another polity, or anything along those lines. We are responsible primarily as rational beings stuck in the timeless predicament of rational beings. We need various indirect reasoning devices to avoid rational error. Authority is one of these devices particularly suited to social contexts in which the behaviour of multiple actors needs to be coordinated. The law relies on this device for its everyday rational purchase. Normally, then, the law has legitimate authority when its being treated by us as having such authority helps us avoid rational error and not when it doesn't. This is Raz's normal justification thesis. It remains applicable whether we are dealing with the law of our home legal system or of some other legal system with which we merely have a chance encounter. Whichever legal system we may encounter, and however we may encounter it, its vain, stupid, and fatuous laws are normally there to be ignored *ab initio*, which is to say not dignified with the search for a countervailing reason to ignore them. If there is no reason to defer to them in the first place one needs no reason to ignore them.

Of course we may, as naturalized citizens or as public officials or just as zealous followers of a particular country, commit ourselves to following even the vainest and stupidest and most fatuous of that country's laws, and our commitment is morally binding so long as following such laws would not be positively immoral (and so long as the commitment was not extracted by coercion or other immoral means). Such a commitment is a truly relational reason to follow the law. But it is also an abnormal reason confined to exceptional cases. Duff's official view elevates it to the status of normality, and in the process grants too much

legitimacy, for my tastes, to vain, stupid, and fatuous laws. Within certain limits his official mantra is ‘it’s our law, right or wrong’. Fortunately, his official mantra does not appear to prevail when he comes to reflect on more concrete examples. As we saw, the reasons he gives for deference to laws regulating endangerment are largely non-relational. They largely comport with Raz’s normal justification thesis. Indeed Duff’s ingenious attempt to find a single relational reason for obeying such laws – his reason 3 – fails. There is, in my view, no such reason.

It would be interesting to explore some of the ramifications of this for other causes dear to Duff’s heart. One is the cause of those who have been severely let down by their government, treated unjustly by the powers-that-be in ways that possibly lie beyond the scope of the criminal justice system. Duff has long argued (since at least Duff 1988, and most recently in Duff 2010) that some question mark hangs over the legitimacy of the criminal justice system in its dealings with such people. In at least some cases, he says, their unjust treatment at the hands of the wider political and social system means that they are not responsible to the criminal courts for their crimes (which is not, of course, to excuse the crimes themselves). But if the legitimate authority of criminal laws turns out not normally to depend on the existence of any (other) relationship between the person subject to those laws and the authorities who make and apply them, then nor is that legitimate authority lost by any failure on the part of those authorities to nurture and sustain such a relationship. And this verdict seems the right one to me. If the poor and dispossessed should not be subjected to further suffering and deprivation at the hands of the criminal justice system, that is for some other reason. I tend to think that it is usually for reasons of mercy. Duff clearly disagrees. He thinks that there is typically a loss of standing to accuse, in the same spectrum as the case in which a country that resorts to terror tactics against its enemies accuses its enemies of being terrorists by way of justification (on which see Williams 2005 and Cohen 2006). I am open to

persuasion that he is right. But a new strategy of persuasion is called for. Duff's view that authority, and hence responsibility to the authorities, is relationally gained, and hence relationally lost, is not persuasive. Even Duff, it seems to me, is not entirely persuaded. Officially he holds that responsibility is relationally justified but in concrete cases he is not able to bear the idea out and ends up, so far as I can see, paying only lip service to it.

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