

24.235J – Philosophy of Law – Paper Topics – Second Short Paper

DUE THURSDAY, MAR. 22nd by the BEGINNING of class.

Please write a short (1200-1500 word) paper addressing **one** of the following topics:

- (1) Consider the debate between Scalia and Dworkin on how judges should go about interpreting legislation. Both Scalia and Dworkin claim to embrace (at least in the debate we read) a form of *originalism* about statutory interpretation, but they disagree about what this kind of interpretation entails for determining the meaning of particular statutes – especially Constitutional statutes. First, explain and evaluate the form of originalism (Dworkin calls it “semantic originalism”) that Scalia and Dworkin defend. It may help to contrast it with other possible theories of interpretation, such as strict textualism or “expectation originalism.” What advantages do the authors think semantic originalism offers over other forms of interpretation? Do you agree? Next, explain and evaluate Scalia and Dworkin’s disagreement about what this form of originalism entails, by examining their disagreement over the meaning of a particular statute (for example, whether the Eight Amendment prohibits the death penalty). What are the strongest arguments each author offers in defense of his interpretation? Are these arguments compatible with semantic originalism, as the authors claim? Who do you think is right, and why?
- (2) In “The Conflict Between Authority and Autonomy”, R.P. Wolff writes:

The defining mark of the state is authority, the right to rule. The primary obligation of man is autonomy, the refusal to be ruled. It would seem, then, that there can be no resolution of the conflict between the autonomy of the individual and the putative authority of the state. Insofar as a man fulfills his obligation to make himself the author of his decisions, he will resist the state’s claim to have authority over him. That is to say, he will deny that he has a duty to obey the laws of the state *simply because they are laws*. In that sense, it would seem that anarchism is the only political doctrine consistent with the virtue of autonomy. (p. 29)

Carefully explain and evaluate Wolff’s argument for the claim that political authority necessarily conflicts with autonomy. Is he right that we cannot have an obligation to obey the law, because it would conflict with our primary duty of autonomy, and hence that there cannot be any legitimate authority? You may want to consider these claims separately: Is Wolff right that any obligation to obey the law would necessarily conflict with an obligation of autonomy? Is he right that it follows that there cannot be legitimate political authority? Why or why not?

- (3) We've looked at a number of arguments for the claim that we have an obligation to obey the law, including:
- a. that the obligation follows from our obligation to support just institutions
 - b. that it is grounded in the implicit or tacit consent of the governed to their government
 - c. that it is an application of a general principle of fair play
 - d. that a principle allowing us to break the law when we think it best can't be universalized
 - e. that the obligation follows from the fact that the consequences of general acceptance of the rule "obey the laws" will have better consequences than the acceptance of any other rule or no rule
 - f. that the obligation to obey the law, at least in states that aren't thoroughly and pervasively unjust, is an associative obligation, akin to obligations of family or friendship
 - g. that the obligation arises, when it does, because allowing the law to guide our actions will make us more likely to comply with our law-independent reasons than allowing our own assessment of those reasons to guide us directly.

Choose the argument for the obligation to obey that you think is strongest, and set it out as carefully as you can. You may want to make use of concrete examples of laws obedience to which might be justified in this way. Be sure to be clear about how general an obligation to obey the argument aims to establish. (That is, does the purported obligation bind all agents or just some? Does it apply to all legal systems, or only just legal systems? Or perhaps only just laws? Can the obligation be outweighed by other reasons or obligations?) Explain what you think the strengths of the argument are: what worries about the obligation to obey does it help answer? To what objections do you think the argument is vulnerable? Are the objections conclusive? That is, do you think the argument ultimately succeeds or fails?

- (4) What makes an act of disobedience to the law count as civil disobedience (that is, what distinguishes civil disobedience from other ways of breaking the law)? In Section V. of "The Justification of Civil Disobedience," John Rawls describes four conditions that must be met if an act of civil disobedience is to be justified. Explain Rawls' four conditions, and why he thinks they are necessary. Do you agree with Rawls' *definition* of civil disobedience? Do you agree with him that an act of disobedience is *justified* only if it meets *each* of his four conditions? Do you think there are any *other* conditions civil disobedience must meet if it is to be justified? Why or why not?

If you have not already done so, please read Jim Pryor's "Guidelines on Writing a Philosophy Paper" before you begin work on your paper. The TA and I are both happy to talk to you about your papers as you work on them.

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