

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

DUE MARCH 1st by the BEGINNING of class.

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

(1) Explain Austin's Command Theory of Law. What do you think is the strongest objection to the Command Theory? How might a proponent of the command theory defend it against the objection? Does the defense succeed?

(2) What are the internal and external aspects of rules? How does the external aspect miss something important about a rule, according to Hart? In criticizing Austin and legal realism, Hart writes:

One of the difficulties facing any legal theory anxious to do justice to the complexity of the facts is to remember the presence of both [the internal and the external] points of view and not to define one of them out of existence. Perhaps all our criticisms of the predictive theory of obligation may be best summarized as the accusation that this is what it does to the internal aspect of obligatory rules. (p. 74)

Do you agree? Explain why.

(3) Explain Hart's distinction between primary and secondary rules. Give examples of each. What is it for a rule of law to be "valid"? What kinds of rules of law *can* be valid? Why does Hart object (on pages 83-84) to the suggestion, made by some writers, that the rule of recognition is "assumed to be valid", and why does he prefer to say that it is "presupposed to exist"?

(4) Explain Dworkin's distinction between rules and principles, and give examples of each. How does the role principles play in judges' reasoning about cases differ from that played by rules? How does Dworkin appeal to principles to argue, *contra* Hart, that judges deciding cases rarely if ever need to "exercise their discretion" and reach beyond the law to arrive at a decision? Is he right?

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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