

Philosophy 155: Critical Analysis Paper

Introduction:

Ronald Dworkin is an influential natural law advocate. He has contributed many concepts to the philosophy of law. One of the articles he has written is called "Taking Rights Seriously." I am tasked with taking his writing and critiquing it. Despite the many insights Dworkin brings, I have a structural critique of him, and this is what I will discuss. This paper will give a short summary of Dworkin's writing, a critique of his writing, counterarguments to the critique, and a response to those objections.

Summary:

In his article "Taking Rights Seriously," Ronald Dworkin explores the controversy of civil disobedience. He argues that liberals and conservatives generally agree that men have a duty to obey the law unless their conscience forbids otherwise; then, they have the duty to obey their conscience, not the state (Dworkin 329). However, they differ in that liberals argue that the state should not punish civil disobedience in some instances while conservatives argue that the state should always punish them (Dworkin 330-331). Dworkin defends the liberal position by pointing out that there are two different ways to define rights. There are strong rights and weak rights. Dworkin argues that strong rights are rights to do something without any interference (unless there is a special reason) (330). He argues that the Constitution provides strong (or fundamental) rights against the government (Dworkin 332). Therefore, he argues that when strong rights are at stake the government must have a compelling reason to limit it, and

conservatives' arguments for doing so are not compelling enough (337). This is the only way to take rights seriously.

Critique:

Dworkin presents some really good arguments overall and makes quick work of the so-called "compelling" reasons conservatives give for limiting rights (333-339). Therefore, my critique of him is going to be more of a structural critique than one of principle. The best way to frame this critique is to start with the basics: What is the purpose of the state? Different people will give different answers. Some might say to provide stability, order, and protection. Others might say to protect individual liberties and rights, or to provide its citizens with certain basic necessities. But, how does a state accomplish this? The answer would be through laws. Therefore, while states may differ on the purposes its laws seek to achieve, they all use laws to achieve those ends.¹ However, as all legal jurisprudences would agree, laws do not do much if they are not backed by some kind of force. Fuller would even argue that it is not a law if it is not congruent (39). So, in order to achieve its purposes, states have to enforce their laws and that can be read to be their overall purpose. This is where we pick up on Dworkin's argument. He presents both the liberal and conservative perspectives, and he argues in favor of the liberal one. Namely that civil disobedience should sometimes be allowed to go unpunished. However, it can be seen that if the state's purpose is to enforce its laws, then letting people go unpunished is working against itself. Laws should be applied despite one's moral and subjective objections. If not, there could be grave consequences to the rule of law. Dworkin does acknowledge that this could be a

¹ Of course, this is bypassing the legal naturalist argument that not all of a state's commands are laws. For the purposes of this paper, I will take on a legal positivist perspective and will not engage in that debate.

counterargument, but he dismisses it somewhat out of hand; and does not really seriously consider how taking the rule of law seriously² means that all laws should be followed (333-335).

Taking Dworkin's article from this perspective, another weakness comes to mind; and this has to do with his examples to prove his point. He takes his examples from the First Amendment (the Free Speech and Free Exercise Clauses) (Dworkin 336-337). He argues that while the government can regulate these rights, it has to pass a compelling reason test (Dworkin 337). This evidently proves that if one takes rights seriously, the conservative argument for the punishment of civil disobedience is also proven erroneous. Not so! Certainly, the conservative argument loses strength if it argues for a less strict standard on Free Speech cases; but if the conservative position is just taken to mean that the government should punish acts done out of civil disobedience that violate the law, then, it still has viability and persuasion. The reason being is that the First Amendment is a constitutional law. Those who argue for the enforcement of the laws can still argue for the protection of quote-on-quote "civil disobedience." The First Amendment curtails governmental power and protects civil liberties and protects conscience objectors. Therefore, the conservative can still argue that those who break the law should be punished. But since they are protected under the First Amendment, they are not actually breaking the law since the Constitution is the supreme law of the land. Therefore, conscience objectors are unpunished because of the rule of law, not in spite of it.

² This makes sense considering the title of Dworkin's article, but it is something he could do better to counterargue.

Now, there are two objections that can be raised concerning these critiques. Number one, it can be argued that Dworkin's argument is a matter of how the Constitution should be interpreted, and that conservatives press for a low standard of review under the First Amendment. The liberal advocates for having actual compelling interests to curtail individual rights and protecting the First Amendment. Therefore, I am misrepresenting the conservative position. The second critique of my critique is that I am misrepresenting the purpose of the state. The highest goal of a state is not to enforce its laws, but to protect citizens' individual rights. In this case, the state should defend non-legal individual rights even if it means not enforcing its laws. Therefore, the conservative position of enforcing laws can not stand, because of Dworkin's arguments for the non punishment of conscience objectors.

For the first objection, I would absolutely agree with those who attack the supposed conservative position. As a matter of constitutional law, there is a compelling reason to apply either a strict scrutiny test or a compelling reason test. The First Amendment's whole purpose is to protect the rights of those who want to protest government policies or laws and in some cases disobey them. This is necessary in a workable liberal democracy. Given the importance of these rights, it follows that they should be given the highest priority of protection. Therefore, if the conservative position is that there should be a low standard of review, then, I agree with Dworkin. However, the conservative position as Dworkin defines it is as follows: "The conservatives, as I shall call them, seem to disapprove of any act of disobedience; they appear satisfied when such acts are prosecuted, and disappointed convictions are reversed" (329). As Dworkin argues, conservatives argue that conscience objectors should be punished for breaking the law. I give their reason: Because the state's whole purpose is to enforce its laws. Therefore,

the conservative position could be taken as since the state's purpose is to enforce its laws, those who break them should be punished (including conscience objectors). However, it does not follow that all conscience objectors break the law since there is a higher law: the Constitution.

This leads to a more deeper criticism: Is the state's purpose to carry out its laws? Some may say that it is instead to protect the rights of its citizens, both legal and moral. Therefore, it would be reprehensible for a state to punish conscience objectors. I would agree that the protection of individual rights could be a desirable goal that the state works to achieve, but I would say that has never been the overall purpose of the state. If a state's purpose is to protect individual rights, then, surely, a state can not be a state if it does not fulfill this purpose, or at the very least, it could not last very long. However, just looking at the news can show many examples of states not fulfilling their supposed purpose of protecting individual rights. In fact, the organization, Freedom House, keeps track of states and their respect of political rights and civil liberties. According to them, over 155 countries are categorized as not free or partly free. This is 80% of all of the countries surveyed (Freedom House). As can be seen, a state does not have to respect rights in order to be a state. I think this line of reasoning illustrates to a degree the long standing debate between legal naturalists and positivists. It can be argued persuasively that the state's purpose should be to protect individual rights, but this is not how a state is actually structured. Therefore, I propose that in order to protect individual rights, it should be done through a state's laws; and if they do not protect individual rights, there should not be exceptions for conscience objectors.

Conclusion:

To conclude, Dworkin makes good points for how to protect rights and interpret the Constitution, but I find that he does not represent the conservative position well. It is true that conservatives want the government to punish conscience objectors according to the law. However, Dworkin does not have an effective argument against states always enforcing their laws. It seems the best he can come up with is that they need to have compelling reasons to break the legal rights of its citizens. However, legal rights are in fact laws, and therefore, not punishing them on that basis is actually enforcing the law. Ultimately, there is a deeper moral issue at stake here. It sounds truly awful to punish someone with prison time or fines for obeying what they think is moral. However, while that may be awful, the remedy should be to either make a law decriminalizing that behavior or to make a law that allows for an exception for conscience objectors. The avenue of remedy is not to leave the offender unpunished; it is to change the laws. This way both the rule of law and conscience objectors are protected.

Works Cited

Dworkin, Ronald. *Taking Rights Seriously*. Harvard University Press, 1977.

Freedom House. *Freedom in the World 2024*. Feb. 2024.

Fuller, Lon L. *The Morality That Makes Law Possible*. Yale University Press, 1964.