February 6, 2017

Class Notes – Kristel Tupja

* Argument re Hohfeld with Stein (friend of Green who sent him an article)
* You can have privilege aka lack of duty not to do it without having anyone with a duty not to interfere with you
  + We can have privileges in Hohfeldian sense without claim rights
  + and we can give privileges with claim rights🡪put duties on people to not interfere with it
* Argument🡪 powers:
* Stein argued that powers can be violated
  + His example: Power of atty and someone went in and interfered with ability to exercise it
    - Can the power be violated?
    - Stein said yes
    - Green: NO
    - by virtue of having a power all that follows is that I can change someone’s Hohfeldian rights – it does not follow that other people have duties to me not to interfere with that power
    - Here is an example:
      * When I punch someone in the face I exercise a power— I give someone claim right for compensation. BUT: Police can interfere with this power.
      * Hohfeld explains why the relationship between power and having claim right to non-interference with exercise of the power is not an analytic truth, but a normative argument
* Questioning again the usefulness of Hohfeldian definition of privilege and immunity negatively
  + Remember this problem…?
    - shoe has privileges because it has no duties
    - same is true for immunity – shoe has immunities bc cannot change the shoe’s rights.
    - Might need a positive understanding of an immunity

* **Three theories of legitimacy**
  + Natural/Razian🡪 legitimacy means when gov enacts law, changes your moral situation and now you have a duty of obedience to law. Gov gives itself claim-rights.
    - Red light—moral duty to stay at red light.
  + In between/Applbaum🡪 when gov is legitimate and announces law/judgment🡪 changes moral situation but without necessarily claim-right to duty of obedience to law/judgment
    - Clamdigger example—judgment changes claim right to go on property to get to beach to privilege to go by jumping over chain. Turns beachowner’s duty to allow clamdigger to go on property into a privilege to interfere with him (eg by putting up chain)
    - Red light—
      * When put up red light still have Hohfeldian privilege to run red light, but now have duty to accept the punishment. So changed moral situation by putting up red light.
  + Under priv to punish Ladensonian view🡪 announcing the judgment in clamdigger and putting up red light did not change anyone's moral situation at all
  + all it means for gov to be legitimate is that it has Hohfeldian privilege to punish – that is, not violating a duty to anyone by punishing. When gov enacts a law, has not changed your moral situation.
  + Red light—By enacting law, doesn’t change moral situation but announces policy of punishment, you have privilege to run red light and gov has privilege to punish you.

Green has a problem with understanding the Ladenson approach as involving absolutely no moral change when laws are enacted

* Isn’t the gov’t permitted to punish only after announcing a law? – if so then the gov’t exercises a power when announcing a law – it gives itself a priv to punish
* Still this is less than the type of power that Applbaum talks of under his theory

Green’s puzzle is tied to the following stuff that Applbaum says, which also Green finds hard to understand

Applbaum says the following about the Ladenson approach when the punisher is different from the lawmaker:

Ladenson “I have privilege to punish, you (say sheriff) are my agent and you punish using my power”

Under Applbaum view, the following is what is going on:

* + - * I have a power to make it permissible for sheriff to punish
      * I exercise that power
        + Now you are permitted sheriff

Green: how agency is possible under Ladenson approach – isn’t that just a sort of power?

* Does the government claim Applbaum approach or the Raz approach
  + Applbaum’s is not an account of what gov’s are claiming but rather what is morally true if gov’s are legitimate
  + Gov probably claims Raz approach
* Spent some time discussing whether the gov’t might claim something less than Raz in connection with duties that exist in the state of nature….
  + May even claim only Ladenson
  + Announcement of law prohibiting murder does not change your moral situation
  + BUT govt would surely claim Razian power concerning other laws
    - There are speed limits in state of nature (to drive “reasonably” but not an obligation to go a particular speed)
    - What is benefit of having speed limit🡪 benefit of having gov authority settle disagreement about the proper speed
    - When gov’t announces speed limit, gov’t probably thinks it had given you a duty to go the speed limit

Does a legitimate gov’t necessarily have a claim-right against other gov’ts not to interfere?

* + Applbaum thinks NO – does not necessarily follow
  + Green offers an extreme example
  + gov identifies A’s in nation as slaves of the B’s. When the B’s attempt to enslave A’s, A’s engage in resistance that is permissible. Neighboring state intervenes, invades and stops enslavement. Invading is permissible. How do we say initial government is legitimate?
    - Before law, As had claim right not to be enslaved, Bs had duty not to enslave
    - After law, turns all to privileges🡪 another gov interfering with legit government’s exercise of law, while recognizes legitimacy
* Analytic philosophy of law
  + theory of law
  + What does it mean to come up with theory of something?
    - What is essential to that thing
    - What must be the case if it exists
    - Identify necessary and sufficient criteria for being that thing
      * Bachelor:
        + Unmarried (necessary)
        + But not sufficient🡪 need to add male (necessary)
  + Not a theory of just American law, but law wherever it might occur
* First problem
  + Is this just about the definitions of words
  + NO – people can have the same concept of law even though they speak different languages
  + Also meaning of word “law” may not overlap with concept
    - * + Over-inclusive🡪 law of thermodynamics, murphy’s law. We have a concept of law that can be shared by everyone despite language, and furthermore the word law doesn’t map perfectly.
        + We are interested in concepts, not words.
    - In addition, we are not just interested in identifying the nec and suff conditions for law (the content of the concept of law) but also interested in things that follow from it
      * Attempting to figure out what follows
* Second problem
  + Are we doing anything meaningful? Concept = criteria of thought🡪 why bother?
  + (learning what a bachelor essentially is doesn’t mean you learn anything about world.)

Green: identifying the content of a concept sounds worthless if you understand a concept as simply the criteria we associate with it

* + - What is the concept of water now: H2O?
    - What was concept of water in 16th century? Clear, liquid, potable, transparent.
      * We we are talking about different things?
      * Perhaps content of our concept isn’t just criteria we associate with it—can be wrong about what the content of our concept is
        + We may share concepts but criteria one person associates with subject could be wrong criteria
  + OK – so how do you determine what the content of a concept really is?
  + Shapiro’s approach – reflective equilibrium
  + How do you come up with theory of something?
    - Start with set of truisms and get a theory that is in equilibrium with them
    - Cannot adopt a theory that does not account for most of the truisms
    - BUT can throw out some truisms bc they don’t fit with a theory
  + Reflective equilibrium🡪 slightly problematic, you engage one way and someone else might do it a different way: who is right?
    - * + Apple-sorter problem