Lecture Notes 1/11

What is this class?

* Philosophy, not law
  + Philosophical reflection on the law
* Examples of questions we will ask:
  + Is there a moral duty to obey the law?
    - anarchism
  + do you need a duty to obey the law to have a legitimate government?
  + what is the nature of law?
    - is it composed of social facts, morality, something else?

Anarchist question – Is there a prima facie moral obligation to obey the law?

we are concerned with whether there is a generic duty to obey the law

* the fact that there are laws whose content is good is irrelevant to whether there is a generic duty
* so it does not show that there is a duty to obey the law that there is a duty to obey a law that says do not murder

There are many moral reasons for obeying the law besides the fact that it is the law – these do not show that there is a generic duty to obey the law

e.g.

* the content of the law happens to be good
* violation of the law happens to be likely to result in punishment
  + assuming that there is a moral duty (as opposed to a self-interested duty) to avoid punishment

Spent a long time on another question

* is there a prima facie moral duty to keep your promises?
* That means that making a promise itself must give you a moral duty to keep your promise, not something that is contingently associated with making a promise
* Example – if the reason we should keep our promises is that others reasonably rely on them, then there is no duty to keep promises, because one can have promise w/o reasonable reliance (and reasonable reliance w/o a promise)
* If there is a duty to keep your promises because you need to keep the social practice of promise-making-and-keeping going, then there is arguably no duty to keep a promise because there might be a promise without the practice
* but some believe that the promise itself creates a prima facie moral duty to keep it even without reasonable reliance – those people really believe in a moral duty to keep your promises – tied to idea of our autonomy

Must do the same with the law – what gives as a duty to obey the law must be essential to the law, not just contingently associated with it

BUT we are not concerned whether there is an Absolute Moral Duty – if an absolute moral duty exists to X means that one must always X, no matter what the countervailing moral considerations

* there are probably no absolute moral duties

We are interested in a prima facie moral duty to obey the law – this can be overridden by weightier moral duties

Smith draws a distinction between 3 types of argument for a duty to obey the law:

* 1. Consequentialist
     1. the duty to avoid bad consequences (which is a duty we all have by virtue of being human beings), justifies the duty to obey the law – if we break any law bad consequences will result
  2. Consent
     1. the duty to obey the law is one that we have willingly accepted through and actual or implicit promise to obey – doesn’t matter if there are bad consequences from disobedience
  3. Arguments based on the state having conferred benefits
     1. different from consent because one did not ask for the benefits
     2. different from consequentialist argument because it is not clear that there will be any bad consequences from disobedience