[Name of the Writer]

[Name of Instructor]

[Subject]

[Date]

**Philosophy of law**

**1.**

In every society, since the primordial era laws are present which are established to control the actions of the people. The legal system is given authority to regulate the actions and behavior of the people through sanctions, punishments, and coercion. A profound understanding of all the laws of different nations, it is apparent that the laws are established in accordance with the moral values persistent in society. The reason for the submission to the authority is a debatable point since philosophers like Thomas Hobbes and John Locke are of the view that people submit to the authority of law because it is a supreme authority and is cardinal for the maintenance of stability in the society. However, the viewpoint of philosophers like Joseph Raz and HLA Hart differs.

According to Joseph Raz and HLA Hart theory of law, a law is the combination of both primary and secondary rule. By primary rules, they meant rules which are morally right and people are obliged to follow them for the greater good. On the contrary, the secondary rules are those rules which are present to alter, enhance or change the primary rules. However the reason for the obligation of laws by the people is different from other philosophers, and he links the formation of the legal system, establishment of laws and reason by the people to follow these laws together in an excellent manner.

HLA Hart in his theory of law agrees with philosophers like Austin that people obey because of threat and sanctions to some extent (Kelsen, 30). But according to him the fundamental reason why people follow the law is that as a rational being they have to obey it. Linking this aspect with the establishment of law HLA Hart opine that the legal system is established because of two reasons. The first reason is that rules are made by the legal system when the rules are in accordance to the ultimate rule of recognition and are obeyed by the people collectively, and secondly when the rules of recognition are accepted by the officials of a legal system as standard behavior for the officials. An in-depth analysis of this point makes it evident that for HLA Hart the underlying reason for the people to obey the law is when having a feeling that these laws do not bump against the collective values of the society (Brand, pg.7) and that the rules are valid in the legal system . Suppose there is a man on the road, who is getting late for work, he sees that the roads are clear, but the signal is red. Still, he does not break the signal and waits patiently for his signal to go green. According to Joseph Raz and HLA Hart theory of law the reason that the man waited for his signal to turn green, despite the fact that he was getting late for the work and the roads were clean is that he understands that the law is made for the protection of the people and he should not break this law since it can cause harm to someone.

2.

Ronald Dworkin was a famous legal philosopher who challenged the model of the theory of law presented by HLA Hart. Wayne D. Moore in this article “Legal Positivism has termed Ronald Dworkin as one of the most prominent critics of Legal Positivism because of his stance about the practices by the lawyers in hard cases (Moore, pg.2).

Ronald Dworkin does not believe in the presence of a general theory about the existence of law and authority. Contradicting the positivist theory of law, Dworkin believes that a theory of law should be concerned with how cases are and ought to be decided. During his career and made keen observations of the practices by the lawyers during hard cases and based on these observations he stated the notion that while dealing with different cases the lawyers in a justice system does not take into consideration rules only while formulating legal arguments. In fact, these lawyers use other kinds of standards also like policies and principles. Policies as per the view by Dworkin are standards that are set for improving the political, economic and social life of the community and by principle, he meant standards of morality, justice, and fairness. Thus Dworkin believes that lawyers use all the combination of all these things while formulating an argument for legal cases.

Riggs v. Palmer is one of the most prominent civil court cases of the 1880s. In this case, Elmer Palmer murdered his Grandfather to receive his inheritance under the will of his Grandfather. However, the court punished Palmer, and he was unable to receive the inheritance because he had committed a sin. It is essential to note here that in the 1880s the estate laws have no exception to cases of murder. Dworkin argues that Palmer was punished because the lawyers used the standards of principles and policies instead of law only to formulate an argument against him. He believes that if these alternate principles had nothave been used by the lawyers, Palmer would have received the inheritance under his Grandfather’s will.

Another great example is given by Dworkin which rejects the legal positivism school of thought is of Henningsen v. Bloomfield Motors case of 1960. In this case, the car of the plaintiff was damaged due to a defect in the car. The insurance company refused to pay for the damages that are caused to the car other than the broken part (Brink, pg. 274). In this case, the court passed an order in favor of the plaintiff. Dworkin believes that in this case, the lawyers have used the arguments based on principles rather than on the law to provide justice to the people.

These two examples sufficiently support the thesis by Dworkin that lawyers use policies and principles in addition to the rules to solve hard cases. Unlike HLA Hart, Dworkin explained how principles and policies are essential to provide justice and equality to the people and how the application of the rules only can hinder the objective of the legal system.

3.

John Rawls is a political philosopher, who gave the concepts of natural duties, moral obligation and the principles of fairness. According to the theory by John Rawls, there are a number of natural duties present in society. These natural duties are present naturally in the world and laws are made based on these natural duties. Therefore all the people are obliged to follow the law. The natural duties include avoid being cruel, inflict injury or harm to the innocent and help others. Rawls believes that these natural rules are present to give mutual benefits to the people; therefore all the members in the community have to follow these rule as their moral obligation (Rawls, pg. 36). Another reason provided by Rawls is through the concept of fair play. As per his view, there should be equality, justice, and fairness in society and when laws are not followed, people suffer from inequality. Henceforth for a fair play, it is vital for the people to obey the law as a moral obligation.

The best objection to his argument is that the natural laws can be time and culturally specific and what should be the action of the people if natural law is beneficial to many but is harmful to a few. Take an example of white lies. By white lies, it means that a lie which is spoken to protect the interest of someone is not a lie. Since white lies can be included in the list of natural laws than under the theory of John Rawls should it be added to laws or not is a question of contemplation. Another objection to his theory is that most of his concepts like the “veil of ignorance” are hypothetical (Corlett, pg.176). I feel that on these objections his response would have been that since white lies eventually can be detrimental for others in the future, therefore, that cannot be included as laws and natural laws can be time and cultural specific therefore laws are different in different societies and people also behave differently as per the rules of their communities.

The theory by John Rawls can best be explained through a situation in which a person is working in an organization; there is a rule that siblings cannot work in the same office. The brother is eligible for the job; both the men need a job because of their financial conditions. Under this situation is the man morally obliged to tell the company that the selected candidate is your brother. This situation is an ethical dilemma because the person is trapped between professional obligations and personal obligation. Under such circumstance, the man can remain quite because his brother has qualified for the job on his capabilities. By this, he won't harm his brother who is a natural law. However since the code that siblings cannot work in the same organization is not a natural law; therefore, the man is not morally obliged to follow this law and can remain quiet.

**Works Cited**

Brand, Jeffrey. Philosophy of Law: Introducing Jurisprudence. A&C Black, 2013.

Brink, David O. "Originalism and Constructive Interpretation." The Legacy of Ronald Dworkin (2016): 273-298.

Corlett, J. Angelo, ed. Equality and liberty: analyzing Rawls and Nozick. Springer, 2016.

Dworkin, Ronald. "Rawls and the Law." Rawls and Law. Routledge, 2017. 35-53.

Kelsen, Hans. General theory of law and state. Routledge, 2017.

Moore, Wayne D. "Legal Positivism." The Wiley‐Blackwell Encyclopedia of Social Theory (2017): 1-2.