



Jurisprudence

Fall, 1992

Professor Terrell

Final Examination

Time allowed: 3 hours, 30 minutes

Instructions:

1. This is an open book examination.
2. You have a maximum of three hours and thirty minutes to complete the examination.
3. The examination consists of three questions. Be certain that your copy of the examination includes all three.
4. The questions will be weighed according to the raw score points and suggested times allotted to each.
5. The raw score points for the questions total 95. I have reserved five of these points to reward particularly well-drafted answers.
6. Although you may take the examination anywhere, any announcements concerning the examination will be made only in the room assigned for the examination and any designated typing room.
7. Your examination answers must be turned in in the room assigned for the examination. You may keep your copy of the examination itself.
8. Good luck.

Question One
(45 raw score points; 90 minutes)

Both of the following quotes are from articles concerned about fundamental issues in the philosophical effort to theorize about justice, and both refer to the idea of "starting points." But the two references may not be to the same thing. Discuss the ways in which these two quotes relate or fail to relate to each other, and the perspectives they each suggest for analyzing the work you have read of Dworkin, Rawls, Nozick and Terrell.

The first quote is from an article by Phillip Johnson:

Moral philosophy is a fascinating enterprise, but it has considerable trouble with its starting point. The problem is not the quality of the philosophers. The liberal moral philosophers like Rawls, Dworkin and Nozick are often brilliant, but they lack a firm place to plant their feet. What they come out with depends upon the starting point that they arbitrarily choose.

The second is from Lloyd Weinreb:

[N]otice the connection between the old, ontological natural law [which had to do with discerning God's providence] and our current efforts to devise principles of liberty or equality consistent with justice, despite the radically different starting points in our lives; some of us are smarter, handsomer, have more nurturing parents, than others -- all of those factors that we worry about all the time. What we are asking is how a person can justly be bound by her past, his past. And if she/he cannot justly be bound, what steps ought we take to correct it by affirmative action, or whatever you like? That is not different, in the end, from the question that Oedipus asks, or, rather, that question that Sophocles asks about Oedipus, and answers: How can he deserve to suffer as he did, because of the wrong of his father? If Oedipus did not deserve Laius, neither does the unfortunate child deserve her parents. It is that to which we address ourselves when we theorize about

justice.

Question Two

(30 raw score points; 60 minutes)

Compare and contrast the approaches of Hart and Dworkin to the question of whether "international law" exists. For Hart, you have, of course, his discussion in Chapter X of *The Concept of Law*; for Dworkin, however, you will have to extrapolate from the materials provided for the course, none of which directly addresses this topic. You might discuss, for example, how a judge on the International Court of Justice and a judge on the Eleventh Circuit Court of Appeals might view their respective responsibilities in applying such law from the perspectives of these two theorists.

Questions Three

(20 raw score points; 40 minutes)

Speculate briefly on how you would now analyze whether a relationship between two persons amounted to a "contract."