



Jurisprudence

Fall, 1995

Professor Terrell

Final Examination

Time allowed: 4 hours

Instructions:

1. This is an open book examination.
2. You have a maximum of four hours to complete the examination.
3. The examination consists of some general instructions and then four questions. Be certain that your copy of the examination contains all four questions.
4. The questions will be weighted according to the raw score points and suggested amounts of time allotted to each. **Please pay attention to the suggested times. Avoid getting bogged down in any particular part of the exam.**
5. The raw score points for the questions total 130.
6. **Bear in mind that your examination answers will be the only basis available to me to give you a grade in the course. Be certain to allow those answers to display primarily your mastery of the assigned reading materials, and only secondarily your ability to be a creative thinker and writer. You are welcome to move beyond the course's readings after you have discussed them adequately.**
7. 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.
8. Your examination answers must be turned in in the room assigned for the examination. You may keep your copy of the examination itself.
9. Good luck.

Question One
(40 raw score points; 70 minutes)

Consider the following:

A central and unavoidable paradox for liberal philosophy is the value placed upon the family in western cultures. Within modern societies otherwise emphasizing equality and liberty, this social institution is a crucial source of inequality and constraint. As long as the family unit itself carries moral weight, the inequality in distribution it creates cannot be justified by the liberal principle of "merit," nor rectified through redistributive "fairness." Likewise, the family's constraints on voluntary choice cannot be justified by the liberal principle of "autonomy," nor rectified by "compensation."

Discuss the implications of this observation (e.g., is liberalism therefore simply wrong? is it incomplete? is the statement wrong because it is mixing "is" and "ought"? and so on) with reference to the moral and political theories espoused by John Rawls and Robert Nozick; and with additional reference perhaps to whatever it is that appears to be espoused in the "Flatlaw" article.

Question Two
(20 raw score points; 35 minutes)

Without getting bogged down in too much detail, and without citing any case law of which you might be aware, analyze the possible substance of the famous phrase from the 8th Amendment: "cruel and unusual punishment." Illustrate your analysis using the hypothetical example of a statute imposing the death penalty for rape.

Question Three
(35 raw score points; 60 minutes)

Compare and contrast Justice Clarence Thomas' worry about "heroes" and "victims" (in his Federalist Society speech distributed in class) with:

(a) Ronald Dworkin's concern with the proper relationship between "liberty" and "equality" as expressed in his *New York Review of Books* articles distributed in class (and including any reference to Bruce Ackerman's ideas you deem helpful to this discussion); and

(b) Stephen Jay Gould's enigmatic line in his essay in Problem 4: ". . . since *single* acts of greatness are intrinsic spurs to democracy"

Question Four
(35 raw score points; 60 minutes)

One of the themes imbedded deep within the legal theories of H. L. A. Hart and Ronald Dworkin is that of legitimate "authority." It seems to be relevant to both of them at three different levels of their analyses of law and legal systems: first, and most generally, regarding the "authority of law" itself as a guiding force in people's lives; second, regarding the "authority of legal decision makers" to determine and impose the law; and third, regarding the "authority" on which legal decisions can rest.

Compare and contrast Hart and Dworkin on these points.