



JURISPRUDENCE

Spring, 1997

Professor Terrell

FINAL EXAMINATION

Time allowed: 3 hours, 40 minutes

Instructions:

1. This is an open book examination.
2. You have a maximum of three hours and forty minutes to complete the examination.
3. The examination consists of this page of general instructions, a page of attitudinal inspiration, 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 110.
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

35 raw score points

Suggested time: 1 hour, 10 minutes

In a remarkable document now referred to as "The Philosophers' Brief," several prominent American philosophers joined together to author and file with the United States Supreme Court an amicus curiae brief in the cases now pending before that Court involving the so-called "right to die" -- that is, the right of individuals to be free of state interference concerning their rational, fully-informed decisions to end their own lives. The centerpiece of that brief is probably the following couple of passages:

Certain decisions are momentous in their impact on the character of a person's life -- decisions about religious faith, political and moral allegiance, marriage, procreation, and death, for example. Such deeply personal decisions pose controversial questions about how and why human life has value. In a free society, individuals must be allowed to make those decisions for themselves out of their own faith, conscience, and convictions

. . .
. . . Most of us see death -- whatever we think will follow it -- as the final act of life's drama, and we want that last act to reflect our own convictions, those we have tried to live by, not the convictions of others forced on us in our most vulnerable moment.

An equally prominent American philosopher has dissented from these views in a separately published article. The essence of his argument is reflected in the following passages:

At the heart of the philosophers' argument is the attractive but mistaken principle that government should be neutral on controversial moral and religious questions. . . .

. . .
Despite their claim to neutrality, the philosophers' argument betrays a certain view of what makes life worth living. According to this view, the best way to live and die is to do so deliberately, autonomously, in a way that enables us to view our lives as our own creations. The best lives are led by those who see themselves not as participants in a drama larger than themselves but as authors of the drama itself

The philosophers' emphasis on autonomy and choice implies that life is the possession of the person who lives it. This ethic is at odds with a wide range of moral outlooks that view life as a gift, of which we are custodians with certain duties. Such outlooks reject the idea that a person's life is open to unlimited use, even by the person whose life it is. Far from being neutral, the ethic of autonomy invoked in the brief departs from many religious traditions

. . . .

. . . .
. . . The philosophers rightly observe that existing laws against assisted suicide reflect and entrench certain views about what gives life meaning. But the same would be true were the Court to declare, in the name of autonomy, a right to assisted suicide. The new regime would not simply expand the range of options, but would encourage the tendency to view life less as a gift and more as a possession. It might heighten the prestige we accord autonomous, independent lives and depreciate the claims of those seen to be dependent. How this shift would affect policy toward the elderly, the disabled, the poor and the infirm, or reshape the attitudes of doctors toward their ailing patients or children toward their aging parents, remains to be seen.

. . . The challenge is to find a [philosophy] . . . that retains the reverence for

life as something we cherish, not something we choose.

Using any material from the course you believe relevant, assess these two positions on the "right to die." But please note: Your answer should *not* be rooted in any doctrinal area of constitutional law, such as the Due Process Clause or federalism. I am not interested in any knowledge you may have from those sources. I am interested in the range and depth of your knowledge of the course's required readings.

Question Two

20 raw score points
Suggested time: 40 minutes

Discuss any relationships, or lack of relationships, between Charles Krauthammer's approach to and analysis of "deviance" in his "Defining Deviancy Up" article and Justice Clarence Thomas' approach to and analysis of "heroes" in his article "Victims and Heroes in the 'Benevolent State'" distributed at the end of the semester.

Question Three

25 raw score points
Suggested time: 50 minutes

Assess the situation and decisions in The Case of the Speluncean Explorers from the perspective of:

- (a) H.L.A. Hart's distinction between social rules and legal rules;
- (b) Ronald Dworkin's distinction between rules and principles; and
- (c) Terrell's notion of dimensional reasoning developed in the "Flatlaw" article.