

PHIL 3211 FINAL STUDY SHEET. Fall 2021.

Natural Law

1. What is the “functionalist” view about the concept of law?

Barrett, Originalism

2. According to the interpretation of originalism promoted by Scalia and Barrett, when is the meaning of the Constitution “fixed”?
3. According to the interpretation of originalism promoted by Scalia and Barrett, which meaning controls interpretation of the Constitution?
4. What is the original meaning, on the view of Scalia and Barrett?
5. Explain one of the two arguments Dr. MacDougall offered in support of originalism.

Dworkin, The Moral Reading of the Constitution

6. What is an example of “abstract moral terms” contained in the Bill of Rights, discussed in class?
7. What is the Moral Reading of the Constitution?

Locke, “Of Property”

8. What was the “divine right of kings” theory of property ownership?
9. What did Dr. MacDougall call Locke’s theory of original acquisition, and what does it say?
10. What are two properties that make gold and silver more desirable than other goods people might work for, such as food and clothes?
11. What is the limit to the right to private property, according to Locke?
12. According to Dr. MacDougall, would Locke think that it is wrong that there are vast differences in the amount of wealth owned by individual persons? Why or why not?

Marx, “Estranged Labor”

13. What is capitalism?
14. What are the proletariat and the bourgeoisie?
15. In what way does capitalism result in the alienation of the laborer from the objects she produces?

Mill, On Liberty

16. What, according to Mill, is the purpose of criminal law?
17. What is a paternalist law?
18. Does Mill think that paternalist laws are a justifiable part of the criminal law?
19. Be able to recognize examples of paternalist laws, and distinguish them from laws enforcing other-regarding duties.
20. According to Mill, when does an action cease to be self-regarding, and become other-regarding?

21. Mill says that the “strongest argument of all” against paternalist laws is that they often do not even reflect the sincere views of the majority. If they are not based on majority views of what is good or bad for the people they target, what are they based on?

Devlin, “The enforcement of morals”

22. What were the two main issues that the Wolfenden Report concluded were matters of “private morality” and so should not be criminalized?
23. What are some of the matters of private morality that Devlin brings up, that few people would be willing to legalize?

Hampton, The Moral Education Theory of Punishment.

24. What are two reasons Hampton gives for rejecting the deterrence theory of punishment?
25. What does the moral education theory hold?
26. What was one of the arguments we discussed in class for thinking that the purpose of punishment is moral education?
27. What is the retribution theory of punishment?

Foucault, “The Panopticon”

28. What are three of the main features of the disciplinary mechanism, evident in plague quarantines, and discussed in class?
29. What is the major effect of the panopticon?

Hi-Phi Nation, “Risky Business”

30. In what situation does a police officer need “probable cause”?
31. According to the Supreme Court, does “probable cause” mean that the suspect is more likely to have committed the crime than not (i.e., more than 50% likely to have committed the crime)?
32. Why might a person be detained (i.e. incarcerated) while awaiting trial? Name two situations when this might occur.
33. Why does it seem unjust that someone might spend several months in pre-trial incarceration?
34. What is one reason the show highlights why people might plead guilty to a crime they did not commit?