

PHIL 3211 FINAL STUDY SHEET. Spring 2024.

Natural Law

1. What is the “functionalist” view about the concept of law?
2. How does the functionalist view help support the idea that “an unjust law is no law at all”? Explain.

Barrett, Originalism

3. According to the interpretation of originalism promoted by Scalia and Barrett, when is the meaning of the Constitution “fixed”?
4. On the view of Scalia and Barrett, to what exactly does “original meaning” refer?
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?
8. What is one of the arguments in favor of the moral reading, discussed in class?

Dobbs v. Jackson Women’s Health Organization

No questions.

Locke, “Of Property”

9. What was the “divine right of kings” theory of property ownership?
10. What did Dr. MacDougall call Locke’s theory of original acquisition, and what does it say?
11. In what way does someone who acquires private property actually increase the amount of common property still available?
12. What are two properties that make gold and silver more desirable than other goods people might work for, such as food and clothes?
13. 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”

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

Coleman, “Corrective justice and wrongful gain.”

17. What is the goal of tort law, according to Dr. M?
18. Why does tort law require the injurer to make the victim whole, according to the Economic Theory of Torts?

19. Why is the traditional focus of tort law on wrongings a problem for the Economic Theory?
20. What, according to Coleman, does the principle of corrective justice require?

Mill, On Liberty

21. What, according to Mill, is the purpose of criminal law?
22. What is a paternalist law?
23. Be able to recognize examples of paternalist laws, and distinguish them from laws enforcing other-regarding duties.
24. What is Mill's argument against paternalist laws based in motivation?
25. According to Mill, when does an action cease to be self-regarding, and become other-regarding?
26. 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?

Hampton, The Moral Education Theory of Punishment.

27. What does the moral education theory hold?
28. What was one of the arguments we discussed in class for thinking that the purpose of punishment is moral education?
29. What is the retribution theory of punishment?
30. What is one problem, discussed in class, with the retribution theory of punishment?
31. Why does Hampton's theory require thinking that the death penalty is actually not a punishment at all?

Foucault, The Panopticon

32. What are three of the main features of the disciplinary mechanism, evident in plague quarantines, and discussed in class?
33. What is the major effect of the panopticon?
34. According to Foucault, what is the main reason we no longer utilize brutal methods of punishment?