

Department of Justice, Law and Society
Master's Comprehensive Examination
Law and Society
Spring, 2005

Instructions: Answer any two of the following four questions. Include in your answers references to the relevant literature, case law, and other sources. Label each answer by topic and number. Please begin each answer on a new page. Remember to write your 4-digit ID number on all pages.

1. Social contract theorists suggest that government is legitimate where it has the consent of the governed. Compare the different senses which several such authors have given to the concept of "consent." How do these differences affect the outcome of each author's theory? Can the requirement of consent ever be met?
2. Scholars writing in the law and society field have proposed various definitions of the law. Identify three of these definitions found in the works mentioned in the Law and Society reading list. Review the implications of each of these definitions for the relevance of moral theory to jurisprudence.
3. Is there really an original understanding of the U.S. Constitution? If so, what is it? If not, why not? Why is this an important question for legal theory? Include in your answer various points of view found in the literature.
4. In 1881, Oliver Wendell Holmes Jr. observed that:
[t]he life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, the intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men shall be governed. (From *The Common Law*)

Since Holmes wrote these words, the approaches that characterize various social science disciplines have had an increasing impact on the substance of law in the United States. On the basis of your reading, choose two distinct disciplines (examples: sociology, philosophy, economics, history, or statistics) and discuss the impact these two approaches have had on one of the following areas of law:

- a. The legal significance of race; or
- b. The legal significance of gender.

Be certain to indicate the strengths and limitations of the approaches indicated by the two disciplines you discuss.

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Instructions: Answer any two of the following six questions. Include in your answers references to the relevant literature, case law, and other sources. Label each answer by topic and number. Please begin each answer on a new page. Remember to write your 4-digit ID number on all pages.

Corrections:

1. According to one observer of the contemporary prison scene, "mature coping... is at the core of what we mean by correction or rehabilitation." Define the term mature coping, and argue for or against the proposition that mature coping is at the heart of the correctional enterprise. (Note that "the correctional enterprise" hinges on successful re-entry into the free world after release from confinement.)
2. You are a newly appointed warden of a prison for women. Your goal is to run a humane prison. You are dismayed to find that there is no easy definition of what constitutes a humane prison, for men or women, let alone a manual telling you how to go about running such an institution. Your assignment is to define the term "humane prison" and to develop a manual – or at least an outline of a manual – for running such a prison.

Policing:

1. Police departments in the two largest US cities, New York and Los Angeles, have experienced serious episodes of brutality and corruption in the past decade, despite clearly stated commitments to community policing. Identify some types and causes of serious lapses in reforms in both cities. Why do these episodes occur? How is community policing plaguing major metropolitan police departments. How are community policing reforms supposed to reduce such lapses? What explanations are most plausible for failures to control the lapses? Please cite the relevant literature in addressing these questions.
2. Community-oriented policing and problem-oriented policing have been regarded by some as revolutionary breakthroughs in policing and by others as the latest in a long series of policing fads. What is generally meant by "community-oriented" and "problem-oriented" policing? Are they related? If so, how? Where do these concepts come from? In what ways do these concepts present useful opportunities for policing? In what ways are they fads? How have police chiefs responded to the opportunities? What more should they be doing? Please cite the relevant literature, commenting on the validity of the empirical evidence.

Justice and Public Policy:

1. "Discretion" is a major issue in criminal justice. How do police, prosecutor and judicial discretion impact the fate of an offender? Would you impose restraints on the discretion of any of these groups? If so, how? If not, why not?

2. One frequently hears about the importance of legitimacy in the criminal justice system. What is meant by legitimacy? Is it inherent in the system or is it purely a matter of public perception? How is legitimacy strengthened and how is it undermined? How might it be measured? Can criminal justice policies be assessed in terms of legitimacy? If so, how? Do conventional measures of criminal justice performance capture the essential elements of legitimacy? Explain how or why not.