

**Department of Justice, Law and Society**  
**Master's Comprehensive Examination**  
**Law and Society, Fall, 2006**

**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 number. Please begin each answer on a new page. Remember to write your 4-digit ID number on all pages.

1. 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.

2. Mutual consent to a social contract has often been cited as an appropriate metaphor for the basis of the moral authority of a government. Outline two examples of this approach. Which of these two theories do you find more compelling? Why? On the basis of your reading, what do you find to be the strengths and weaknesses of using a hypothetical social contract to define a just legal system?
3. Mainstream legal theories present law as a constraint on government, while critics emphasize the use of law by the powerful as a way of maintaining current power relations. Which of these views most accurately reflects the role of law in the contemporary U.S.? Consider the views of theorists on each side of the issue.
4. Because judges frequently announce new legal rules that apply retroactively to the parties before the court, it is difficult to reconcile the exercise of judicial discretion with the rule of law. Some critics claim that judicial discretion is in fact so broad that the law does not operate as a significant constraint on judicial decisionmaking. Evaluate this view in light of alternative models of judicial decisionmaking found in the literature.