

PHL271H1S
IN-CLASS TEST

Test details:

- a. Please arrive early. The test will begin at 10:10 AM on the morning of February 6, 2013.
- b. Please bring your student card and a couple of pens.
- c. The exam will be closed book. You may not use notes or study aids of any kind including the course reader.
- d. The test will consist of two questions. These questions will be drawn from the pool of sample questions below.
- e. The test will be fifty (50) minutes. Accordingly, for each question, please prepare an answer that you can explicate in about 25 minutes.
- f. It would be prudent to prepare your answer in advance by (1) reviewing the readings, (2) reviewing your notes from lecture and tutorial, and (3) thinking about your own perspective on the material. Be sure to answer the question.
- g. The test is worth 25% of your final mark, as indicated on the syllabus.

Possible Questions

1. After expounding his famous formula, Radbruch writes: "For law, including positive law, cannot be otherwise defined than as a system and an institution whose very meaning is to serve justice." How does Radbruch's theory of law generate this conclusion? How does Radbruch's theory contrast with Hart's theory of law as the union of primary and secondary rules *or* Fuller's theory of law's internal morality? (Note: the test will ask you to contrast Radbruch with one of these thinkers, but not both.) Do you think that law can be defined in different ways? If no, why not? If yes, how should we choose between competing definitions? Does it matter?
2. Both Hart and Dworkin present their theories as integral to the project of reforming imperfect legal systems. Explain why Hart thinks that the separation thesis is integral to the ongoing project of legal reform. What is Dworkin's view about the supposed reformist orientation of the positivist theory? How does Dworkin's interpretive model of adjudication provide a framework for legal reform? Who gets the better of this exchange between Hart and Dworkin?
3. Hart famously wrote: "Law is not the gunman writ large, and legal order is surely not to be thus simply identified with compulsion." Explain how Hart seeks to introduce the idea of legal obligation into a positivist framework. How does the resulting theory enable Hart to reply to Radbruch's charge that legal positivism leads to injustice? What do you make of Hart's reply?
4. Fuller and Dworkin seek to provide an alternative to Hart's legal positivism. Explain what each thinker finds objectionable in Hart's approach. Then explain how each thinker seeks to forge a connection between law and morality. How does Fuller establish that law contains its own internal morality? How does Dworkin establish that law has its own ambitions? How does each thinker account for the notion of good governance without appealing to ghostly ideas like supraprstatutory law?