

## PHILOSOPHY 338 SUGGESTED PAPER TOPICS

Assignment: You are to write an original paper of approximately eight to ten pages. A rough draft of this paper is due in class on Wednesday, May 12. (The rough draft may be shorter than the final draft length. But remember, the closer to a finished version your rough draft is, the more helpful the comments on the rough draft can be.) The final draft will be due on Wednesday, June 2.) The following suggested paper topics are just that: *suggestions*. Do not feel limited by these; many of the best papers I have gotten are on topics that I would not have thought to suggest. However, if you do choose a topic not on this list, you must discuss the topic and your approach with me first. (This is because many of the worst papers I have received have also been on topics that I would not have thought to suggest—indeed, topics that were unacceptable.) If you write on one of the following issues, do not treat it as a take-home essay exam. That is, don't try to answer all parts of the question. You will have to define the issue more narrowly than the following questions do in order to write a carefully argued paper for your thesis. The following, then, are designed to *provoke* a paper topic, not to define the boundaries of your paper. In almost all cases, you should expect to do additional reading in preparing to write the paper. Contact me for some suggested readings or some information on how to track down more readings when you have a clear idea of the topic on which you want to write.

1. Some critics say Hart's conception of a legal system as a "union of primary and secondary rules" is too broad. For instance, the NFL may turn out to be a legal system since it uses primary rules to regulate behavior (e.g. "No clipping"), and it uses secondary rules to determine what the rules are, who the officials are, *etc.*, and compliance is ensured by the threat of punishment (penalties, expulsion from the game). Yet, it seems initially implausible that the NFL is really a legal system. How might Hart defend his theory against this objection? Does Hart's requirement that legal systems be addressed to the amelioration of the human condition eliminate the NFL as a legal system on Hart's conception? Why or why not? Are there additional necessary features of a legal system which Hart has overlooked? What are they and how do they help avoid the above criticism?
2. Classical Natural Law Legal Theory is a standard foil for legal positivism. Presumably, the CNLL theorist held that an immoral statute failed not only to result in a moral obligation but also failed to impose even a *legal* obligation. The legal positivist, by contrast, seems to hold the common sense view that one might be legally obligated without being morally obligated to obey an unjust law. Research and defend the position of either a classical natural law theorist (*e.g.*, Aquinas) or a modern natural law theorist (*e.g.*, Lon Fuller) against this objection of the legal positivist. In your defense, you may want to consider whether the legal positivist has fairly described the particular natural law theorist whom you are defending. Try to anticipate responses by the positivist to your defense.
3. Were the Nazis tried at Nuremberg guilty of any *legal* offense or was this merely a case of the winners getting the losers (who, obviously, deserved to be gotten)? If the Nazis were guilty of a legal offense, what legal rules did they violate and to what systems of law did these legal rules belong? If not, is there any justification for the trials and subsequent punishment? If so, what? What do the answers to these questions tell us about the concept of law?

4. Virtually everyone agrees that there are cases in which one is justified in violating some of the laws of even a reasonably just, democratic society. But they view this as a case in which the *prima facie* obligation to obey the laws (of a reasonably just, democratic society) has been overridden. Is there even a *prima facie* obligation to obey the laws of a reasonably just democratic society?
5. What is meant by legal insanity and is the insanity defense justifiable? If so, how?
6. Plea bargaining is viewed by some as a necessary expedient in our criminal justice system. Others, calling it a "Let's-Make-A-Deal" judicial practice, condemn it as unjust and unsafe. Can plea bargaining be justified and, if so, how? If not, why not?
7. Why should we punish (if, indeed, we should) *harmless* criminal attempts? If we should punish them, why not as severely as successes (at least when the criminal fails through no virtue of her own)? Can a consistent rationale be given for what is our usual current practice: punishing attempts, but doing so less severely than for successes?
8. Is capital punishment justified in a society such as our own? Does it, by its intrinsic nature, violate the constitutional ban on cruel and unusual punishment? Does it violate such a ban in *practice*? Does it, in practice, violate the "equal protection" clause? If you oppose capital punishment in your paper, make sure that your arguments aren't so strong that, if sound, they will also condemn *any* form of punishment (unless you oppose all forms of punishment). If you support capital punishment, make sure your arguments aren't so strong that, if sound, they will allow the torture and rape of criminals (or innocent others) in an attempt to deter crime (unless, of course, you support these conclusions).
9. Some argue that punishment as an institution is fundamentally flawed because it views the criminal as a responsible, rational agent. We need, rather, to view criminal as ill and in need of treatment. Defend or criticize the thesis that we should replace our system of criminal punishment with a system of therapeutic rehabilitation.
10. One of the three freedoms guaranteed by the First Amendment is freedom of religion. Should there be any *special* protection for religious freedom? That is, given that freedom of assembly and freedom of speech are already guaranteed, and that the state is prohibited from establishing any religion as an official state religion, should anything more be protected by a freedom or religion clause? Is it justifiable that some action be legally protected if done as a part of a religious expression but illegal if not done in this way?
11. Is the state justified in interfering with private behavior that causes no harm to any nonconsenting individual on the grounds that the behavior harms (or risks harm to) the individuals choosing to engage in it? Is the state justified in interfering with such behavior on the grounds that the behavior is immoral despite its nonharmful nature?
12. The Constitution guarantees the "right to keep and bear arms". In light of this clause, how can *any* restrictions on the possession of arms be justified? (Can registration be justified? Can restrictions on *where* one keeps and bears arms be justified?) The Constitution doesn't just say 'rifles' or 'weapons with a sporting purpose'; it says 'arms'. So, rather than introducing gun control, why aren't loyal citizens working either for a constitutional amendment to restrict our right to bear arms or for the repeal of laws preventing citizens from owning *chemical, biological and nuclear* weapons? Why are restrictions against flame-throwers, bazookas, and bombs not declared

unconstitutional? Is gun control constitutional? If so, what forms? Apart from its constitutionality, should there be gun control? If so, what forms?

13. The “exclusionary rule” excludes from court proceedings any evidence obtained illegally. If the purpose of a trial is to arrive at the truth and good evidence of the guilt (or innocence) of a person exists, shouldn’t it be used regardless of how it was acquired? Wouldn’t punishing those guilty of illegally acquiring the evidence make more sense than throwing out the evidence?
14. The Fifth Amendment provides citizens with a right not to give evidence against themselves. How can this be justified? Suppose an absolutely reliable lie-detector could be developed or so-called “brain-wave monitoring” becomes feasible. Should a person be allowed to refuse to use it? Why?
15. When, if every, is sex discrimination in the law justified? Consider the following sorts of issues in addressing this question:
  - While there is no mandatory military service now in America, all male U.S. citizens are required to register for the draft. If they do not, they are denied federal funding for education and are subject to punishment. No female U.S. citizens are required to register for the draft.
  - Until recently, many states defined ‘statutory rape’ so that only a female could be a victim of this crime. There is evidence that there is still great disparity in the sentencing of females who perpetrate this crime on young males when compared to the sentencing of males who perpetrate this crime on young girls.
16. Numerous U.S. Supreme Court and appellate court decisions clearly indicate that a parent’s right to custody of his children is a *fundamental constitutional right*. Nevertheless, in courtrooms across America, when two parents divorce, courts routinely deprive one parent of custody of the children. Are parental rights fundamental constitutional rights? What are the implications of determining that a right is a fundamental constitutional right? If parental rights are fundamental constitutional rights, is it constitutionally acceptable for courts routinely to deprive one parent of custody when parents divorce?

