

Student's Name

Instructor's Name

Class

Date

Take-away Exam

Part 1

What is the definition of "philosophy"?

Philosophy refers to a thought regarding the underlying nature of the world, basics of human knowledge, and assessment of human behavior (Blackburn 2).

What is the main idea about the law found in the play Antigone?

The main idea is that good law is more essential than the rules of a man (Sophocles n.p).

What reason does Socrates give to his friend Crito for why it is not just to escape prison, even if you are innocent?

He would be setting a bad example for his children (Plato, 177). He would make himself an outlaw and unwelcome in other states. Phillips (39) states that Crito would be dishonoring laws by escaping.

What are the two definitions of justice found in the Republic?

- Justice entails serving the interests of the stronger.
- A just action entails obeying the laws of a specific state (Sachs 37).

Part II

Question two: Characteristics of Natural Law Theory as understood by both Thomas

Aquinas and John Finnis.

According to Thomas Aquinas, the natural law theory comprises of various forms of law. One of them is an eternal law that indicates the analytical purpose of God and his plan for all things (McInerny 16). Since this law is part of God's plan, it will always exist. Also, this theory states that everything has a purpose and follows a plan. Anything is good as long as it fulfills the intended purpose. The approach emphasizes that we act according to reason by pursuing good and avoiding any form of evil. This should serve as our guiding principles in decision making. Natural law should not create an external set of rules for us to follow. Instead, it establishes standards that rational persons can recognize.

According to John Finnis, Aquinas' views must not be interpreted as a theoretical description of the presence of law (Finnis 9). He states that Aquinas was not disturbed by providing a theoretical description regarding legal rationality (Finnis 9). Instead, he focused on describing the moral force of the law. The primary purpose of the law should be to give validation for state compulsion. The unfair laws may be legitimately binding, but they cannot deliver an equal validation for coercive power, thus, they are not enforceable. There are seven valuable basic things; religion, life, good health, friendship, aesthetic experience, play, and knowledge (Finnis 13). All these goods have an intrinsic value and should be given a human nature. The theoretical fact of law should be providing for a collective good by allowing the imposition of guidelines to solve coordination issues stemming from the fundamental pursuit of the elementary necessities.

Question three. Characteristics of Legal Positivism as understood by each Austin and Hart.

According to Austin, the primary distinctive feature of a legal system is the existence of a sovereign (Coleman 241). Law should be obeyed whether we dislike it or not. The severity of a

susceptible authorization is extraneous. Any general self-governing commands reinforced by a threat or all forms of damage and harm is a law (Coleman 241). Also, the sovereign law-making administration lacks powers of legal limitation.

■ According to Hart, there are three forms of secondary rules, which indicate a shift from simple forms of law to the developed legal structures (Hart 418). They are;

- Rule of recognition - Indicates some ownership structures that a proposed rule is taken as a confirmatory conclusion (Hart 418).
- Rule of change - It enables the society to add, eradicate, or change the rules.
- Rule of adjudication- Offers a tool for evaluating the violation of a valid rule.

Also, there exist two necessary conditions in the functioning of a legal structure. One requirement is that the rule of behavior has to vary within the system's validity criteria (Waluchow 29). The other requirement is the rules of recognition that states the legal validity criteria.

PART III

Question one

In this scenario, a client informs the lawyer about the plan to kill his colleague. Lawyers should maintain the confidentiality of their clients unless there is an imminent risk of death or severe bodily harm. This places the lawyer in a dilemma on whether to break confidentiality or not. The lawyer can use natural law theory and legal positivism to solve the dilemma. The client is putting the life of his coworker at risk by planning to kill him. Under the concepts of the natural law theory, morality should not be subjective (Bix 51). As such, the definition of 'right' and 'wrong' is similar to all persons. Under the concepts of this law, all persons have a right to live their life. The lawyer, in his capacity, should understand that murder deprives the client's colleague of his right to life. It is a right which, when taken away, cannot be given back. The act of taking someone's life works against human purpose to live a good life. Natural law reflects God's grand design. God prohibits any form of murder and underscores significance in human life. Since we are made in the image of God, any murder is a sin. As such, the lawyer should not just let it happen without taking any action. The lawyer should have the capacity to understand principles that guide human conduct. As such, maintaining confidentiality and allowing the client to commit the crime is an unnatural act and contrary to the natural law. Although breaking the confidentiality works against the Law Society of Ontario's Rules of Professional Conduct Code, the client's plans on committing murder work against our human nature.

According to the legal positivism theory, all laws act as an expression of doing whatever an authority deems necessary (Bix 51). As such, the law set in the Law Society of Ontario's Rules of Professional Conduct Code on confidentiality is not an attempt to realize any social goal. Having the legal obligation to maintain secrecy does not mean that the lawyer should

compromise the ethics of life. In order to understand the legal rights, the lawyer should look at what beliefs does the society has. He must do according to what the society deems as right, and in this scenario, the honorable thing would be to disclose the client's secrecy and save the life of the client's colleague. Maintaining confidentiality deprives society of its rights that the true morality says that it should have.

Question 3

In this scenario, the Bill passed by the government of Quebec prohibits public employees from putting on religious symbols while at the place of work. All candidates in the position of the Prime Minister stated that they would not challenge the Bill at the federal level. Nevertheless, it is viewed as unconstitutional and will make a way to the Supreme Court. The natural law theory and the Legal positivism theory can be used to solve the matter at hand.

In this case, public workers should be allowed to exercise their religious rights. According to the natural law theory, things that are not human-made have purposes and functions. Any good for these things translates to the realization of goal and functions. Religious symbols are an act of faith and are a deep-seated conviction. For these workers, wearing these symbols goes to the core of their beliefs. It is a violation of freedom rights and it also takes the state backward regarding the rights of the minorities. The valuable thing among people is obtaining value and living a flourishing life. According to Bix (52), happiness should comprise of the fulfillment of our unique nature. In this case, public workers should be allowed to exercise their religious freedom that will help them fulfill their true nature.

The natural law theory on law states that the legal systems have a mandate to secure just laws (Bix 53). The grossly unjust laws are not laws, but they are merely a perversion of the law. The Bill should not be established to grant people's rights. Instead, it should be set to secure and

ensure that every person exercises his or her rights. It is highly discriminatory and makes it hard for religious minorities to integrate into Quebec society; it unfairly targets the minority.

In his legal positivism theory, Austin states that if something is against the natural law, then it also contradicts with the divine law (Bix 54). These symbols are primarily religious in nature. They were adopted since the spread of Islam, and they are still in use today. This Bill is, therefore, contrary to the divine law and beliefs of the minority groups. It is a negative morality in that it deviates from the practices of divine law. The legal positivism theory also notes that laws should be passed based on society's norms. This Bill does not consider the underlying impacts on minorities. It will make them uncomfortable in the place of work and even attract the attention of their colleagues. Some of them may lack a choice and decide to quit their positions to maintain their religious beliefs.

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Works Cited

- Bix, Brian. "On the dividing line between natural law theory and legal positivism." *Law and Morality*. Routledge, 2017. 49-60.
- Blackburn, Simon. *The Oxford dictionary of philosophy*. OUP Oxford, (2005): 1-495 Coleman, Jules L., and Brian Leiter. "Legal positivism." *A companion to philosophy of law and legal theory* (1996): 241.
- Finnis, John. "Aquinas: moral, political, and legal theory." (1998). 1-13
- Hart, Herbert, LA. "Legal Positivism." *The Encyclopedia of Philosophy* 4 (1967): 418.
- Harte, Verity. "Conflicting values in Plato's Crito." *Archiv für Geschichte der Philosophie* 81.2 (1999): 117-147.
- McInerny, Ralph. *Aquinas on human action: a theory of practice*. Washington, DC: Catholic University of America Press, (1992). 13-27
- Phillips, David. *The Law of Ancient Athens*. University of Michigan Press, (2013): 39-67 Plato and John Burnet. *Plato's Euthyphro, Apology of Socrates and Crito*. Clarendon Press, (1977): 177
- Sachs, David. "A fallacy in Plato's Republic." *Plato: Modern Studies in Philosophy*. New York: Anchor Books 2 (1971): 35-51.
- Sophocles. *Antigone*. ReadHowYouWant.com, 2008.
- Waluchow, Wilfrid J. *Inclusive legal positivism*. Oxford: Clarendon Press, (1994): 1-357