

Phil 116, Final Exam Study Questions

- In the final exam, you will be presented with five of the following passages.
 - You will be asked to select three of those five passages and for each *to explain the role of the passage in the author's overall argument*. This may also require explaining *the passage itself*.
 - The exam is open book, so you may bring readers, handouts, notes, and computers.
 - You may write out answers in advance, if you wish. However, there is no guarantee that any particular passage for which you prepare an answer will appear on the exam. Also, answers written in advance must be under 600 words.
1. Democratic decision-making enables us all to see that we are being treated as equals despite disagreements as long as we take into account the facts of judgment and the interests that accompany them. Because democratic decision-making realizes public equality in this way, and there is pervasive disagreement on its outcomes, it is intrinsically just.
 2. All this seems to leave us in a quandary. An interpretivist approach—at least one that approaches constitutional provisions as self-contained units—proves on analysis incapable of keeping faith with the evident spirit of certain of the provisions. When we search for an external source of values with which to fill in the Constitution's open texture, however—one that will not simply end up constituting the Court a council of legislative revision—we search in vain. Despite the usual assumption that these are the only options, however, they are not, for value imposition is not the only possible response to the realization that we have a Constitution that needs filling in.
 3. We can try if we like to suppress these disagreements, to denigrate the other's views as selfish or irrational and exclude them as far as possible from our politics. But, as I have argued, we can hardly do this in the name of *rights*, if it is part of the idea of rights that a right-bearer is to be respected as a separate moral agent with his own sense of justice. If, on the other hand, we resolve to treat each other's views with respect, if we do not seek to hide the fact of our differences or to suppress dissent, then we have no choice but to adopt procedures for settling political disagreements which do not themselves specify what the outcome is to be. In that sense, politics does leave things up for grabs in a way that is bound to be disconcerting from each individual's point of view.
 4. There are certain harms which, although they would not occur but for certain acts of expression, nonetheless cannot be taken as part of a justification for legal restrictions on these acts. These harms are: (a) harms to certain individuals which consist in their coming to have false beliefs as a result of those acts of expression; (b) harmful consequences of acts performed as a result of those acts of expression, where the connection between the acts of expression and the subsequent harmful acts consists merely in the fact that the act of expression led the agents to believe

(or increased their tendency to believe) these acts to be worth performing.

5. Paternalistic behavior is special because it represents a positive (although often sometimes unconscious or sometimes caring) effort by another to insert her will and have it exert control merely because of its (perhaps only alleged) superiority. As such, it directly expresses insufficient respect for the underlying valuable capacities, powers, and entitlements of the autonomous agent. Those who value equality and autonomy have special reason to resist paternalism toward competent adults.
6. Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a *part-owner* of you; it gives them a property right in you. Just as having such partial control and power of decision, by right, over an animal or inanimate object would be to have a property right in it. End-state and most patterned principles of distributive justice institute (partial) ownership by others of people and their actions and labor. These principles involve a shift from the classical liberals' notion of self-ownership to a notion of (partial) property rights in *other* people.
7. Now both the liberal conception and that of natural aristocracy are unstable. For once we are troubled by the influence of either social contingencies or natural chance on the determination of distributive shares, we are bound, on reflection, to be bothered by the influence of the other. From a moral standpoint the two seem equally arbitrary. So however we move away from the system of natural liberty, we cannot be satisfied short of the democratic conception.
8. *Cases in which punishment must be inefficacious.* These are... Where the penal provision, though it were conveyed to a man's notice, could produce no effect on him, with respect to the preventing him from engaging in any act of the sort in question. Such is the case, 1. In extreme infancy; where a man has not yet attained that state or disposition of mind in which the prospect of evils so distant as those which are held forth by the law, has the effect of influencing his conduct. 2. In insanity; where the person, if he has attained to that disposition, has since been deprived of it through the influence of some permanent though unseen cause.
9. Consider again the case of the Pursuer. Suppose that the person who programmed and implanted the mind-control device—call him the “Initiator”—has suffered an accident and is now bedridden and tethered to a respirator. You go to plead with him only to discover that he is powerless to stop the Pursuer. At that point, you see the approach of the Pursuer, who has followed you to the Initiator's house. You have only two options for saving yourself. One is to shoot the Pursuer as she approaches. The other is to flee in the Initiator's car. This car, however, is battery powered, and the only available battery is the one that is supplying power to the

respirator. In order to flee the Pursuer, you must remove the power supply from the Initiator's respirator, thereby killing him. What ought you to do: allow yourself to be killed; kill the Pursuer, who poses an unjust threat but is not responsible; or kill the Initiator, who now poses no threat but is morally responsible for the threat posed by the Pursuer? It would be permissible for you to allow yourself to be killed, but in the circumstances that is not morally required. The view that asserts the permissibility of defense against unjust threats implies that you may kill the Pursuer but not the Initiator. Intuitively, however, it seems that if you must kill one or the other to save your life, you must kill the Initiator rather than the Pursuer. Because the Initiator is the one who is morally responsible for the fact that someone must die, he should, as a matter of justice, bear the costs of his own voluntary and culpable action.