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CHAPTER 2
JUSTICE AND THE LAW

MULTIPLE CHOICE QUESTIONS

1. According to Aristotle, justice consists of:
a. treating equals equally
b. treating all people equally
c. treating unequals unequally according to relevant differences
*d. a and c only

2. Which type of justice is concerned with how a society's system of law goes about determining guilt or innocence?
*a. procedural retributive
b. procedural distributive
c. substantive retributive
d. substantive distributive

3. Under what system does a convicted person pay a fine equal to a day's pay?
a. procedural
b. distributive
*c. day fine
d. retributive

4. Sentencing guidelines attempt to:
a. treat equals unequally
b. treat all offenders equally in accordance with the law
c. treat unequals equally according to relevant differences
*d. minimize sentencing disparity

5. _____ are a way of numerically defining Aristotle's definition of justice by assigning numbers both to various aspects of the crime and to characteristics of the offender.
*a. sentencing guidelines
b. procedural guidelines
c. distribution guidelines
d. sentencing procedures

6. What is not a theory or philosophy of law but rather the study of legal decision making?
*a. legal realism
b. legal positivism
c. legal evolutionism
d. legal transcendentalism

7. Which U.S. Supreme Court case was the first time that the Court openly acknowledged social science data in rendering its decision?
*a. Muller v. Oregon

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b. Riggs v. Palmer
c. Brown v. Mississippi
d. Nix v. Williams

8. Believers in transcendental natural law believe that natural law
a. is a "law within the law"
b. is universally applicable
c. transcends positive law
*d. all of the above

9. A _____ basically believes that whatever is considered right and proper in any given society is morally right even if outsiders might consider some practices of that society to be morally repugnant.
a. legal positivist
*b. moral relativist
c. moral positivist
d. legal relativist

10. _____ believe in timeless and universalistic natural laws that transcend the legal interests of a particular society at a particular time in history.
*a. transcendentalists
b. relativists
c. positivists
d. evolutionists

11. _____ law not a formal set of statutes or procedures.
a. criminal
*b. natural
c. procedural
d. positivist

12. What type of law has also been used against the idea of the divine right of kings?
a. positivist law
b. procedural law
*c. natural law
d. criminal law

13. What attempts to explain the origins of law and justice with reference to the principles of evolutionary biology?
*a. evolutionary perspective
b. transcendental perspective
c. procedural perspective
d. criminal perspective

14. The evolutionary perspective of natural law proposes that humans are biologically predisposed to make certain choices because:

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a. they reflect cultural norms that have become habitual
b. humans have an innate sense of fairness
*c. those choices promoted survival and reproductive success of our distant ancestors
d. scientists have found what might be characterized as “justice genes”

15. According to the evolutionary perspective, _____ is probably also the basis for the desire for revenge.
a. criminal procedure
b. evolution
*c. moral outrage
d. morality

16. For the evolutionary perspective, moral outrage buttressed by retaliatory action is a plausible candidate as the basis of:
a. counterproductiveness and antisocial behavior
*b. our sense of justice
c. all behavior, whether moral or immoral
d. less-desirable human attributes

17. The evolutionary perspective posits a moral _____, which implies generality but recognizes the possibility of exceptions rather than the absolutism of the transcendental perspective.
a. altruism
b. conviction
*c. universality
d. outrage

18. Law and justice:
a. are identical
b. are both abstractions
*c. can be in accordance with one another
d. can never be in accordance with one another in a formal-rational legal system

19. _____ principles are heavily used in family and contract law since they allow judges to fashion necessary remedies not readily apparent from a reading of legal statutes.
a. justice
b. legal
c. morality
*d. equity

20. The early equity courts were known as:
a. equity courts
*b. chancery courts
c. justice courts
d. courts of common pleas

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21. Perhaps the best example of a specific attempt to "naturalize" elements of the law was Raffaele Garofalo's formulation of a _____ definition of crime.
a. positivistic
*b. natural
c. violent
d. street

22. According to Raffaele Garofalo, an act should be considered a crime only if it was:
a. mala prohibita
b. made wrong by positive law
*c. universally condemned
d. all of the above

23. Which type of crimes are considered wrong only because they have been made wrong by positive law?
a. the worst of the worst
*b. mala prohibita
c. mala in se
d. universally condemned

24. The idea of the rule of law appears to have originated with:
a. Aristotle
*b. Plato
c. Philip Reichel
d. Thomas Jefferson

25. The rule of _____ has been called the most important legal principle in the world.
a. justice
*b. law
c. legality
d. due process

26. _____ is essentially a set of instructions informing agents of the state how they must proceed in their investigation, arrest, questioning, prosecution, and punishment of individuals who are suspected of committing crimes.
*a. due process
b. crime control
c. criminal law
d. all of the above

27. Which individual wrote a book that constituted an impassioned plea to humanize and rationalize the law and to make punishment more reasonable?
a. Herbert Packer
b. Raffaele Garofalo
c. Thomas Jefferson
*d. Cesare Beccaria

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28. Which of Packer's models of criminal justice asserts that the system should work like an assembly line and appeals should be kept to a minimum?
*a. crime control
b. due process
c. conflict
d. consensus

29. Which of Packer's models of criminal justice can be likened to an obstacle course in which impediments to carrying the accused's case further are encountered at every stage of his or her processing?
a. crime control
*b. due process
c. conflict
d. consensus

30. Which U.S. Supreme Court cases is an example of the excesses of the due process model?
a. Nix v. Williams
*b. Brewer v. Williams
c. Riggs v. Palmer
d. Brown v. Mississippi

TRUE/FALSE QUESTIONS

1. Aristotelian justice is all about compassion and equality. F

2. An Aristotelian would assert that a singer making $10 million a year and contributing nothing to society but entertainment is making his or her money unjustly. F

3. Substantive retributive justice is about how society determines just punishment for the guilty. T

4. Distributive justice is concerned with how a political entity distributes resources to its members. T

5. Procedural retributive justice is about how society determines guilt or innocence. T

6. Most examples of rules that may be defined as natural law rules are found in religious texts such as the Qur'an or the Bible. T

7. Natural law fits Max Weber's formal-rational type of law. F

8. Evolutionary thinkers believe that there are such things as law genes. F

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9. The term *naturalistic fallacy* refers to confusing what is with what ought to be. T

10. Evolutionary theorists assert that behaviors such as deception, aggression, and rape are products of natural selection and are thus natural. T

11. Evolutionary natural law theorists tend to be more absolutist in their thinking about natural law than transcendental natural law theorists. F

12. Law and justice are basically the same thing. F

13. Many decisions in early equity courts violated common law principles. T

14. According to transcendental natural law, humans are assumed to have an innate sense of justice. T

15. A mala prohibita crime is a crime that is inherently evil. F

16. Lettres de cachet were sealed letters ordering an individual's incarceration without charge or trial for anyone who had displeased some high official in France. T

17. The most problematic element of the rule of law is the requirement that a system of procedures to hold the government to its fundamental principles and values should be in place. T

18. The crime control and due process models of criminal justice are entirely separate models. F

19. The crime control model emphasizes community protection. T

20. The due process model is concerned with the efficiency of the legal process. F

21. Assessing different monetary fines for the same traffic offense in Europe is known as the "just desserts model." F

22. Legal realists evaluate law not "as written" but, rather, law "as practiced." T

23. prostitution, gambling, and drug usage are examples of mala in se crimes. F

24. Jus cogens is a fundamental philosophy of legal realism. F

25. *Rigg v. Palmer* was a famous murder case involving natural law. F

26. Cesare Beccaria was most interested in reforming the legal system. T

27. Sir Edmund Coke is known as the father of due process. T

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28. Sentencing guidelines conform to the spirit of Aristotle's definition of justice. T

29. The transcendental natural law perspective is morally absolutist. T

30. Natural law is always considered God-given. F

ESSAY QUESTIONS

1. Compare and contrast distributive and retributive justice. Which is most beneficial in a society?
2. Discuss the differences between transcendental natural law and evolutionary natural law.
3. What is equity and why is it important to law and society?
4. What are Reichel's irreducible elements of the rule of law?
5. Compare and contrast the due process and crime control models of criminal justice.

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