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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 relates to how a political entity such as a nation-state distributes resources to its members?
a. retributive
*b. distributive
c. procedural
d. substantive

3. _____ justice is about rightful, merited, and deserved distribution; it is not about need.
a. retributive
b. repressive
c. procedural
*d. distributive

4. Under _____ justice, two people may have identical needs, but one of them may deserve a much greater portion because of his or her contributions to the community.
a. retributive
*b. distributive
c. repressive
d. procedural

5. _____ governments have long recognized the unjustness of exploitive concentrations of wealth and have taken legislative steps to correct it.
a. libertarian
b. aristocratic
*c. democratic
d. meritocratic

6. 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

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7. Which type of justice is concerned with how a society's system of law goes about determining the proper (just) punishment for the guilty?
a. procedural retributive
b. procedural distributive
*c. substantive retributive
d. substantive distributive

8. Which type of justice involves people getting what they rightly deserve according to their behavior?
a. procedural retributive
b. procedural distributive
*c. substantive retributive
d. substantive distributive

9. 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

10. 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 disparities

11. Which of the following is NOT one of the criteria contained in the prior record section of felony sentencing worksheet?
a. previous probation, parole, or bail violations
b. number of prior felony and misdemeanor offenses
c. whether the defendant previously served prison time
*d. the statutory gravity of the crime

12. What was designed following a two-year study of the sentencing practices of 60 percent of Ohio's felony judges?
a. felony murder statutes
*b. felony sentencing worksheet
c. distributive justice
d. mitigation sentencing grids

13. According to the text, _____ will be more fully realized when we view relevant differences exclusively as differences of conduct, not as differences of ascribed statuses.
a. equality
b. law
c. distribution
*d. justice

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14. Which of the following 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

15. For legal realists, law is _____; that is, law by itself does not fully determine the outcome of a legal action.
a. determinate
*b. indeterminate
c. relative
d. conflicting

16. Judges sitting on appeals courts are frequently subjected to ideological _____, which is if all judges on a panel are of the same political persuasion, their ideology will be enhanced.
a. interpretation
b. dampening
*c. amplification
d. subjectiveness

17. _____ belies the claim that the United States is "a country of law, not men."
*a. legal realism
b. ideological amplification
c. moral relativism
d. moral positivism

18. Philosophers have long contemplated the question of whether _____ laws govern human behavior in the same sense that physical laws govern the physical world.
a. positivist
*b. natural
c. societal
d. evolutionary

19. 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

20. 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

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c. moral positivist
d. legal relativist

21. _____ believe in timeless 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

22. The transcendentalist perspective is that the _____ of law runs downward from some transcendental realm through jurisprudence and education to the individual.
a. is
b. philosophy
c. conflict
*d. ought

23. What literally means "compelling" or "higher" law?
a. caveat cogens
b. jus patriae
c. caveat cogens
*d. jus cogens

24. According to which philosophy did the king's lawmaking powers come from God, so his decisions could no more be questioned than the will of God himself?
a. natural law
*b. divine right of kings
c. legal realism
d. legal naturalism

25. 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

26. According to the evolutionary perspective, law may be considered "_____" because it flows from the evolved nature of Homo sapiens.
a. human
*b. natural
c. positivist
d. criminal

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27. The primary difference between the two natural law positions is that _____ seek empirical support for their views through studying the behavior of human and other social species.
a. positivists
*b. evolutionists
c. realists
d. relativists

28. Which perspective attempts to illustrate why law is necessary by focusing on the evolutionary origins of humanity's more offensive traits?
a. transcendental
b. retributive
*c. evolutionary
d. repressive

29. When evolutionary theorists refer to something as "_____," they do not use the word as a synonym for "good" or "desirable."
*a. natural
b. transcendental
c. retribution
d. revenge

30. According to the _____, what is represents a scientific observation; what ought to be is a moral hope.
a. moral fallacy
*b. naturalistic fallacy
c. transcendent fallacy
d. evolutionary fallacy

31. 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

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

33. There is evidence for _____ from imaging studies showing increased blood flow to areas of the brain that respond to reward when miscreants are punished.
a. crime

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b. crime acceptance
c. altruism
*d. the desire to punish

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

35. The _____ position asserts that the emotional and intellectual equipment for moral outrage has evolved; it does not specify all behaviors that will invoke it.
*a. evolutionary
b. transcendentalism
c. morality
d. justice

36. 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

37. Believers in _____ maintain that the goal of positive law should bring itself into conformity with what is just.
a. transcendentalism
b. legal realism
c. equity
*d. natural law

38. Which of the following refers to remedies for wrongs that were not recognized under English common law?
a. naturalism
b. legal realism
c. jurisprudence
*d. equity

39. The early equity courts were known as:
a. magistrate courts
*b. Courts of Chancery
c. justice courts
d. Courts of Common Pleas

40. The first mention of a Court of Chancery was in _____, during the reign of Edward I.

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a. 1080
b. 1180
*c. 1280
d. 1380

41. The classic American _____ case is Riggs v. Palmer (1889).
a. common law
*b. equity
c. natural law
d. positivist law

42. 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

43. 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

44. Raffaele Garofalo reasoned that an act would be universally condemned if it offended the natural sentiments of _____ (compassion and sympathy).
*a. pity
b. probity
c. integrity
d. honesty

45. Which legal scholar expresses the idea of the rule of law in the phrase "laws change but the Law must remain"?
a. Raffaele Garofalo
*b. Philip Reichel
c. Herbert Packer
d. Sir Edmund Coke

46. The system of procedures to hold the government to its principles is articulated by the concept of:
a. justice
b. law
c. equity
*d. due process

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47. _____ 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

48. _____ is not something a person earns by his or her actions; it is something that is due to everyone, without exception, simply because of their humanity.
a. procedural law
b. crime control
*c. due process
d. all of the above

49. The term "lettres de cachet" means:
a. due process
*b. sealed letters
c. process letters
d. none of the above

50. 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

51. Which of the following individuals was the first person to suggest a series of written procedures for implementing substantive criminal law?
a. Raffaele Garofalo
b. Philip Reichel
c. Herbert Packer
*d. Sir Edward Coke

52. _____ is often called the "father of due process".
*a. Sir Edward Coke
b. John Marshall
c. Cesare Beccaria
d. Raffaele Garofalo

53. Which legal scholar's two models of the criminal justice system provide a framework to explore the relationship between the everyday operation of the criminal justice system and justice itself?
a. Raffaele Garofalo
b. Philip Reichel

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*c. Herbert Packer
d. Sir Edward Coke

54. 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

55. According to the _____ model, swiftness and efficiency demand a well-oiled criminal justice system in which cases are handled informally and uniformly in "assembly-line" fashion.
a. due process
*b. crime control
c. conflict
d. consensus

56. 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 processing?
a. crime control
*b. due process
c. conflict
d. consensus

57. It is probably correct to say that under a _____ model, more innocent people may be convicted.
*a. crime control
b. due process
c. conflict
d. consensus

58. The danger of a runaway _____ model is a return to the days when due process was nonexistent.
a. due process
*b. crime control
c. consensus
d. conflict

59. The United States is characterized as operating with a _____ model and Canada with more of a _____ model.
a. due process; civil libertarian
b. civil libertarian; crime control
c. due process; regulatory
*d. due process; crime control

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60. In which case did the U.S. Supreme Court overturn a conviction, stating that the individual had not waived his right to counsel during questioning and that the officer's "Christian burial speech" constituted custodial interrogation?
a. Nix v. Williams
b. United States v. Leon
*c. Brewer v. Williams
d. Brown v. Mississippi

TRUE/FALSE QUESTIONS

1. Legal realism is defined in Webster's dictionary as "the maintenance or administration of what is just."
a. True
*b. False

2. Procedural justice is about rightful, merited, and deserved distribution; it is not about need.
a. True
*b. False

3. Procedural retributive justice is concerned with how a society's system of law goes about determining guilt or innocence
*a. True
b. False

4. Under the day fine system, a convicted person pay a fine equal to a day's pay.
*a. True
b. False

5. Sentencing guidelines 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. True
b. False

6. The big problem with Aristotle's definition of justice rests with defining what laws are.
a. True
*b. False

7. Legal realists examine how law is actually applied and the implications of that application.
*a. True
b. False

8. Legal realism belies the claim that the United States is "a country of law, not men."
*a. True
b. False

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9. Believers in transcendental natural law believe that natural law may be considered "natural" because it flows from the evolved nature of Homo sapiens.
a. True
*b. False

10. The evolutionary perspective of law is a philosophical position that emphasizes the primacy and superiority of the spiritual over the material.
a. True
*b. False

11. Natural law may be considered "law within the law."
*a. True
b. False

12. Caveat cogens literally means "compelling" or "higher" law.
a. True
*b. False

13. The evolutionary perspective of law attempts to explain the origins of law and justice with reference to the principles of evolutionary biology.
*a. True
b. False

14. The evolutionary perspective argues that humans are biologically predisposed to make certain choices because humans have an innate sense of fairness.
a. True
*b. False

15. According to the naturalistic fallacy, what is represents a scientific observation; what ought to be is a moral hope.
*a. True
b. False

16. As with any universal desire, the desire to punish has a built-in physiological basis.
*a. True
b. False

17. Law and justice are identical.
a. True
*b. False

18. The term equity is derived from the Latin word for "just."
*a. True
b. False

19. The early equity courts were known as Courts of Common Pleas.

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a. True
*b. False

20. The term caveat emptor is Latin for "let the buyer beware."
*a. True
b. False

21. Raffaele Garofalo was satisfied with the positivistic definition of crime ("crime is what the law says it is").
a. True
*b. False

22. According to Raffaele Garofalo, natural crimes are evil in themselves and are called mala in se crimes.
*a. True
b. False

23. The idea of the rule of law appears to have originated with John Locke.
a. True
*b. False

24. 98. The system of procedures to hold the government to its principles is articulated by the concept of:
*a. True
b. False

25. 102. The term "lettres de cachet" means:
a. True
*b. False

26. According to Cesare Beccaria, punishments should only just exceed the level of damage done to society.
*a. True
b. False

27. The due process control model emphasizes community protection and argues that civil liberties can only have real meaning in a safe, well-ordered society.
a. True
*b. False

28. The crime control model can be likened to an obstacle course in which impediments to carrying the accused's case further are encountered at every stage of processing.
a. True
*b. False

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29. The danger of a runaway due process model is that truth and justice get lost in a maze of legal ritualism.
*a. True
b. False

30. The U.S. Supreme Court case of Brewer v. Williams is an example of the excesses of the due process model.
*a. True
b. False

ESSAY QUESTIONS

1. What are sentencing disparities? How are sentencing guidelines related to Aristotle's definition of justice?

2. Provide examples of how judges may use nonlegal reasons in their judicial decisions. Do you feel that these examples are fair or not? Explain your answer.

3. Compare and contrast the transcendental natural law and evolutionary perspectives. Which do you feel better explains where justice comes from? Explain your answer.

4. Explain Raffaele Garofalo's contributions to law and crime. Make sure to provide a discussion of his two types of crimes in your answer.

5. Compare and contrast the due process and crime control models. Provide examples of each of the models in action.

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