

## CHAPTER 1

### ESSAY QUESTIONS

1. What are the key differences between the conflict and consensus models of the law?

#### Consensus

- Views society as basically good, just, and providing equal opportunity for all individuals.
- Emphasizes how society is structured to maintain its stability and views it as an integrated network of institutions (the family, church, school, economy, government) that function to maintain social order and the system as a whole.
- Social stability is achieved through cooperation.
- Specific legal codes are assumed to express compromises between various interest groups.
- The law is obeyed out of respect, not fear.
- If coercion is needed to bolster conscience, it is because the individual, not the law, is flawed.
- Conflicts occur only temporarily.

#### Conflict

- Views society as basically unjust, unequal, and discriminatory.
- People seek to maximize their interests.
- Because resources are limited, conflict is inevitable.
- Law functions to preserve the power of the most exploitive individuals.

2. How can technology affect laws? Use examples to discuss your answer.

- It supplies technical inventions and refinements that change the ways in which criminal investigations are made and the law is applied (examples: fingerprinting, DNA testing, polygraphy, computerized data banks, and closed circuit TV cameras).
- Technological advances in the media may change the intellectual climate in which the legal process is executed (examples: the ability to televise congressional hearings and courtroom dramas, videotapes of police officers beating suspects, etc.)
- New technology presents the law with new conditions with which it must wrestle (example: modern practices such as artificial insemination and surrogate motherhood bring up a multitude of new issues that were never thought about 50 years ago).

3. Choose one “legal thinker” discussed in this chapter and discuss that person’s legal philosophy.

#### The Code of Hammurabi

- The first written legal code
- Governed relationships pertaining to sexual behavior, property rights, theft, and acts of violence.
- The law’s administration was almost exclusively in the hands of the priesthood.
- Used the “eye for an eye, tooth for a tooth” (lex talionis) concept of justice.

#### Plato

- Known for expanding the use of the “Socratic method,” which focuses on dialogue

- Derived the theory of forms, asserting that the objects we perceive through our five senses are corrupt and transitory copies of ultimate and eternal realities of the forms. Therefore, among the imperfect objects we possess is the law.
- Argued that the state was virtuous and superior.
- Asserted that anarchy and chaos would be the inevitable result if law was not present to restrain the insatiable desires of the citizenry.

#### Aristotle

- Pupil of Plato
- Favored an egalitarian system in which the rulers must be subservient to the law.
- Believed the goal of the legislature must be to provide for the greatest happiness of the greatest number.
- Equated law with justice.

#### Thomas Hobbes

- Asserted that in the state of nature, life was “a war of all against all” and was “nasty, brutish, and short.”
- Derived the concept of the social contract in which human beings created a contract with one another to create a state that could protect them from predation and exploitation.
- Was a legal positivist.
- Believed in a strong sovereign in which the sovereign’s subjects are morally obliged to obey because they are parties to the social contract.

#### John Locke

- Held a much more optimistic view of human nature.
- Believed that our minds and personalities are like “blank slates” when we arrive in this world, and what we become and how we behave rests entirely on our past experiences interacting with our present circumstances.
- Human beings enjoyed freedom and independence in the pre-political state of nature, and they do not have to surrender their liberty to live in a political community
- The social contract can be broken by the governed if the state does not maintain its part of the contract.

#### John Rawls

- Compared law to scientific theory.
- In the state of nature (original position), individuals were equal, rational, and self-interested with “a capacity for a sense of justice and for a conception of the good.”
- Prefers equality of outcome over equality of opportunity.
- Asserts that individuals would choose the same liberties and opportunities for everyone if they had to choose behind a “veil of ignorance.”