

First paper

Write a paper no longer than 1800 words, about 5-6 pages, on one of the topics below. Please turn your paper in to my box in 208 Pearsons by 1:15 pm on Thursday, March 6.

1. Fuller holds that Hart faces a dilemma: he can have either his criticism of Austin's command theory or he can have the separation of law and morality, but he cannot have both (p. 638-9). Explain Fuller's point. How would Hart respond in his own defense? How would you resolve the dispute? Are legal obligations one category of moral obligation or are they different?
2. Hart argues against following the post-war German courts in holding that evil rules cannot be laws. If we did so, he claims, we would confuse "one of the most powerful ... forms of moral criticism," "that laws may be law but too evil to be obeyed" (p. 620). But according to Fuller, "matters certainly would not have been helped if, instead of saying, 'This is not law,' they had said, 'this is law but it is so evil we will refuse to apply it'" (p. 655). Explain these points, giving the strongest case you can make for each side. Then explain what you think. How do you resolve the dispute?
3. In order to show how theories of what the law is matter, Fuller presents a hypothetical case, the Speluncean Explorers, and five opinions from an imagined final court of appeals. How would you resolve this case? Every possible resolution has some objections. Explain the ones that you regard as the most powerful. How do you answer them? You may defend one of the justice's opinions against the objections raised by the other justices or you may offer a view entirely of your own making.

