

First paper topics

Write a paper no longer than 1800 words, about 5-6 pages, on one of the following topics. Please turn your paper in to my box in Pearsons Hall *and* to the dropbox on Sakai by 10 am on Friday, March 8 (the syllabus says March 4; it is incorrect).

1. The post-war German courts held that an apparent law that is “contrary to the sound conscience and sense of justice of all decent human beings” is not a genuine law (Hart, p. 619). Hart thought this was a mistake because it threatened to undermine “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’” (Fuller, p. 655). Explain these points. What do you think is the strongest case that can be made for Hart’s side? What is the strongest case that can be made for Fuller’s? Then explain what you think. How do you resolve the dispute?
2. Fuller presents a hypothetical case, the Speluncean Explorers, and five opinions from an imagined final court of appeals. The point of the imaginative exercise is to show how philosophies of law might matter to a real case. 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 what you regard as the most compelling objections raised by the other justices or you may offer a view entirely of your own making.

