Texas State University
School of Criminal Justice
Ph.D. Comprehensive Exam for Law & Ethics
November 11, 2013
9 a.m. to 11:00 a.m.

DIRECTIONS: Choose Option One or Option Two.

Save two electronic copies of your answer (one with just your ID number assigned to you, the other with your ID number and name). Email both copies to Cybele Hinson <ch56@txstate.edu>; print out a hard copy as well with both your ID number and name written on it.

Option 1
Discuss United States v. Jones (2012) and explain the rationale, precedent (past cases), and progeny (current or upcoming cases that will utilize the same line of reasoning). Discuss whether the court’s decision is consistent with natural law. Is it consistent with legal positivism? (Make sure you thoroughly describe these philosophies in your explanation as to whether or not the law is consistent with them). Discuss whether the court’s decision is consistent with utilitarianism and explain why [again, part of this answer is a complete and comprehensive description of utilitarianism]. Identify and explain another ethical system that is the most consistent with the court’s position regarding the issues in this case (not utilitarianism).

Option 2.

A case is before the Louisiana Supreme Court challenging the Louisiana law that bars felons from owning or being in possession of firearms. The case turns on a constitutional amendment that 75% of voters approved last year to make gun ownership a "fundamental" right.

The Louisiana state constitutional amendment added these words to the state Constitution: "The right of individuals to acquire, keep, possess, transport, carry, transfer, and use arms for defense of life and liberty, and for all other legitimate purposes, is fundamental and shall not be denied or infringed, and any restriction on this right must be subjected to strict scrutiny."

Before the amendment, the state’s gun control laws were scrutinized under "rational review," a lower standard that gave the state the right to regulate gun ownership. "Strict scrutiny" is a much higher standard. Attorneys for a probationer who was convicted of the state’s gun law prohibiting felons from owning or possessing firearms argue that the state has not met the burden of strict scrutiny in that the law bars all felons without distinction of violence or other criteria. Opponents of the constitutional amendment argue that making gun ownership a “fundamental” right means that all probationers and parolees should have the right to own or possess a gun.

Present either one side or the other of this case using appropriate case law and public policy arguments to support your position [this would look like a written argument for or against the position that the law prohibiting all felons from owning or possessing firearms was unconstitutional]. Now present the Louisiana Supreme Court’s probable holding and rationale [this would read as a Court holding]. Because
an accepted part of the rationale for any law is to protect society’s morality, provide an ethical justification as well in your “court’s holding” using one of the ethical systems we have covered. Then explain whether or not your court holding is consistent with a) natural law, b) positivism, c) legal realism, or d) critical legal theory [meaning explain whether it is or isn’t for each one of these and why].