I.A. Feminist Critique of Law & Economics

___ 10 general tenets of L & E (original understanding, not parroting notes):
assumptions, rational actors, self-interest, individual defines measure of utility, resource allocation,
wealth maximization, efficiency, cost-benefit analysis, normative/positive

___ 10 feminist critique of rationality: irrational behavior and bias exist; discrimination is rational,
Epstein; women are compelled to act for others (dominance theory) or perhaps conditioned or choose
to act altruistically and care for others (special treatment theory); is rational decision making implicitly
masculine?

___ 10 L & E presumes individual is focus; feminist theory believes community or collective should be
the focus; self-interest tends to create hierarchy; is self-focus a masculine construct of autonomy?

___ 10 L & E overlooks gender: the ways social forces construct economic situations; assumptions of
equality are flawed (women are devalued, have different incentives and bargaining abilities). Ayres,
Landes & Posner

___ 10 assumption of perfect information: power disparities = information disparities; men have greater
access to information because of power and domination of market

___ 5 free market isn't free or equal: male-dominated laws limit choices and create market valuation
biases

___ 5 if wealth maximization is principal goal, this will disadvantage women because the existing
distribution of resources is unequal

___ 5 special treatment: women need special compensation for nurturing roles that are not valued
economically

___ 5 dominance theorists would argue that L & E assumptions just rationalize the domination of
women, assign blame to women (as independent self-responsible economic actors) for their
marginalized situations

___ 5 cultural feminists would critique L & E for not recognizing differences

___ 10 application of feminist theory (and understanding differences among theorists) tied to critique of
L & E
I. Feminist Version of Law & Economics

Instead of theorizing that maximizing individual utility maximizes social welfare, feminist L & E might maximize the collective directly (e.g., pro-family employment policies or using the theory to reveal social injustices, Ayres).

Increase empirical accuracy if assumptions reflect reality (people aren't rational, not all have access to information); ensure, rather than assume, access to information.

L & E model assumes equality of actors, which is a good objective (say the equal treatment theorists); include multiple perspectives in the definition (does self-interest promote this goal?)

L & E focus on economic efficiency should be turned toward other goals, such as nurture and caring.

Suggested changes in laws to create communal responsibility (e.g., if we tailor laws to allow efficiency breaches, why not recognize emotional harms, relational interests, or contract benefits for marriage).

Change theory to recognize social construction of choices.

Innovative arguments.

Total 150

II. Required Pro Bono

Raymore (J.R.) Natural Law

Application of natural law tenets (scientific and religious bases; do the right thing; law and morality tied).

Pro bono is the right thing for the public good; law schools must teach practice skills and commitment to community; law schools already teach ethics in P.R. and J.

Students must go beyond doing what they are told, Milgram experiments.

Model Rule 6.1 reflects transcendent values of service and community; network of 104 law schools working with 4,000 organizations.
Heart (J.H.) Positivism

___ 10 application of general tenets: law is rules, command of sovereign; separation of law and morality, Hart, Dworkin

___ 10 this proposal tries to impose morality; law schools should teach what the law is; only 30 law schools require pro bono

___ 10 should not create new laws to tinker with morality; rules should not be based on normative assumptions

___ 10 Model Rules are just rules of a professional organization, not a sovereign; Model Rule 6.1 just says "should" render pro bono assistance; although Supreme Court has held them constitutional, no requirements that law schools must adopt them; no AALS Rule mentioned

Tushman Critical Legal Studies

___ 10 application of CRT tenets: ideology - law influences ways of envisioning society; indeterminacy - why this standard?; alienation if good deeds are compelled

___ 5 tension for Tushman, since crits generally like collective responsibility and public good

___ 10 required pro bono would be repressively tolerant, a patch kit that might stifle more fundamental reform; law generally retains the status quo; is this just political flash?

___ 10 what effects would the requirement have on students: economic, psychological, pedagogical; class effects of the rule - free labor from a disempowered group

___ 10 good deeds and good ideas can't be legislated: this would be the bureaucratic enforcement of philanthropy; this is top down administration or prescribed relationships, Gabel (choose 1 of 4,000 volunteer-ready projects; required number of hours might be perceived as a ceiling)

___ 20 dialogue among the theorists; innovative arguments or presentation; thoroughness

___ 10 specific factual analysis of the problem; avoidance of a generalized high-level theory discussion

___ Total 150

___ 10 style and quality of writing, composition, grammar

___ 10 overall typos and proofreading