

**AMERICAN LEGAL HISTORY**  
**SPRING 1998**  
Prof. Ariens

**FINAL EXAMINATION**

**QUESTION I**

“Whether the debate is between liberalism and republicanism, or between individualism and socialism, both law and legal thought swings in a pendulum-like motion, from the excesses of one to the excesses of the other. The difficulty is finding a way to reduce (or eliminate) this movement, a difficulty that may be impossible to accomplish.” Discuss.

**QUESTION II**

“Advocates of legal realism claimed their understanding of law was superior to legal formalism because they were ‘realistic’ in understanding the nonrational aspect of judging by human beings. Formalists only thought of law as involving legal principles and rational analysis; realists wanted everyone to know that law involves human beings, and that ‘legal principles’ often arise out of such decisions. It was only realistic, the realists claimed, to accept that judges make decisions based on human emotions and feelings, and that the path of the law was determined by these emotive decisions by judges. This factual claim (*i.e.*, that’s what judges *do*) was later turned into a normative claim: Judges *should* make decisions based on their emotions and feelings. Because judges made law, realists made them the center of the legal universe. What the realists failed to understand, as a matter of human psychology, was that human beings want to make decisions that are satisfying both emotionally and logically. By denigrating the existence of universal values, realists undercut the justifications judges could use to claim that their decisions were both emotionally and logically acceptable, which made legal realism untenable as a continuing philosophy of law.” Discuss.

**END OF EXAM**