

ST. MARY'S UNIVERSITY SCHOOL OF LAW

AMERICAN LEGAL HISTORY

Professor Michael Ariens

FINAL EXAMINATION

SUMMER 1995

INSTRUCTIONS

1. This examination consists of one (1) page, excluding this page, and two (2) equally weighted questions. Please write your examination number on your bluebook immediately.
2. This examination must be completed within three (3) hours. If you do not hand in the examination when the proctor informs you that the examination period is completed, the proctor has my permission to leave without collecting your examination, in which case you will receive a failing grade.
3. If you identify yourself in any way in your examination, you will receive a failing grade, and you will be in violation of the Code of Student Conduct.
4. You may use your assigned or recommended texts, your notes, any outline and any other materials you believe may be helpful, except things that make noise. You must use black or blue ink when writing your answers, and your answers must be contained in one (1) sixteen (16) page bluebook, which will be provided to you at the examination. You may write on every line on one side of the page, or every other line on both sides of the page.
5. At the end of the examination, please return your bluebook and this cover page, both signed with your secret number, to the proctor. You may keep your examination if you wish.

I HAVE NEITHER GIVEN NOR RECEIVED UNAUTHORIZED AID IN TAKING THIS EXAMINATION, NOR HAVE I SEEN ANYONE ELSE DO SO.

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QUESTION I

“In one guise or another, the history of American law is a history of the battle between the competing ideas of individual freedom and societal duty, for law is the expression of both individual freedom and societal duty, and the struggle between these competing ideas is thus in large part a struggle for control of law.” Discuss.

QUESTION II

In a 1991 book, Professor Bruce Ackerman suggested that there are two kinds of constitutional lawmaking—regular constitutional law, and transformative constitutional politics. The former is the year in and year out decisionmaking of the Court. The latter is decisionmaking by the People, and in Ackerman’s view this has occurred only three times in American history—at the Founding, Reconstruction and the New Deal. Discuss whether Ackerman’s division of constitutional law into two types makes sense, and discuss whether Reconstruction or the New Deal were more important as transformative moments in constitutional history. (You are to discuss the impact of those two events because without the Founding in 1787, American constitutional government and American constitutionalism would be a very different thing.)

END OF EXAM