ST. MARY'S UNIVERSITY SCHOOL OF LAW

AMERICAN LEGAL HISTORY **FINAL EXAMINATION**
Professor Michael Ariens SPRING 2004

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 I inform you that the examination period is completed, I will leave without collecting your examination, and 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. This is an open book exam. 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 is provided to you. You may write on every line on one side of the page, or every other line on both sides of the page. If you are typing this examination on a computer or otherwise, you are limited to no more than 2750 words, which is about four (4) single-spaced typed pages. Include a word count if you type.

5. At the end of the examination, please return your bluebook and this cover page, both signed with your secret number. 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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FINAL EXAMINATION

QUESTION I

"The Constitutional Revolution of 1937 is better understood not as the end of formalism in jurisprudence, or even the end of the *laissez-faire* state, but as ushering in the end of a consensus about how law is understood and made (or found). The Supreme Court since 1937 has failed to reach a consensus on how it is that judges 'do' law. Hugo Black retreated to the text, Felix Frankfurter turned to history, Benjamin Cardozo sought refuge in societal consensus, William O. Douglas used more abstract 'principles' to decide cases, and Earl Warren looked to his particular understanding of fairness to shape the meaning of the Constitution. Thus, the Court is unable to articulate a guide by which society should judge the lawfulness of the Court's action, making it more easy to accuse the Court of 'playing politics.'" Discuss.

QUESTION II

"When assessing the goals of the legal process or reasoned elaboration school of jurisprudence in the era following World War II, one is constantly amazed at its congruence with the grand theory ideas expressed before the Civil War, most notably by Joseph Story. Both Story and legal process scholars such as Henry Hart believed the law should be based on and drawn from general principles rooted in reason, practice, and social needs; society needed clear and specific rules of law; and the federal courts were essential instruments of American government and should be used to advance and institutionalize what they regarded as a broader national viewpoint. Both were anti-formalist in that sense, and critical of much of dual federalism. And, of course, both Story and Hart taught at the Harvard Law School, which they saw as an institution training a national legal elite whose graduates would implement those jurisprudential views. Interestingly, then, both types of jurisprudential thinking faded because they failed to appreciate both the populist tendency in law and law making, and the limits of reason itself, particularly when faced with difficult, even transforming issues of power and morality." Discuss.

END OF EXAMINATION