

AMERICAN LEGAL HISTORY  
L6213  
Final Examination – December 2005  
Professor Eben Moglen

This examination consists of 3 pages.  
Please check *now* to see that your copy of  
the examination is not missing any pages.

IF YOU ARE A CANDIDATE FOR GRADUATION IN JANUARY 2006, WRITE  
ON THE TOP OF YOUR FIRST PAGE “CANDIDATE FOR GRADUATION, JAN-  
UARY 2006.”

This examination contains three essay questions. You are required to  
write on any *two*. In order to ensure general adherence to reasonable limits  
on time and quantity, the following restrictions apply:

- Total working time is not to exceed 12 hours.
- No more than 6 hours is to be spent on any single essay.
- No essay is to exceed 1,500 words (six double-spaced typewritten  
pages, or the longhand equivalent).

Each of the following questions can be excellently answered in an essay  
referring only to the assigned reading and the substance of lectures. Other  
research is *not* categorically forbidden, but anyone incorporating the fruits of  
such research in an essay will be held to a higher standard of factual accuracy  
and comprehensiveness. In short, additional research is discouraged.

Submission of essays will be deemed to be a pledge that you have adhered  
to the stated time restrictions. Any essay which exceeds the space limitation  
may be rejected *in toto*. We all do better by avoiding arms races. Write  
well, and don't worry.

Question I

“The geographic expansion of the United States in the first three quarters of the nineteenth century would have been unsustainable, like the conquest empires of central Asia—or the Spanish Empire in the western hemisphere—had it not been for the flexibility of the legal system carried by that expansion. Neither so parochial in focus as to preclude the development of an expansive unitary market, nor so centralized as to instigate inevitable uprisings, the legal arrangements of the United States facilitated the “release of energy” more effectively than any less balanced, or perhaps less inchoate, approach could have done. And even so, the one element that could not be finessed, namely the institution of chattel slavery, nearly destroyed all the rest.”

Discuss, with specific reference to private law doctrines of contract, tort and property.

Question II

“The primary missing element in almost all of American law before 1933 is ‘environmental regulation,’ broadly defined. This is not to say that keeping pigs from running in the streets was unheard of, but rather that the use of law to subsidize development and release entrepreneurial energy was seen as a far more valuable application than the restraint of energy counterproductively employed. By the time Americans realized the law’s function in restraining as well as nourishing private power, the concentration of private power in the economy was extremely hard to dislodge.”

Discuss.

Question III

“When John Randolph of Roanoke said ‘I am a Virginian: I love liberty and hate equality,’ he might as well have expanded the geographical epithet. Eagerness to embrace the conception and the consequences of liberty is as profound a motif in explaining the development of American law as the absence of concern with, or outright hostility to, the conception and the consequences of equality.”

Comment, with specific attention to public law development in the period from 1791 to 1865, or alternatively from 1850 to 1954.

END OF EXAMINATION