

# UNIVERSITY OF MIAMI SCHOOL OF LAW

Spring 2020

U.S. CONSTITUTIONAL LAW II

PROFESSOR D. MARVIN JONES

## First Class Assignment

The textbook we will be using this semester will be **Stone, Seidman, Sunstein, Tushnet, and Karlan, Constitutional Law (8<sup>th</sup> Edition 2017)**. This includes a 2019 Supplement. Unless otherwise stated, all assignments refer to the text and/or supplement. The text and supplement are published by Wolters, Kluwer.

### ASSIGNMENT FOR FIRST CLASS:

For your first assignment, pick one of the questions listed below and write a reflection paper. A reflection paper must explain what the issue is, what the competing principles or policies are, and how you think the case or issue should be resolved. The format could be that of a court opinion, in which you take the role of a judge, or, if you choose, a lawyer writing an editorial for a newspaper, or a scholar writing an abstract on the topic involved. Reflection papers may be from 300 to 1,000 words. The reflection papers must be typed and double-spaced. Standard citation practices apply. Because the essays are very short, you need not restate the facts nor focus on procedural issues. Your job is to frame the issues substantively, distill the competing principles, and succinctly state your position. Students may only write on one of these questions.

Please be sure to print and hand in your reflection paper to Professor Jones on the first day of class, Tuesday, January 14<sup>th</sup>.

#### Question 1

The original Constitution contains several clauses which recognized the legitimacy of slavery or protected the “property rights” of slave masters to their slaves.

Question: Would you sign the original Constitution?

In answering this question, discuss the dichotomy of law v. morality, or natural law v. positive law, or competing theories of interpretation (or a combination of all three).

Required Reading:

*State v. Post*, pgs. 467-470 in text

## Suggested Readings:

D. Robinson, *SLAVERY AND THE STRUCTURE OF AMERICAN POLITICS, 1765-1820* (1971)

Thurgood Marshall, *Commentary: Reflections on the Bicentennial of the United States Constitution*, 101 Harv. Law Review 1 (1987)

Stanford Levinson, *The Constitution in Perspective- Pledging Faith in the Civil Religion; Or, Would You Sign the Constitution?* 29, William and Mary L. Rev. 113 (1987)

## Question 2

In the Declaration of Independence Thomas Jefferson writes, “All men are created equal...” Three later Presidents - Lincoln, Kennedy, and Johnson invoked “equality” as a guiding norm of our democracy in a time of crisis. But what is equality? Is it captured by the phrase “equal opportunity?” Or does it require something more? Do blacks have substantive, moral claims against the state (i.e. a right to affirmative action) based on their unique, history and experience? Do Native Americans, women, or other groups have competing similar claims?

Assignment: Write an essay reflecting on the meaning of equal protection.

Required Reading:  
Pgs. 573-604 in text

## Suggested Readings:

*Narrowly Tailored but Broadly Compelling: Defending Race-Conscious Admissions After Fisher*, 45 Seton Hall L. Rev. 761 (2015)

S. Cashin, *PLACE, NOT RACE: A NEW VISION OF OPPORTUNITY IN AMERICA* (2014)

## Question 3

Study the case of *Snyder v. Phelps*, 131 S. Ct. 1207 (2011). What should the Court have said? Write a concurring or dissenting opinion.

## Suggested Reading:

Steven J. Heyman, *To Drink the Cup of Fury: Funeral Picketing, Public Discourse, and the First Amendment*, 45 Conn. L. Rev. 101 (2012)

Rosalie Berger Levinson, *Targeted Hate Speech and the First Amendment: How the Supreme Court Should Have Decided Snyder*, 46 Suffolk U. L. Rev. 45 (2013)

I look forward to seeing all of you in class!