

PHI243/POL312 - PHILOSOPHY OF LAW/JURISPRUDENCE

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GRADED ASSIGNMENT #2 - DUE FEB 23, 2015

Writing guidelines: For the purpose of this assignment, I want you to write a coherent 5 page essay that critically engages with a court opinion and that shows rigorous thinking. You should address all (or most of) the questions in one of the two prompts below. If you prefer to focus on a certain subset of questions, however, feel free to do so.

Your claims must be carefully argued and your reasoning must be spelled out clearly, precisely and explicitly. Whenever you attribute a certain statement or argument to a court opinion, you should support your attributions by citing relevant excerpts of the opinion, with page numbers.

Please do one of the following.

Prompt 1: In her dissent in *DeBoer v. Snyder* (2014), Judge Daughtrey writes:

the majority sets up a false premise—that the question before us is “who should decide?”—and leads us through a largely irrelevant discourse on democracy and federalism (p. 43).

Compose a carefully argued 5 page essay that addresses the following:

- (a) Why does Daughtrey think that the question “who should decide?” is irrelevant? What question does she think is relevant? What is her argument for giving priority to one question rather than another?
- (b) How does Daughtrey respond to the majority’s arguments based on (i) original meaning, (ii) rational basis and (iii) fundamental rights?
- (c) In light of (a) and (b), which side has the stronger argument? Please explain why.

Prompt 2: The majority in *Tennessee Valley Authority v. Hill* (1978) argues that the meaning of ESA is rather unequivocal and that ESA mandates that the construction of the dam be halted *whatever the costs*. In his dissent, however, Justice Powell argues that the meaning of ESA is far from clear. Compose a carefully argued 5 page essay that addresses the following:

- (a) Which interpretative principles are the Justices adopting? Is the majority using interpretative principles different from the principles used by the dissenting Justices? (An interpretative principle could be “the law should be interpreted as to avoid unreasonable outcomes”, “the law should be interpreted literally” etc.)
- (b) What are the Justices disagreeing about? Are they disagreeing about the most adequate principles of legal interpretation in the instant case? Or are they disagreeing about something else, e.g. the value of the snail darter, the costs of halting the construction of the dam, etc. ?
- (c) In light of (a) and (b), which side has the stronger argument? Please explain why.