

**Université PANTHÉON - ASSAS (PARIS II) MELUN**

**Droit - Economie - Sciences Sociales**

<b>Session :</b>	Janvier 2017
<b>Année d'étude :</b>	Deuxième année de Licence Droit
<b>Discipline :</b>	<b><i>Anglais juridique</i></b>
<b>Examen :</b>	Premier semestre (UEC1 7031)
<b>Durée :</b>	1h30
<b>Titulaires du cours :</b>	Ms. Brown, Ms. Cingal, Mr. Huet, Mr. Lecocq

**Les documents et les appareils électroniques ne sont pas autorisés.**

**Exercices can be done in any order.**

**I. Complete the following sentences, adding between 10 and 25 words. Do not start a new sentence. (20 points)**

1. Since *Marbury v. Madison*..
2. Article I, section 8...
3. Besides being part of the executive branch...
4. In diversity of citizenship cases ...
5. Despite a presidential veto...

**II. Choose ONE of the following topics and write an essay in approximately 250 words (+/- 10%). (50 points)**

1/ Comment on the following quotation by James Madison: "*In framing a government which is to be administered by men over men you must first enable the government to control the governed; and in the next place oblige it to control itself.*"

2/ / How much power do the states have in the federal system of government?

**III. Read the following document and answer each of the questions below. (approximately ten lines/100 words for each question). Use your own words. DO NOT QUOTE DIRECTLY FROM THE TEXT. (30 points)**

### **At Last, A Supreme Court That Does Less**

Cass R. Sunstein, *The Wall Street Journal*, June 3, 2016

Many observers, especially Democrats, have deplored the fact that the Supreme Court is now sitting with just eight justices, thanks to the partisan standoff over replacing the late Antonin Scalia. But the current situation has had an unexpected consequence: a significant increase in judicial “minimalism” and a big decrease in grand, far-reaching rulings. Both Democrats and Republicans should be celebrating—and hoping that the court continues to embrace the minimalist approach to constitutional law after the current vacancy is filled.

Chief Justice John Roberts has long championed what he calls “the cardinal principle of judicial restraint—if it is not necessary to decide more, it is necessary not to decide more.” That simple principle contains two different ideas.

The first is that decisions should be narrow rather than wide. If the court is asked to strike down an affirmative-action program, it should focus on that program, not on affirmative action in general. This holds as well for abortion, national-security surveillance and presidential powers: Decide the case at hand and leave other problems for other occasions.

The second idea is that decisions should be shallow rather than deep. In a free-speech case, for example, minimalists believe that the court should avoid the most controversial claims about the foundations of liberty. Instead it should seek rulings that can command support from people who have different views on the deepest questions. The justices might agree that the government may not regulate speech unless it poses a clear and present danger, but that view could be rooted in distrust of public officials, respect for human dignity or belief in the marketplace of ideas—and there is no need for them to pick a preferred theoretical foundation.

Narrow and shallow rulings reflect one virtue above all: humility. Minimalist judges know that there is a lot that they don’t know. Life is full of surprises, and a far-reaching ruling might turn out to be a big fat blunder. Equally important, minimalist rulings have the advantage of keeping things open for debate, above all by We the People. On issues such as gun control, religious freedom and campaign finance, that is a major benefit.

On the right and the left, of course, many people favor big, heroic rulings. Seeing the justices as Jedi knights, restoring peace and justice to the galaxy, they want them to strike down Obamacare, restrictions on commercial advertising and affirmative-action programs—or (from the other side of the aisle) to create constitutional rights to decent housing and clean air and to place new restrictions on the police.

Minimalist judges reject constitutional heroism in all its forms. If society is going to take bold steps backward or forward, they think that it should be because of democratic choices, not judicial fiat. [...]

This term’s minimalism might just be a blip, but I have a prediction: The more the justices practice minimalism, the more they are going to like it. Consensus-seeking is habit-forming, because congeniality builds on itself. Don’t be surprised if we continue to see more narrow, shallow rulings—and a reduced presence for the Supreme Court in American life.

*Mr. Sunstein is the Robert Walmsley University Professor at Harvard Law School and the author of “The World According to Star Wars.”*

### **QUESTIONS**

1. How does Cass Sunstein define judicial minimalism?
2. What arguments does he put forward to support the minimalist approach?
3. Do you agree with Sunstein that minimalism is better for the US Supreme Court?