

Lesson 38: *The Federal Judiciary*

(Less. Time 44:57)

[for Sunday, November 15, 2015]

Reading: *The Making of America*, pages 569-581

(Chapter 23) *The Federal Judiciary*

Pre-lesson questions for homework study and review: [*Supplemental* notes are bracketed]

[287 Constitution Provisions “principles” in text.]

1. WHY DID THE FOUNDERS CONSIDER GOVERNMENT A "FEARFUL MASTER"? (PAGE 570)

[It is a conglomerate of humans who have the propensity to increase their power – both of evil and right natured men both.]

2. WHAT ARE THE "CHAINS OF THE CONSTITUTION"? (570)

The Chains of the Constitution

- o Assign only limited powers
- o Separate the powers
- o Check and Balances
- o Written Constitution
- o Set up a guardian
 - Jefferson — all 3 branches & people
 - John Marshall = Fed Judiciary

3. DESCRIBE THE EVOLUTION OF THE SUPREME COURT'S POWER OF 'JUDICIAL REVIEW.'" (571)

Supreme Court Evolves as Guardian

- o Chief Justice John Marshall [every student studies this case to start]
 - Marbury vs. Madison
 - claimed “Judicial Review”
 - implied in supremacy clause
 - measure laws against Constitution

4. WHAT MAJOR PROBLEM HAS DEVELOPED IN CONNECTION WITH THE FEDERAL JUDICIARY?

Major Weakness

- o What if Supreme Court imposes Its will on the nation?
- o Remedy?
 - appoint new ones
 - restrict jurisdiction

DO THE CHECKS AND BALANCES PROVIDED IN THE CONSTITUTION ADDRESS THIS PROBLEM?

(571-72)

- impeachment [not easily done, no real remedy–Jefferson]

5. WHAT DID THOMAS JEFFERSON AND JOHN MARSHALL HAVE IN COMMON?

Marshall vs. Jefferson

- o Both Men:
 - cousins
 - trained by George Wythe
 - loved Constitution

- considered people source of authority
- gov to protect rights of people

HOW DID THEIR VIEWS DIFFER WITH REGARD TO THE POWER OF THE FEDERAL JUDICIARY? (572-73)

- o Jefferson felt strong gov was threat (quotes)
- o Marshall felt someone had to [ultimately] uniformly interpret Constitution
 - brought questions of law to a final decision

6. WHAT WERE JEFFERSON'S OBJECTIONS TO GIVING JUDGES THE FINAL WORD ON CONSTITUTIONAL QUESTIONS? (573-74)

- finally won out

7. EXPLAIN WHY JOHN MARSHALL'S VIEWS EVENTUALLY PREVAILED. (574-75)

- "Supremacy" "binding clause" "judicial power"

8. ON WHAT BASIS SHOULD JUDGES INTERPRET THE CONSTITUTION? (575-76)

How to Interpret the Constitution?

- o Meaning at the time of adoption (3 quotes)

9. ACCORDING TO JEFFERSON, WHAT MAY CAUSE THE EVENTUAL DISSOLUTION OF THE FEDERAL GOVERNMENT? (576-77)

- o Jefferson foresees dissolution (quote)
 - "the germ of the dissolution of the government is in the federal judiciary"

10. DESCRIBE HOW CRIMINAL JUSTICE HAS BEEN NATIONALIZED IN THE UNITED STATES.

Nationalizing Criminal Justice [1925]

- o SC ruled Bill of Rights prohibitions applied to states

DOES THIS VIOLATE THE FOUNDERS' INTENT? (577)

- o Civil rights cases transferred to Fed Govt [bad decision, long term Fed power grab!]

11. SHOULD THERE BE CONSTITUTIONAL QUALIFICATIONS FOR SUPREME COURT JUSTICES? (577)
[most assuredly, but there is not]

Qualifications for Supreme Court

- o none!

- o 1954-1969 – No judge had prior substantive judicial experience! (Warren Court)

12. DESCRIBE THE HISTORICAL STAGES THROUGH WHICH THE SUPREME COURT HAS PASSED SINCE 1789. (578)

Four stages of Judicial Rule

- o 1st – "national supremacy"
 - Judges used Federalist papers and word of founders
- o 2nd – 1835- 1895 relied on constitutional theories
- o 3rd – "Judicial Supremacy" – the Constitution is what the judges say it is (quote, p 578)
- o 4th – out of control stage

13. THE ROLE OF THE FEDERAL JUDICIARY WAS ALREADY A SIGNIFICANT ISSUE IN JEFFERSON'S DAY. o Remedy?

WHAT WAS HIS CONSTITUTIONAL PROPOSAL FOR SOLVING THE JUDICIAL CRISIS? (579)

- o The Jefferson Amendment | - Congress can overturn Supreme Court by 2/3 vote

14. GIVE A QUICK SUMMARY OF THE OPERATIONS OF THE SUPREME COURT TODAY. (579-81) *

Lesson 38: *The Federal Judiciary*

(Less. Time 44:57)

[for Sunday, November 15, 2015]

Reading: *The Making of America*, pages 569-581

(Chapter 23) The Federal Judiciary

QUIZ - LESSON 38

1. LIST THREE CONSTITUTIONAL CONCEPTS WHICH JEFFERSON CALLED "CHAINS OF THE CONSTITUTION. "

2. IMPLIED IN THE "SUPREMACY CLAUSE" IS THE CONCEPT THAT A WATCHMAN OR

_____ WOULD BE NECESSARY TO SEE THAT CONSTITUTIONAL PROVISIONS ARE STRICTLY ENFORCED.

3. THOMAS JEFFERSON FELT THIS ROLE SHOULD BE FILLED BY THE _____. WHY WOULD THIS BE CUMBERSOME? _____

4. JEFFERSON'S COUSIN, _____, FELT THIS ROLE SHOULD BE FILLED BY THE FEDERAL COURTS. HE SO DECLARED IN THE CASE OF _____ VS. _____. THIS CONCEPT IS CALLED _____

5. GIVE THE MEANING OF THIS CONCEPT. _____

6. WHAT MAJOR WEAKNESS EXISTS IN MARSHALL'S CONCEPT? _____

7. WHERE DID THE FOUNDERS SAY TO LOOK FOR A CORRECT INTERPRETATION OF THE CONSTITUTION? _____

8. JEFFERSON WARNED THE "GERM OF DISSOLUTION OF OUR FEDERAL GOVERNMENT" IS IN THE MAKE-UP OF THE FEDERAL _____.

9. THE SUPREME COURT HAS PASSED THROUGH FOUR STAGES OF DEVELOPMENT. THE FIRST IS THE _____ PERIOD, DURING WHICH THE JUDGES USED WHAT

AS THEIR GUIDE TO CONSTITUTIONAL INTERPRETATION? _____

10. THE SECOND PERIOD WAS FROM _____ TO _____ (GIVE YEARS)

WHEN THE JUDGES SELDOM

11. DURING THE THIRD PERIOD THE COURT REPLACED THE CONCEPT OF CONSTITUTIONAL SUPREMACY WITH " _____ SUPREMACY" . THE JUDGES SAID THE CONSTITUTION IS

12. THE FOURTH PERIOD OF TODAY IS WHERE THE JUDICIARY IS VIRTUALLY _____

13. THE WORST TIME IN JUDICIAL HISTORY IS THE PERIOD KNOWN AS THE _____
COURT. FOR SEVERAL YEARS NOT ONE JUDGE ON THE SUPREME COURT HAD ANY PRIOR
_____ EXPERIENCES.

14. GIVE TWO EXAMPLES OF "JUDICIAL LEGISLATION" WHICH CAME FROM THIS PERIOD.

15. LONG AGO, JEFFERSON NOT ONLY WARNED OF THIS TREND BUT ALSO SUGGESTED A REMEDY KNOWN AS THE JEFFERSON AMENDMENT. WHAT WAS IT?

QUICK SUMMARY OF THE OPERATIONS OF THE SC: [#14 Pre-lesson notes:]

2 biweekly intervals: oral arguments then ruling & Decisions | Then 2 week recess to have private office with law clerks to review ponder and evaluate assigned petitions.

Calendar: late October – June

Each Wednesday or Friday: Justices meet to decide which cases will be heard. Must have at least 6 SC judges (a quorum) to decide laws. 4 votes to approve petition for review. Briefs submitted then. ½ hour presentations strictly timed. 1 hour for more critical cases. 5 votes required to pass. 4=tied vote/ lower case ruling stands for *that case*, but case “open-ended” for future in a tie vote of justices. Only 5% of cases permitted “oral” presentations before justices.