

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 It’s 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) *

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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

