American Constitutional Law Introductory Essays and Selected Cases 17th edition Mason Test Bank

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TWO

The Constitution, the Supreme Court, and Judicial Review

Multiple Choice

1. In *Federalist*, No. 78, _____ argued that the judiciary would be the "least dangerous branch."
    a. James Madison
    b. John Jay
    c. Benjamin Franklin
    *d. Alexander Hamilton

2. Who won the case of *Marbury* v. *Madison*?
    a. Alexander Hamilton
    b. John Marshall
    c. William Marbury
    *d. James Madison

3. In *Scott* v. *Sandford*, on what part of the Constitution did Chief Justice Taney rely in invalidating the Missouri Compromise? _____
    a. Article I
    b. Article IV
    c. First Amendment
    *d. Fifth Amendment

4. Who wrote the opinion of the Court in Ex parte *McCardle*? _____
    a. Justice Grier
    b. Chief Justice Marshall
    c. Chief Justice Taney
    *d. Chief Justice Chase

5. William McCardle was a _____.
    a. federal judge
    b. a Supreme Court justice
    c. an ex-Confederate general
    *d. a newspaper editor

6. Section 5 of the Fourteenth Amendment grants Congress the authority to legislate in the field of _____.
    a. eminent domain
    b. criminal law

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*c. civil rights
d. international relations

7. *City of Boerne v. Flores* concerned _____.
a. criminal justice
*b. the Religious Freedom Restoration Act
c. highway construction
d. the right to vote

8. Robert Yates was _____.
a. signer of the Declaration of independence
*b. author of the Letters of Brutus
c. Alexander Hamilton's uncle
d. a Virginian

9. Robert Yates believed _____.
*a. that the Supreme Court would practice judicial review
b. that the Constitution protected the rights of the states
c. that the meaning of the Constitution was fixed
d. that judges could be trusted to decide cases correctly

10. John Marshall was named Chief Justice by _____.
a. George Washington
*b. John Adams
c. Thomas Jefferson
d. James Madison

Essay Questions

1. Define the power of judicial review as exercised by courts in the United States.

2. Explain and evaluate Chief Justice Marshall's reasoning in support of the Supreme Court's assumption of the power of judicial review in *Marbury* v. *Madison* (1803). Focus not on the facts of the case, but rather on the assumption of judicial review (both in this case and in principle).

3. Summarize the major points in Justice Gibson's critique of Chief Justice Marshall's position in *Eakin* v. *Raub* (1825).

4. Aside from the basic arguments, explore the implications of judicial review as a major component of American government.

5. What are the advantages and disadvantages of a reliance on judicial review? Support your conclusions.

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6. On what basis did Justice Gibson believe that *state* courts were authorized by the U.S. Constitution to exercise judicial review?

7. Among the several approaches to constitutional interpretation, which ones were used in *Scott* v. *Sandford*? Explain.

8. Among the several approaches to constitutional interpretation, which ones were used in *Marbury* v. *Madison*? Explain.

9. It is commonly agreed that three questions were embedded within the Dred Scott Case (1857) when it reached the Supreme Court. Had the majority confined its attention to only two of these questions, the Court could have decided the case without reaching what proved to be the most explosive question that the case placed on the table. Explain.

10. Identify and explain the two strongest arguments you believe Chief Justice Marshall makes in *Marbury* v. *Madison* (1803) in defense of judicial review. Then, identify and explain two counter arguments advanced in *Eakin* v. *Raub* (1825) by Justice Gibson against those points in his critique of Marshall's position.

11. *Marbury* v. *Madison* and *Scott* v. *Sandford*, separated by 54 years, were the first and second occasions when the Supreme Court invalidated an act of Congress. In the opinion of many constitutional scholars, the *Dred Scott* decision seems to signify or embody a significant expansion of judicial review, when compared to *Marbury*. Do you agree? Support your answer with at least three points.

12. In the "Letters of Brutus," New York's Robert Yates laid out his views on what could be expected from the proposed Supreme Court of the United States that would become part of the new national government if the Constitution were ratified. In what way or ways were Yates's views confirmed by the Supreme Court's decision in *Chisholm* v. *Georgia* (1793) and *Marbury* v. *Madison* (1803) and in the circumstances surrounding those cases? In what way or ways were Yates's views refuted by those decisions and in the circumstances surrounding those cases?

13. From 1803 until 1857, *Marbury* v. *Madison* (1803) and *Scott* v. *Sandford* (1857) were the only instances in which the Supreme Court invalidated an act of Congress. Yet, as examples of judicial review, the two decisions appear vastly different. Identify and explain two ways in which this might be so.

14. According to John Marshall in *Marbury* v. *Madison* (1803), to deny the Supreme Court the power of judicial review "would subvert the very foundation of all written constitutions …" and "reduce to nothing what we have deemed the greatest improvement on political institutions, a written constitution." What point is Marshall making here in defense of judicial review? Explain.

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15. What does Pennsylvania's Justice Gibson in *Eakin* v. *Raub* (1825) offer by way of rebuttal for this part of Marshall's *Marbury* opinion? Explain.

    a. Justice James Wilson's opinion in *Chisholm* v. *Georgia* (1793) describes the case as one "of uncommon magnitude." What gave to the case its "uncommon magnitude"? Discuss.

    b. Would the Court's decision in *Chisholm* have surprised New York's Judge Robert Yates? Why?

16. The introductory essay for Chapter Two contains a section that discusses "Approaches to Constitutional Interpretation." The section presents four such approaches. What are these four approaches? Explain how each one is illustrated by a Supreme Court opinion (majority, dissenting or concurring) that has been assigned thus far in the course.

17. Chief Justice Marshall's opinion in *Marbury* v. *Madison* contains the following two sentences: "The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it." Discuss.

18. Any prospective Supreme Court justice testifying before the Senate Judiciary Committee will profess an intention to "interpret the Constitution" if confirmed. A revealing follow-up question would be to ask the nominee what precisely is meant by "the Constitution." Drawing examples from three cases you have studied in this course, write an essay illustrating how justices may differ over "the Constitution" that is being interpreted. Your examples should illuminate at least three different understandings of what "the Constitution" may be.

19. In *Ashwander* v. *TVA* (1936), Justice Brandeis listed a series of restrictions that, historically, the Supreme Court has imposed on itself to avoid confronting issues unnecessarily and to avoid injecting itself unnecessarily in political controversy. The fourth such limitation on Brandeis's list advises: "If possible, the Court will dispose of a case on nonconstitutional grounds." Discuss *Scott* v. *Sandford* (1857) in light of Brandeis's later admonition.

20. In *Eakin* v. *Raub* (1825), Justice John Bannister Gibson of the Supreme Court of Pennsylvania wrote what many regard as the most effective rebuttal to Chief Justice John Marshall's defense of judicial review in *Marbury* v. *Madison* (1803). Identify, explain, and assess three of the points Gibson makes against Marshall's position.

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21. Supreme Court opinions in constitutional cases vary considerably in their use of, and reliance upon, the text (i.e., the words) of the Constitution. Sometimes, the text seems to be very important in the resolution of the case, while at other times the text seems to play a minor role or is nearly invisible. From the cases assigned for reading thus far in the course, select two that demonstrate this variance: One case where an opinion (majority or separate) seems largely "text-driven" and another case where an opinion (majority or separate) does not. In an essay, demonstrate how the presence or absence of "text" tends to shape the result advocated by each opinion. (You may also use a single case for this essay, if the variance is demonstrated by different opinions in the same case.)

22. Imagine that you are one of Chief Justice John Marshall's colleagues on the United States Supreme Court in 1803. In conference Marshall's explains how *Marbury* v. *Madison* should be decided. You disagree. "Perhaps section 13 of the 1789 Judiciary Act is not in accordance with the Constitution," you say, "but in any event I do not believe that this Court has the authority to invalidate an act of Congress. We've never done that." A week later, Marshall shows you his opinion of the Court in *Marbury*, and you decide to write a dissenting opinion. What do you say in response to what Marshall has written?

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