

The Judicial Branch

Explain the principle of judicial review and how it checks the power of other institutions and state governments.

1. In Federalist 78 Alexander Hamilton wrote, "Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them."

What is the main idea of this passage?

- a. The separation of powers divides authority equally
- b. The Congress is the most powerful branch
- c. The Courts will be the least dangerous branch
- d. The President will have supreme power over the courts

2. Alexis de Tocqueville in the 1830s wrote, "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." What was he trying to say?

- a. As a nation of law, the courts ultimately settle our most important issues
- b. The courts determine the essential political questions that we get to vote on
- c. Political questions are rare because we live in fear of litigation and court action
- d. Judges should not be settling our political questions

3. Judicial review was established in the case

- a. Marbury v. Madison (1803)
- b. Fletcher v. Peck (1810)
- c. McCulloch v. Maryland (1819)
- d. Gibbons v. Ogden (1824)

4. Which of the following scenarios provides the best example of the Court practicing judicial review?

- a. The Court applied the privileges of the Fourth Amendment to the states
- b. The Court broadly interpreted the latest environmental protection laws
- c. The Court struck down a corporate bid to buy the public park
- d. The Court ruled the president's application of war powers unconstitutional

5. In the case McCulloch v. Maryland (1819) the court extended the supremacy of the United States government by recognizing the authority of Congress'

- a. Power to check the president
- b. Legislative veto power
- c. Power to declare war
- d. Necessary and proper clause

6. The U.S. Supreme Court cannot whimsically decide which cases to hear. All cases before the federal judiciary must have standing. What does this mean?

- a. Personal injury must be shown
- b. A constitutional question is at stake
- c. Public opinion must support case
- d. A majority of the states endorse the Court hearing

7. Which of the following Supreme Court cases provided the seminal interpretation for the following language found in the U.S. Constitution?

“This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.”

U.S. Constitution Article 6, Section 2

- a. Marbury v. Madison (1803)
- b. McCulloch v. Maryland (1819)
- c. Gibbons v. Ogden (1824)
- d. Barron v. Baltimore (1833)

8. Read the Court excerpt below and answer the questions that follow:

“Two years ago, in *District of Columbia v. Heller*, 554 U. S. ____ (2008), we held that Second Amendment protects the right to keep and bear arms for the purpose of self-defense, and we struck down a District of Columbia law that banned the possession of handguns in the home. The city of Chicago (City) and the village of Oak Park, a Chicago suburb, have laws that are similar to the District of Columbia’s, but Chicago and Oak Park argue that their laws are constitutional because the Second Amendment has no application to the States. We have previously held that most of the provisions of the Bill of Rights apply with full force to both the Federal Government and the States. Applying the standard that is well established in our case law, we hold that the Second Amendment right is fully applicable to the States.”

Excerpted from Justice Alito’s Court opinion in McDonald v. Chicago (2010)

By applying the Second Amendment to the States the Court was practicing

- a. Selective incorporation
- b. Separation of powers
- c. Checks and Balances
- d. Equal protection

9. Which of the following government principles is most evident in Justice Alito’s opinion above

- a. Reserved powers
- b. Civil rights
- c. Free Speech
- d. National supremacy
- e. Separation of powers

10. An important pillar of our court system is the use of legal precedent. Which of the following scenarios provides an example?

- a. The Court bases its decisions on the letter of the law
- b. The Court bases its decisions on previous court decisions
- c. The Court bases its decisions on the written opinions of judges
- d. Our judges are appointed for life rather than being elected

11. In Latin our word for precedent literally means, “Let the decision stand.” The Latin word for precedent is

- a. Ad hominem
- b. Amicus curiae
- c. Obiter dictum
- d. Stare decisis

12. The use of precedent in the American legal system is loosely based upon

- a. The dialogues of Plato
- b. Roman juries
- c. English common law
- d. Mayflower Compact

13. Which of the following would be an example of the court using *stare decisis*?

- a. Because of the *Brown* decision all schools must be integrated
- b. Because of the *Gideon* decision the court would consider your right to an attorney
- c. Because of the *Gitlow* decision free speech will be applied case by case
- d. *Gitlow v. New York* was a narrowly held decision.

Critical Thinking Prompt: Investigate the frequency of the Court’s use of judicial review. Can judicial review be checked? Explain. Has the Supreme Court become the most dangerous branch?