

American Government: Readings and Cases
CHAPTER 9: The Judiciary

Reading 64: Alexander Hamilton, Federalist 78

1. Hamilton points out that the judicial department of government is the least to be feared in terms of its capability to exercise significant political power. He argues that the executive and legislature are far more powerful policymaking bodies. Why do you feel Hamilton was so careful to point out the relative impotence of the judiciary?

2. What was Hamilton's position regarding the power of the judiciary to declare legislative acts contrary to the Constitution void?

3. Why does Hamilton consider the independence of the judiciary to be a vital component of constitutional government?

4. What arguments does Hamilton advance for establishing permanency of judicial offices?

5. How do the authors of The Federalist explain the different terms of office for the House and the Senate?

Reading 65: Marbury v. Madison, 5 U.S. 137 (1803)

1. Chief Justice Marshall recognized that all three branches of the government take oaths to uphold the Constitution. Why, then, did he feel that it is the responsibility of the courts to determine ultimately whether or not a law is unconstitutional when it is challenged in a case and controversy?

2. Why, according to Marshall, is the Constitution superior to any ordinary act of the legislature?

Reading 66: John P. Roche, Judicial Self-Restraint

1. Why does Roche state that it is naive to assert that the Supreme Court is limited by the Constitution?
2. To what extent has the judiciary been limited as the result of political demands to curb judicial discretion?
3. What are the two major techniques of judicial self-restraint?
4. Why has the Supreme Court been able to exercise such broad-ranging policymaking powers in the American political system?

Reading 69: William J. Brennan, Jr., How the Supreme Court Arrives at Decisions

1. Evaluate Justice Brennan's statement that the Court is not a council of Platonic guardians, nor involved in making social, political, economic, or philosophical decisions, these insofar as they concern government at all being properly the function of the people's elected representatives. The justices are charged with deciding according to law
2. How does a case get docketed with the Supreme Court?
3. Do you feel that the procedures of the Supreme Court described by Justice Brennan are adequate for the Court to meet its vast responsibilities?
4. Should officials be subject to mandates and instructions from the populace?

