

Name _____
Social Security Number _____
Political Science 520, Winter 2006

Professor Caldeira

AMERICAN CONSTITUTIONAL LAW AND POLITICS

Midterm Examination

Multiple Choice: Please write your name and social security number at the top of the page. Choose the best answer. Read questions and answers carefully; often your options vary subtly

1. In *Eakin v. Raub*, Justice Gibson of the Pennsylvania Supreme Court:
 - a. declared that each branch of government should be the authoritative interpreter of its own part of the constitution
 - b. prohibited slavery in the state
 - c. argued that the state supreme courts should be able to interpret how the Federal Constitution applies to the states
 - d. upheld a carriage tax, implying the right of courts to review statutes
2. The Ashwander rules are:
 - a. the formal rules established for structuring an opinion
 - b. the internal rules governing the Conference as written by Chief Justice Ashwander
 - c. rules of decorum established by the Court in the 1800s
 - d. informal rules set by Justice Brandeis for when and how far to go in deciding cases.
3. The major difference between “originalism” and “literalism” is:
 - a. the first looks to the intent of the Framers and the second looks to words of the Constitution.
 - b. nothing, they are different names for the same general approach to deciding cases
 - c. the first allows for contemporary interpretation and the other doesn't allow for any interpretation
 - d. the second has been ruled as an inappropriate decision rule
4. Which of the following cases gives an example of the balancing approach?
 - a. *Marbury v. Madison*
 - b. *Barenblatt v. United States*
 - c. *Baker v. Carr*
 - d. *South Carolina v. Katzenbach*
5. The case of *Luther v. Borden* decided that:
 - a. The Court can overrule Congress's declaration of war
 - b. Congress can amend the Court's appellate jurisdiction
 - c. The President can dismiss a first class postmaster

- d. The Court cannot review a President's decision in recognizing a state government as legitimate
6. Which case firmly established the ability of the Court to hear appeals from state courts when a federal question is involved:
- Ex Parte McCardle
 - Hylton v. U.S.
 - Cohens v. Virginia
 - Martin v. Hunter's Lessee
7. In 1962 the Court decided Baker v. Carr. It:
- dismissed the case because it was moot and clarified what mootness means
 - redefined the political question doctrine in regard to justiciability
 - determined that a case must be ripe before it can be decided
 - dismissed the case for lack of standing
8. In Ex Parte McCardle, the Supreme Court held that:
- Congress could repeal an act providing for the writ of habeas corpus because the writ was part of due process of law.
 - Congress could repeal an act providing for the writ of habeas corpus, but could not make the repeal retroactive and affect cases in progress without violating the ex post facto clause of the Constitution.
 - Congress could not repeal an act providing for the writ of habeas corpus.
 - Congress could repeal an act providing for the writ of habeas corpus, and it could remove a case from the Court's appellate jurisdiction even after it had begun.
9. In Marbury v. Madison, the Court held that:
- a writ of mandamus could not be issued by the Supreme Court because in this case it would be an exercise of original jurisdiction not granted by the Constitution.
 - federal courts could grant only those writs listed in the Constitution and Congress could not authorize the federal courts to grant any other writs.
 - The Supreme Court could not grant the writ of mandamus, because such a writ had not been specifically granted by Congress.
 - a writ of mandamus could not be issued by the Supreme Court because it would be an exercise of appellate jurisdiction not granted by the Constitution.
10. How many justices are there on the current Supreme Court?
- 7.
 - 5.
 - 9.
 - 11.

11. In *Flast v. Cohen*, Chief Justice Warren held that:
 - a. a federal taxpayer's lawsuit could now be entertained (federal taxpayers would have standing) if the litigant could show that s/he was a federal taxpayer and that the legislation in question was passed pursuant to Congress's Article I power to tax and spend.
 - b. *Frothingham v. Mellon* was decided wrongly, and hence should be overruled.
 - c. federal taxpayers must show how the legislation in question violates some clear and specific constitutional prohibition before they will be granted standing to sue.
 - d. a and c.

12. Of the following powers, which is NOT one delegated to Congress in Article I, Section 8 of the Constitution:
 - a. to lay and collect taxes
 - b. provide for the common defense
 - c. borrow money on credit of United States
 - d. to protect health, safety, and welfare
 - e. to control the issuance of patents and copyrights

13. Which of the following is no longer a viable way to reach the Supreme Court:
 - a. writ of error
 - b. writ of appeal
 - c. writ of certiorari
 - d. none of the above; all are still legitimate and in use.

14. All of the following but one has been noted as a reason for granting a writ of certiorari:
 - a. U.S. as a petitioning party
 - b. conflict in the courts below
 - c. In forma pauperis brief filed
 - d. Novelty or importance of the issue raised.

15. In *Marbury v. Madison* (1803), the parts of Chief Justice Marshall's opinion for the Court that examined whether Marbury had a right to the commission for the office of justice of the peace are:
 - a. the foundation of the power of judicial review.
 - b. obiter dicta (i.e., not required for the decision)
 - c. examples of judicial restraint.
 - d. the source of the reasoning for the later case of *McCulloch v. Maryland*

16. The decision in *Baker v. Carr* (1962) found that reapportionment cases were justiciable under the _____ of the Fourteenth Amendment. This was a change from the rulings in *Luther v. Borden* (1849) and *Colegrove v. Green* (1948), which had found reapportionment cases brought under the _____ of Article IV to be nonjusticiable as political questions.

- a. Equal Protection Clause; Guarantee Clause.
 - b. Equal Protection Clause; Full Faith and Credit Clause.
 - c. Due Process Clause; Full Faith and Credit Clause.
 - d. Due Process Clause; Guarantee Clause.
17. These days, most cases come to the Supreme Court via a petition for a:
 - a. writ of certiorari.
 - b. writ of appeal.
 - c. grant of original jurisdiction.
 - d. writ of error.
18. The concurrence of Justice Brandeis in *Ashwander v. Tennessee Valley Authority* (1936) set out guidelines (the Ashwander "Rules") to describe the appropriate contours of:
 - a. recusal.
 - b. justiciability.
 - c. judicial self-restraint.
 - d. decorum.
19. Advocates for the use of the doctrine of original intent argue that it would produce:
 - a. uniformly conservative principles of law
 - b. uniformly liberal principles of law
 - c. uniformly activist principles of law
 - d. uniformly neutral principles of law.
20. The rule of stare decisis calls for judges to:
 - a. abide by, or adhere to, decided cases
 - b. look intently at lower court decisions
 - c. make no decision
 - d. find the case moot
21. In *Martin v. Hunter's Lessee* (1816), the Court:
 - a. asserted its power to review congressional statutes
 - b. asserted its power to review state court decisions
 - c. asserted its power to review executive orders
 - d. none of the above.
22. The power of Congress to remove the jurisdiction of the Supreme Court over a particular category of cases was affirmed in the case of:
 - a. *Martin v. Hunter's Lessee* (1816)
 - b. *Barenblatt v. United States* (1959)
 - c. *Ex parte McCordle* (1869)
 - d. none of the above.
23. "Ripeness" is one concept used by the Court to:
 - a. evaluate the justiciability of a case

- b. evaluate the mootness of a case
 - c. determine whether or not the political question doctrine applies
 - d. evaluate standing in a case.
24. The case of *Luther v. Borden* decided that:
- a. The Court can overrule Congress's declaration of war
 - b. Congress can amend the Court's appellate jurisdiction
 - c. The President can dismiss a 1st class postmaster general
 - d. The Court cannot review a President's decision in regard to recognizing state governments as legitimate
25. In *Flast v. Cohen* (1968), the Court expanded the status of taxpayers in the federal courts in terms of:
- a. personal exemptions
 - b. standing
 - c. mootness
 - d. justiciability
26. The Court's ruling in *Powell v. McCormack* (1969) makes clear that the qualifications for holding office in Congress are:
- a. limited to those enumerated in the Constitution
 - b. subject to change via the implied powers of Congress
 - c. subject to change via the inherent powers of Congress
 - d. can only be changed by the respective state legislatures
27. Chief Justice Marshall stated in *Marbury v. Madison*:
- a. Marbury had no legal right to the commission
 - b. Marbury's commission was legal because it was delivered
 - c. Marbury's commission became valid after it was sealed
 - d. The issue of Marbury's commission was not within the Court's appellate jurisdiction
28. The Court in *Marbury v. Madison* held that:
- a. Marbury had a right to his commission, the law afforded him a remedy, his remedy was a writ of mandamus, and it should issue to Madison.
 - b. Marbury did not have a right to his commission, since Madison had not delivered it.
 - c. Marbury had a right to his commission, the law afforded him a remedy, his remedy was a writ of mandamus, but Congress in providing this remedy had added to the Court's original jurisdiction, which was defined exclusively in Article III.
 - d. Marbury had a right to his commission, the law afforded him a remedy, his remedy was a writ of error, but Congress had in providing this remedy had added to the Court's original jurisdiction, which was defined exclusively in Article III
29. The "rule of four" in the Court means that:

- a. Four or more justices can form an Opinion of the Court.
 - b. Capital punishment cases can be overturned by four of the nine justices,.
 - c. Four justices present and voting are required for a quorum
 - d. Four or more justices can force the Court to hear a case via a writ of certiorari.
30. Which of the following kinds of cases is most likely a “political question” and thus non-justiciable?
- a. Legislative reapportionments of state senates
 - b. Declarations of the beginnings and ends of hostilities
 - c. gerrymandering of legislative districts
 - d. Presidential claims of executive privilege
31. A law withdrawing the Supreme Court’s appellate jurisdiction on a particular subject would be:
- a. Constitutional, because Congress is free to determine the Court’s appellate jurisdiction by statute
 - b. Unconstitutional, because the Court’s appellate jurisdiction is spelled out in the Constitution and may not be altered
 - c. Unconstitutional, because once the Court has properly exercised jurisdiction, Congress may not remove the jurisdiction, except with a constitutional amendment
 - d. Constitutional, because Congress may determine the Court’s entire jurisdiction by statute
32. Consider this lawsuit. You and your landlord, both residents of Columbus, have a dispute over the requirements of your lease, a matter under the law of contracts. You could take this lawsuit to:
- a. A federal court
 - b. A state court
 - c. Either a state or federal court
 - d. Only a state small claims suit
33. Consider another lawsuit--actually, a real one. A diplomat from the nation of Georgia, in a drunken stupor, drives his automobile and kills a pedestrian. The family of the pedestrian could bring suit in which of the following courts:
- a. Federal courts
 - b. State courts
 - c. Either federal or state courts
 - d. Neither federal nor state courts
34. You are a professional baseball player. You believe the owners have conspired among themselves to hold down your salary. Major league headquarters is in New York. You live in New York. You file a suit based on the Sherman Anti-Trust Act, passed by Congress in the late 1880s. You could bring your suit in:

- a. State court
 - b. Federal court
 - c. Either state or federal court
 - d. None of the above
35. Of the following, which is not a current justice on the Supreme Court:
- a. Antonin Scalia
 - b. Clarence Thomas
 - c. Earl Warren
 - d. Samuel Alito
36. How might Congress reverse a ruling of the Supreme Court on the meaning of the Constitution?
- a. Order the Court to rehear arguments in the hope that enough justices will see the light and vote differently the next time around
 - b. Declare all seats on the Supreme Court vacant in the hope that a new set of justices will decide differently in some future case
 - c. Pass a law setting the decision aside and replacing it with a congressional interpretation of the Constitution
 - d. Submit a constitutional amendment reversing the statute to the states.
37. Of the following, which is the most important power of the Supreme Court:
- a. To issue writs of mandamus to federal and state officials
 - b. To establish procedural rule for the federal courts
 - c. To conduct constitutional review of legislative enactments and executive actions
 - d. To try the President for “high crimes and misdemeanors”
38. The chief consideration(s) in evaluating the jurisdiction of the Court as set out in Article III of the Constitution and spelled out in detail in the federal code is (are):
- a. The nature of the controversy
 - b. The status of the parties
 - c. The nature of the controversy and status of the parties
 - d. Whether the issue raised is a “political question”
39. Article III provides that the Supreme Court shall have “original jurisdiction” in which of the following sorts of cases:
- a. When foreign diplomats or states are involved
 - b. If the United States Constitution is challenged
 - c. If an individual attempts to sue the head of a cabinet-level department
 - d. When an individual challenges a state law
40. In *Frothingham v. Mellon* (1924), the Supreme Court:
- a. Refused to decide the case because the litigant was a federal taxpayer and thus lacked standing
 - b. Dismissed the case as a political question

- c. Noted jurisdiction; taxpayers can establish standing to sue under certain circumstances
 - d. Noted jurisdiction; Frothingham had made a claim based on the Bill of Rights
41. The best description of Justice Black's mode of interpreting the Constitution is:
- a. balancing of interests
 - b. The "Palko Doctrine"
 - c. Absolutism or literalism
 - d. Selective incorporation.
42. The best description of Justice Frankfurter's mode of interpreting the Constitution is:
- a. Total incorporation
 - b. Balancing of interests
 - c. Absolutism
 - d. Originalism
43. Of the constitutional powers of Congress, we may properly say that:
- a. Article I, Section 8, summarizes all of them
 - b. Article I, Section 8, and Article III collect all of them
 - c. They appear not only in Article I but also in other articles
 - d. They limit Congress's power to the explicit words of the Constitution
44. How did the Supreme Court respond when President Washington asked for its views on a constitutional question:
- a. It handed down a decision in which it refused and ordered the President to get out of town by sundown
 - b. It refused to answer the question but gave no reason
 - c. It refused to answer the question, on the ground that foreign policy (the area in which Washington asked the question) involves a political, not a legal, issue
 - d. It refused to answer the questions, because the Constitution requires the Court to decide actual cases and controversies, not to provide advisory opinions.
45. Of all of the cases brought to the Supreme Court--including paid and IFP cases--about what percentage do the justices accept for a full review in a term these days? (Take the proportion closest to the correct answer.)
- a. 20 percent
 - b. 15 percent
 - c. 5 percent
 - d. 12 percent
46. The United States Courts of Appeals sit in panels. With the exception of decisions en banc, how many judges sit on each panel:
- a. 5

- b. 7
 - c. 3
 - d. It depends on the importance of the case
47. Under the jurisdiction of the Supreme Court, the granting of a writ of certiorari is:
- a. Obligatory
 - b. Discretionary
 - c. Either a or b
 - d. Neither a nor b
48. Under the jurisdiction of the Supreme Court, jurisdiction on a writ of appeal is:
- a. Obligatory
 - b. Discretionary
 - c. Either a or b
 - d. Neither a nor b
49. Of the following statements about the law of standing, which is correct:
- a. The Burger Court continued the Warren Court's expansion of access to those who would traditionally not have had standing to sue
 - b. The Burger Court did not continue the Warren Court's expansion of access to non-traditional litigants
 - c. The Rehnquist Court, after a pause during the Burger Court, has once again began to expand access to the federal courts
 - d. The Warren Court took a narrow view of standing to sue in a federal court.
50. To have "standing to sue," an individual or organization must:
- a. Demonstrate direct injury
 - b. Allege a violation of the Constitution
 - c. Need not show a direct injury if the alleged violation contravenes a fundamental right
 - d. Show diversity of citizenship
51. A writ of certiorari is:
- a. An order in which the Court directs that the record in a case be delivered up from the lower court
 - b. An order to a public official to take a particular action
 - c. An order to the lower court to take an action
 - d. An order to a prison warden to bring a prisoner into a federal court to demonstrate that he is not holding the prisoner in violation of the Constitution or federal laws
52. In *Eakin v. Raub*, Justice Gibson of the Pennsylvania Supreme Court argued that:
- a. Courts have the power to review actions of coordinate branches of

- government
- b. The legislature has no power to regulate the appellate jurisdiction of the courts
 - c. Courts should not invalidate the actions of co-equal branches of government
 - d. The issue posed there was a “political question” and therefore not within the subject matter of the court.
53. Of the following, which is *not* an argument in support of judicial review made by Chief Justice Marshall in *Marbury v. Madison*:
- a. Justices take an oath of office to defend the Constitution
 - b. The Constitution provides for judicial review
 - c. Judges have greater expertise than do legislators in constitutional interpretation
 - d. To apply an unconstitutional statute puts the Court in an untenable situation.
54. The rationale of Chief Justice Rehnquist for the Court in *Nixon v. United States* is:
- a. The Court cannot decide this case because the Constitution has committed impeachments to the Senate; it has the sole power to try and define how to try
 - b. The Court can decide this case because the Constitution explicitly says that Congress can define the nature of a trial in the Senate
 - c. The Court cannot decide this case because there are not judicially discoverable and manageable standards for resolving disputes between those convicted and the Senate
 - d. Both a and c
55. Under the Exceptions Clause of Article III, Congress can:
- a. Remove portions of the Court’s appellate jurisdiction
 - b. Remove all of the Court’s appellate jurisdiction
 - c. Delete the Court’s original jurisdiction
 - d. Add to the Court’s original jurisdiction
56. During the period up to 1875, cases under the “federal question” jurisdiction came from the _____ to the Supreme Court:
- a. Federal Circuit Courts
 - b. Federal District Courts
 - c. State courts
 - d. All of the above
57. Under Section 25 of the Judiciary Act of 1789, cases could be appealed from the highest state court to the Supreme Court under which situations:
- a. If a federal law were struck down and if a state law were upheld against a challenge on federal grounds
 - b. If a federal law were upheld against a state or federal challenge and if a state law were invalidated based on a federal ground

- c. If a federal law were either upheld or challenged on a federal ground, or if a state law were either upheld or challenged on a federal ground
 - d. In all of the situations mentioned in a, b, and c
58. The Judiciary Act of 1789 provide for the issuance of which of the following:
- a. Writ of habeas corpus
 - b. Writ of mandamus
 - c. Writ of prohibition
 - d. All of the above
59. The statute in question in the initial pass at McCordle, before Congress acted, was the Habeas Corpus Act of 1867. It provided that the writ of habeas would extend to a person:
- a. held by a federal officer contrary to the federal constitution or federal law
 - b. held by a state or federal officer contrary to the federal constitution or federal law
 - c. held by either state or federal officers contrary to a state constitution or law
 - d. held by either state or federal officers contrary to the federal constitution or federal law or to a state constitution or state law
60. The Supreme Court in *Martin v. Hunter's Lessee* held that:
- a. The Court does not have jurisdiction to take appeals from the highest state court, since the Judiciary Act does not grant it
 - b. The Court has jurisdiction to take appeals from the highest state court; Section 25 of the Judiciary Act grants this jurisdiction and is constitutional, since otherwise the judicial power would not extend to all federal issues
 - c. The Court has jurisdiction to take appeals from the highest state court; it is granted in Article III of the Constitution.
 - d. In this case the Court does not have jurisdiction, since the highest state court of Virginia upheld a federal statute
61. Someone murders a homeless person on High Street, near campus. The police nab the alleged perpetrator. He (or she) would be prosecuted in:
- a. A federal district court
 - b. A state trial court
 - c. Either a federal or state trial court
 - d. A state appellate court, since this is an important matter.
61. Why did Chief Justice John Marshall not sit in *Martin v. Hunter's Lessee*?
- a. He had died in the period between the two cases
 - b. Martin filed a motion to force him to recuse himself
 - c. Marshall had a legal interest in the suit and thus recused himself
 - d. He was sick.

62. Who wrote the opinion for the Court in *Martin*?
- a. Justice Johnson
 - b. Justice Grier
 - c. Justice Story
 - d. Justice Gibson