

Assas

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Année d'étude : Deuxième année de licence droit

Discipline : **Anglais 1er semestre**
(Unité d'Enseignements Complémentaires 1)

Titulaires du cours : **Mme Géraldine GADBIN-GEORGE**

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Durée : 1h30

Documents autorisés : AUCUN

I. Complete the following sentences, adding between 10 and 25 words. Do not start a new sentence (20 points).

1. While Senators ...
2. Unlike Anti-federalists ...
3. On the first Monday ...
4. Although the power to declare war ...
5. Whenever a Supreme Court justice ...

II. Choose ONE of the following topics and write an essay in approximately 250 words (+/- 10%) (50 points).

1. In his book *The Imperial Presidency* (1973), historian Arthur Schlesinger wrote that "the constitutional presidency has become the imperial presidency". Discuss.
2. The American political system is made of separated institutions sharing powers. Discuss.

III. Read the following document and answer each of the questions below (approximately 10 lines/100 words for EACH question). Use your own words. DO NOT QUOTE DIRECTLY FROM THE TEXT (30 points in total; 10 points per question).

Should the Supreme Court Matter So Much?

The Kavanaugh controversy is a reminder of why the country's founders wanted a less powerful institution.

By Barry P. McDonald, *The New York Times*, October 11, 2018

Mr. McDonald is a law professor.

If you paused during the heated battle over Brett Kavanaugh's Supreme Court nomination to ask yourself whether it made any sense for the appointment of one individual to one position in our government to matter so much, let me assure you: The answer is no. It doesn't make any sense.

Why did Justice Kavanaugh's confirmation matter so much? Because the Supreme Court has come to matter so much — indeed, because it has come to matter *too* much. The court has become a political actor that wields excessive power in our democracy. The uproar over the Kavanaugh hearings was, at bottom, a reflection of that unfortunate fact. Americans have become so used to having the Supreme Court decree the country's policy on such vital matters as abortion, gun rights, same-sex marriage and campaign finance that they assume this is how the court is supposed to function. But that assumption is mistaken. (...)

When the founders established our system of self-government, they didn't expend much effort on the judicial branch. Of the roughly three and a half long pieces of inscribed parchment that make up the Constitution, the first two pages are devoted to designing Congress. Most of the next full page focuses on the president. The final three-quarters of a page contains various provisions, including just five sentences establishing a "supreme court," any optional lower courts Congress might create and the types of cases those courts could hear.

Why was the judicial branch given such short shrift? Because in a democracy, the political branches of government — those accountable to the people through elections — were expected to run things. The courts could get involved only as was necessary to resolve disputes, and even then under congressional supervision of their cases.

It was widely recognized that the Supreme Court was the least important of the three branches: It was the only branch to lack its own building (it was housed in a chamber of Congress), and the best lawyers were seldom enthusiastic about serving on it (John Jay, the court's first chief justice, resigned within six years and described the institution as lacking "energy, weight and dignity").

When disputes came before the Supreme Court, the justices were expected to ensure that Americans received "due process" — that they would be ruled by the "law of the land" rather than the whims of ruling individuals. In short, the court was to play a limited role in American democracy, and when it did get involved, its job was to ensure that its judgments were based on legal rules that were applied fairly and impartially.

What about the task of interpreting the Constitution? This question is the subject of some debate, but the founders most likely believed that each branch of government had the right and duty to determine for itself what the Constitution demanded, unless the Constitution was clearly transgressed. If the Constitution *was* clearly transgressed, the Supreme Court had a duty to hold Congress or the president accountable — but only in the case before it. The founders almost certainly did not envision a roving mandate for the Supreme Court to dictate to Congress, the president or state governments what actions comported with the Constitution (unless they were a party to a case before it).

As time went on, however, the Supreme Court lost sight of both its limited role and the principle of judicial neutrality. (...)

When such vital matters of social policy are determined by a handful of unelected justices and their interpretations of malleable terms like "liberty" and "free speech," the American people are robbed of their ability to have a say about the rules that dictate how they live. One way or another, the Supreme Court needs to recover the founders' vision of its modest role in our system of self-government. When it is not clear to justices of both ideological stripes that the Constitution requires a ruling that will have major public policy implications, the court should leave it to the people to decide for themselves.

Questions

1. What does McDonald think of the role the Supreme Court plays today?
2. Why does he think this is not what the Framers had intended?
3. Discuss the underlined sentence.