

LECTURE / DISCUSSION / DEBATE
THE FEDERAL JUDICIARY

Terms and concepts to know:

Article III of the Constitution	Jurisdiction
Standing	Supremacy clause
Judiciary Act of 1789	Marbury v. Madison (judicial review)
Common law	<i>Stare decisis</i>
Equity law	Statute law
Criminal and civil law	Adversary process
Appellate procedure	<i>Writ of Certiorari</i>
<i>Amicus Curiae</i> brief	Opinion-majority, concurring, dissenting
Senatorial courtesy	Judicial activism / restraint

Study and discussion questions:

1. Discuss the concept of judicial review. Why do you think Americans have largely ignored this unusual usurpation of power and accepted it without too much fuss?
2. Discuss the concept of Supreme Court opinions. Why do you think the content of the opinion might be as important (maybe more important) than the decision itself?
3. Discuss the concepts of judicial activism and judicial restraint. Which type of jurisprudence do you favor and why?
4. How has history and culture of the U.S., as well as the structure of our government, enhanced the role that law plays in American politics?
5. In what ways does Swidorski's analysis challenge the notion of the neutrality of the law?
6. To what extent does Swidorski see a role for the law and the courts in creating social change? Compare his views on this issue with those of Howard Zinn on the Constitution in Article 3.12.
7. Williams writes, "A war against terrorism is a war of the mind..." Explain. In what way(s) might the constitutional crises engendered by the Patriot Act affect the minds of Americans?
8. Williams warns us against the temptations of "the 'comfort' and convenience of high-tech totalitarianism." What are some contemporary examples of the technology of surveillance and control? How might these technologies collide with the basic values embodied in the 1st Amendment to the US Constitution? Or, the 4th, 5th, and 6th Amendments?

Readings:

Heineman. *American Government*, chapter 11.
Grover/Peschek. *Voices of Dissent*, chapters 8.29, 8.31.

Video: Selections from *The ACLU Files*.