

Constitutional Law - Midterm

October 5, 2015

5:30-7:00

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Instructions:

You will have ninety minutes to complete the midterm examination. There is one essay question, with a 1,000-word limit. Anything you write past 1,000 words will not be read. Please use the word-count feature to check the length of each answer. If you hand-write the exam, please do a manual word count.

The exam is completely open-book. You can use anything you wish, so long as that it was printed *before* the distribution of this exam. Obtaining any new information from anyone or anything *after* the exam is prohibited.

Please don't turn the page until the proctor signals that the exam has begun.

Good luck!

Instructions: The year is 1789. The ink on the Constitution is not even dry, but our young republic has entered a pivotal period of crisis. You are a clerk to Secretary of State Thomas Jefferson. He has asked you to prepare a memorandum of no more than 1,000 words addressing five pressing constitutional issues that President George Washington must confront. Please remember that the Supreme Court of the United States, which has not yet convened, cannot offer any assistance with these matters.

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Shortly after President Washington's inauguration on April 30, 1789, the peace and prosperity of the United States quickly became entangled in the toils of European ambition, rivalry, interest, humor, and caprice. On June 1, Genet, a French diplomat, arrives in Philadelphia. Genet informs President Washington that France defeated Spain in war, and now controls Mexico. Genet gave Washington two requests: first, that the United States recognize France's sovereignty over Mexico; second, that Washington inform Spain that the United States will no longer recognize Spain's sovereignty over Mexico. Washington, mindful of the help the French provided the Colonies during the Revolutionary War, reluctantly agreed. Washington, who did not consult with Congress, issued Executive Order #1:

The United States of America will hereby recognize France as having sovereignty over the territory of Mexico; further the United States will no longer recognize Spanish sovereignty over the territory of Mexico. The American ambassador to Spain, charged with diplomatic matters over Mexico, is immediately recalled, and removed from his office.

On June 2, Congress learned about Executive Order #1, and becomes furious. The Representatives and Senators felt loyal to Spain, and feared getting entangled with French power struggles. Congress promptly enacted the Spanish Loyalty Act of 1789, which prohibited all relations with France. President Washington promptly vetoed the bill, claiming that it intruded on the powers vested in him by the Constitution. On June 5, both the House and the Senate unanimously voted to override the veto.

On June 6, the Senate unanimously voted for Resolution #1, which stated:

The Constitution requires the "advice and consent" of the Senate for the appointment and removal of ambassadors. The Senate does not provide its "advice and consent" for the removal of the American ambassador to Spain. Therefore, he remains in his office, and there is no vacancy.

Washington became livid when he learned about Resolution #1. Washington promptly nominated a Virginia politician named John Marshall to become the new Ambassador to Spain. The Senate refused to act on the nomination, insisting that the previous ambassador retained his position, and thus there was no vacancy. Washington, sensing an urgency—as the conflicts with Europe were growing by the day—issued Executive Order #2 on July 4, 1789.

With the Congress in a recess to celebrate the thirteenth anniversary of our independence, I hereby nominate John Marshall to become the Ambassador of Spain until the conclusion of the first Congress in 1791.

That day, Washington dispatched Marshall to Spain to attempt to broker peace, and sent a fleet of boats with American goods to Spain to trade with them.

On July 7, when Congress returned from its three-day celebration of independence, they learned that Washington had appointed Marshall as ambassador to Spain. Furious, both houses of Congress approved Resolution #2:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that war be and is hereby declared to exist between France, and the United States of America; and that the President of the United States shall use the whole land and naval force of the United States to carry the same into effect.

Washington, upon learning of Resolution #2, took no action against France.

Three months later, on October 1, Washington received a letter from Ambassador Marshall. Marshall learned that Genet was planning a surprise invasion against the United States across the Mexican border. Genet had tricked Washington into breaking America's alliance with Spain, thereby destabilizing the region. Washington—who always asked to be called General—mounted his White Horse and led the United States Army down to the border, and waged a preemptive battle against the Mexican troops. He was victorious. Because of the urgency of the potential surprise invasion, Washington did not seek Congress's permission first.

On November 1, the House of Representatives, learning about this military engagement, approved one article of impeachment:

Article #1: That said George Washington, President of the United States, on the 1st day of October, in the year of our Lord, 1789, unmindful of the high duties of his office, of his oath of office, and of the requirement of the Constitution that he should take care that the laws be faithfully executed, did unlawfully and in violation of the Constitution and laws of the United States engage in a state of war with Mexico, whereby said George Washington, President of the United States, did then and there commit, and was guilty of a high misdemeanor in office.

The Senate has scheduled a trial for President Washington's removal, to be presided over by Chief Justice John Jay, on December 1.

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Secretary of State Jefferson has asked you to prepare a memorandum of no more than 1,000 words addressing five constitutional issues present in this crisis.

1. Did President Washington have the constitutional authority to enact Executive Order #1? Please reference any relevant provisions of the Constitution.

2. Did the Spanish Loyalty Act of 1789 intrude on the President's Executive Powers? Please address whether the President's decision to send John Marshall and the Trade Fleet violated the Act.
3. Was President Washington's removal of the Ambassador to Spain unconstitutional—as the Senate charged in Resolution #1?
4. Was President Washington's appointment of John Marshall as Ambassador to Spain a valid appointment?
5. Did President Washington have the constitutional authority to engage in military actions in Mexico? Please consider the impact of Executive Order #1 and Resolution #2.

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