

## Unit 4c Study Guide The Judiciary Answers

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almost since the beginning of the republic america s rigorous separation of powers among executive legislative and judicial branches has been umpired by the federal judiciary it may seem surprising then that many otherwise ordinary cases are not decided in court even when they include allegations that the president or congress has violated a law or the constitution itself most of these orphan cases are shunned by the judiciary simply because they have foreign policy aspects in refusing to address the issues involved judges indicate that judicial review like politics should stop at the water s edge and foreign policy managers find it convenient to agree thomas franck however maintains that when courts invoke the political question doctrine to justify such reticence they evade a constitutional duty in his view whether the government has acted constitutionally in sending men and women to die in foreign battles is just as appropriate an issue for a court to decide as whether property has been taken without due process in this revisionist work franck proposes ways to subject the conduct of foreign policy to the rule of law without compromising either judicial integrity or the national interest by examining the historical origins of the separation of powers in the american constitutional tradition with comparative reference to the practices of judiciaries in other federal systems he broadens and enriches discussions of an important national issue that has particular significance for critical debate about the imperial presidency

### 3 3 why this situation

with quiet eloquence lane sunderland argues that we must reclaim the fundamental principles of the constitution if we are to restore democratic government to its proper role in american life for far too long he contends the popular will has been held in check by an overly powerful supreme court using non constitutional principles to make policy and promote its own political agendas his work shows why this has diminished american democracy and what we can do to revive it sunderland presents a strong thoughtful challenge to the constitutional theories promoted by ronald dworkin archibald cox richard epstein michael perry john hart ely robert bork philip kurland laurence tribe mark tushnet and catharine mackinnon an enormously diverse group united by an apparent belief in judicial supremacy their theories he demonstrates undermine the democratic foundations of the constitution and the power of the majority to resolve for itself important questions of justice central to this enterprise is sunderland s reconsideration of the federalist as the first most reliable and most profound commentary on the constitution the federalist he states is crucial because it explains the underlying theory of the constitution as a whole a theory that gives meaning to its particular provisions in addition sunderland reexamines the declaration of independence and the work of hobbes locke and montesquieu in order to better define the nature and limits of their influence on the framers his reading of these works in conjunction with the federalist shows just how far afield contemporary commentators have strayed sunderland deliberately echoes and amplifies madison s wisdom in federalist no 10 that the object of the constitution is to secure the public good and private rights and at the same time to preserve the spirit and form of popular government to attain that object he persuasively argues requires that the judiciary acknowledge and enforce the constitutional limitations upon its own powers in an era loudly proclaiming the return of popular government majority rule and the will of the people that argument is especially relevant and appealing

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