

## Formative Assessment: Evaluating Evidence



**Thinking historically means identifying the evidence related to a claim, assessing its validity, and corroborating it by comparing multiple sources' interpretations of events, developments, or processes.**

**Directions:** Read the following secondary source and then answer the questions on evaluating evidence that follow. The multiple choice questions for this formative assessment are Weighted Multiple Choice (WMC) Questions. This means that there is only one *incorrect* answer, but the other 3 choices are weighted. The *best* answer is 3 points, the *second-best* answer is 2 points, and the *third-best* answer is 1 point. The *incorrect* answer is 0 points.

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Source: Alexander Hamilton, Federalist No. 78, 1788. [Library of Congress](#).

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment...

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves...

It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute...

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former.



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1. Select the piece of evidence from the above document that *best* supports the claim: **The Judicial Branch's power of judicial review is critical to upholding the Constitution.**
  - A. "No legislative act, therefore, contrary to the Constitution, can be valid."
  - B. "If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute."
  - C. "The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever."
  - D. "It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority."

2. Justify your choice in the space below.



## Formative Assessment: Evaluating Evidence

1. Select the piece of evidence from the above document that *best* supports the claim: **The Judicial Branch's power of judicial review is critical to upholding the Constitution.**
  - A. "No legislative act, therefore, contrary to the Constitution, can be valid." **(2 points)**
  - B. "If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute." **(1 point)**
  - C. "The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever." **(0 points)**
  - D. "It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority." **(3 points)**

2. Justify your choice in the space below.

**Choice D, worth 3 points, is the best piece of evidence to support the claim because it is the clearest and most direct explanation of why judicial review is a mechanism to uphold constitutional limits on legislative power. It emphasizes the judiciary's role as a protector of the Constitution and the people. Choice A, worth 2 points, is also strong as it is a straightforward assertion that judicial review is necessary — laws that contradict the Constitution are invalid, but doesn't contain a "why" like Choice D. Choice B is worth 1 point as it reinforces the principle of constitutional supremacy, but is a bit more abstract and less directly tied to the court's specific role, especially given its conditional language. Finally, Choice C is worth 0 points because it does not address the claim around judicial review.**



## 1. Weighted Multiple Choice

3 points (Choice D)	2 points (Choice A)	1 point (Choice B)	0 points (Choice C)
			<b>Subtotal: _____ / 3</b>

## 2. Short Answer: Justify Your Answer

3 points	2 points	1 point	0 points
Student thoroughly justifies their choice of the <i>best</i> piece of evidence—which is worth three points as shown on the teacher key—that supports the claim.	Student thoroughly justifies their choice of either the 1 or 2 point option from the WMC question. OR Student's justification of the 3 point option needs deeper analysis.	Student's justification of their choice (either the 1 or 2 point option) lacks deep analysis.	Student either makes no attempt to justify their choice OR try to justify the 0 point option.
			<b>Subtotal: _____ / 3</b>

**Total: \_\_\_\_\_ / 6**

