

CAPES/ CAFEP EXTERNE D'ANGLAIS

SESSION 2011

ÉPREUVE SUR DOSSIER

PREMIÈRE PARTIE

Vous procéderez en anglais à la mise en relation des documents suivants, en vous appuyant sur la consigne ci-dessous :

Analyse the place of the Judiciary power in the three-branch system of the American Government, as presented in this set of documents.

Document A (audio) : an extract from the first of two lectures Supreme Court Justice Stephen Breyer delivered at the Yale Law School on February 15 & 16, 2010.

Document B : an extract from a letter by Thomas Jefferson to William Charles Jarvis (September 28, 1820)

Document C: “USS Kagan prepares to set sail - Behind the civility, it’s war in the Supreme Court” (*The Economist*, Jul 1st 2010)

DOCUMENT A

Audio document: an extract from the first of two lectures Supreme Court Justice Stephen Breyer delivered at the Yale Law School on February 15 & 16, 2010. The lectures addressed the Supreme Court's role in helping to make the American Constitution work well in practice.

From <http://www.youtube.com/watch?v=-bKLXQzZXLk&feature=related>, from 8'26'' to 11'26''

DOCUMENT B

Letter from Thomas Jefferson to William Charles Jarvis

Monticello, September 28, 1820

[...] Our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privilege of their corps. Their maxim is “*boni judicis est ampliare jurisdictionem*,”¹ and their power the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective control. The constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots. It has more wisely made all the departments co-equal and co-sovereign within themselves. If the legislature fails to pass laws for a census, for paying the judges and other officers of government, for establishing a militia, for naturalization as prescribed by the constitution, or if they fail to meet in congress, the judges cannot issue their mandamus to them; if the President fails to supply the place of a judge, to appoint other civil or military officers, to issue requisite commissions, the judges cannot force him. They can issue their mandamus² or distringas to no executive or legislative officer to enforce the fulfilment of their official duties, any more than the president or legislature may issue orders to the judges or their officers. Betrayed by English example, and unaware, as it should seem, of the control of our constitution in this particular, they have at times overstepped their limit by undertaking to command executive officers in the discharge of their executive duties; but the constitution, in keeping three departments distinct and independent, restrains the authority of the judges to judiciary organs, as it does the executive and legislative to executive and legislative organs. The judges certainly have more frequent occasion to act on constitutional questions, because the laws of *meum* and *tuum*³ and of criminal action, forming the great mass of the system of law, constitute their particular department. When the legislative or executive functionaries act unconstitutionally, they are responsible to the people in their elective capacity. The exemption of the judges from that is quite dangerous enough. I know no safe depository of the ultimate powers of the society but the people themselves [...].

<http://oll.libertyfund.org/>

¹ = it is the part of a good judge to enlarge his jurisdiction

² *mandamus* = a writ issued by a superior court commanding the performance of a specified official act or duty ;
distringas = a writ commanding the sheriff to seize a person's property.

³ = mine and thine

DOCUMENT C

USS Kagan prepares to set sail**Behind the civility, it's war in the Supreme Court**

The Economist, Jul 1st 2010



THIS may not have occurred to you, but a Supreme Court justice is like an aircraft-carrier. How? Just count the ways.

First: longevity. One of the first carriers to arrive off Afghanistan after 9/11 was the *USS Enterprise*, a carrier that first saw service in the Cuban missile crisis of 1962. When it retires in 2013 it will have given 51 years of service. An investment that continues to pay off after half a century is a wonderful thing. The justices of the Supreme Court are also investments for the long term. This week saw the retirement, still sound at 90, of Justice John Paul Stevens, who got his commission from Gerald Ford and has served on the court for 35 years.

Second: raw power. Once confirmed by the Senate, justices may sit for life and rule as they please, regardless of the expectations of the president who nominated them or the promises they gave the Senate in confirmation hearings. A long-serving justice can make a deeper mark on America than a president. In 24 years on the bench Thurgood Marshall, the first black justice, did as much for racial equality in America as Lyndon Johnson, who chose him. True, a justice is boxed in by the other eight judges on the bench, the words of the constitution and the rules of jurisprudence. But that leaves ample latitude. "Do what you think is right and let the law catch up," Marshall said.

Last: like an aircraft-carrier, a justice goes to war. Behind all the civilities the Supreme Court is indeed engaged in a high-stakes war between its conservative majority and liberal minority. The fiction Barack Obama adopted when nominating Elena Kagan to replace Mr Stevens is that he chose his own solicitor-general and this former dean of the Harvard Law School because she happens to possess the wisdom of Solomon, not because of her politics. But everybody knows he needs a liberal to stop the court from moving further to the right than it already has under John Roberts, the present chief justice, a man more stealth-bomber than aircraft-carrier, whose professions of judicial modesty during his own confirmation hearings in 2005 gave little inkling of the controversial decisions over which he has since presided. It is a safe bet that Mr Stevens would not be retiring at all but for his desire to let a Democratic president pick his successor.

At her confirmation hearings in the Senate this week some of Ms Kagan's Republican interrogators wryly acknowledged the truth of the matter. You are a liberal person, I am a conservative person, but elections have consequences and that's just America, said the relaxed Lindsey Graham from South Carolina. Jeff Sessions of Alabama got more steamed up. Ms Kagan had barely practised law; her college thesis seemed to bemoan the decline of socialism in New York; when serving in the Clinton White House she had tried to restrict gun rights; at Harvard she had treated military recruiters in "a second-class way". Having clerked for Marshall, was she also going to do as she pleased and wait for the law to catch up? Was she, gasp, a "legal progressive"?

[...] Barring some unforeseen calamity the cautious nominee will shortly be confirmed and *USS Kagan* will sail forth to do battle. Her arrival in Mr Stevens's place will not much change but should at least preserve the existing imbalance of power on the court. If she turns out to be the liberal of Mr Sessions's fears and Mr Obama's hopes, she will follow her predecessor's example and make common cause with a like-minded minority (Sonia Sotomayor, Stephen Breyer and Ruth Bader Ginsburg) against the conservative majority composed of Mr Roberts, Antonin Scalia, Samuel Alito and Clarence Thomas. Anthony Kennedy, the court's swing voter, is conservative on most issues.