



Name \_\_\_\_\_

Date: \_\_\_\_\_

Course: **US History/Ms. Brown**

Homeroom:



7<sup>th</sup> Grade US History  
Standard # – Do Now – Day #85

**Aims:** SWBAT identify and explain the conflict in *Marbury v. Madison*  
 SWBAT explain the concept of judicial review and evaluate its importance in our Democracy Prep Public Schools

**DO NOW**

**Directions:** Answer the following questions in complete and historically accurate sentences. Use your notes and knowledge of history. You **MUST** annotate your answers, which means cross off the question stem, capitalize the first letter, and cross off the question mark.

1. **Review:** What is the system of checks and balances? Why is it important?

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2. **Review:** What is the role of the Supreme Court?

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3. **Draw it Out:** Using the definition of checks and balances, create a symbolic representation (graphic) of the phrase (HINT: think triangle and use your notes!)



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**Directions:** Read the article and identify and annotate the issues (problems) some people have found with the judicial branch. With your should partner fill out the graphic organizer about the issues you have found and why they are a problem.

### What's the Matter?

The judicial branch, like the other branches of government, is not always beloved by the people. Some people argue that the judicial branch moves too slowly, others argue that it is biased against minorities in the country, and still others argue that the courts gave themselves too much power using judicial review.

#### Too slow?

When a person makes their first court appearance they are starting a long and difficult path. Whether they win or lose at the trial court or district court, a person might be required continue to fight their case for years depending on the number of appeals. The longer a case is in court, the more money a person must spend on lawyers and legal fees. This could add up to a lot of time and a lot of money!

#### Is the court biased?

Another argument against the judicial branch, is that because of the long period of time and money it takes to win a case, wealthier people tend to have more success in court than poorer people. Everyone is entitled to a lawyer whether they can afford one or not, however the best lawyers tend to be the most expensive. Therefore, people who have a lot of money get the best lawyers and are more likely to win.

Other people argue that our court system favors white men. This means that white men tend to win the most cases! African American men tend to go jail far more often than any other ethnicity in the United States. Does this mean that African Americans are committing more crimes, or does it mean that the courts might be prejudiced against people of a certain race?

#### Is this even in the Constitution?

Lastly, the judicial branch took a big risk when it declared its own right to judicial review. The executive and legislative branches both had their checks and balances clearly written in the Constitution and Federal Papers. However, the judicial branch gave itself the power to stop the other two branches even though it was not written in the Constitution. They claimed that it was implied, or hinted at, but not expressly written that they should have that power. Is it fair for the judicial branch to have so much power?



Issue:	Why is it an issue #1	Why is it an issue #2



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**Video Analysis**

1. Who was the president that hired the Federalist judges during the midnight appointments that Jefferson attempted to remove?

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2. Who was William Marbury and why did he sue the Secretary of State?

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3. The Marbury v. Madison (1803) case gave the Supreme Court the power to declare actions of the Legislative and Executive branches unconstitutional. What is this power called?

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4. In your own words define the power identified in the previous question. Include the power in your definition.

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Here is a Script of the Video

When Jefferson took the office he let the National bank expire, reduced the size of the National army, and he attempted to get rid of all the Midnight Judges. Now, Jefferson didn't like the Federalists and when he was elected, he wanted to get rid of all the Federalist judges that President Adams hired. William Marbury berry bush was one of these the judges, and he sued the Secretary of State, who at the time was James Madison, when he denied Marbury of his title of Supreme Court, claiming the president could not overrule any act of congress. This became known as Marbury vs. Madison. To solve the problem, they made a rule called Judicial review that gave the Supreme Court basically the ability to say if something Congress or the Executive branch was doing is unconstitutional.



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**Part III. Marbury v. Madison**

Just as George Washington helped shape the actual form that the executive branch would take, so the third chief justice, John Marshall, shaped the role that the courts would play.

Under the administrations of Washington and his successor, John Adams, only members of the ruling Federalists Party were appointed to the bench, and under the terms of the Constitution, they held office for life during “good behavior.” Thus, when the opposing Republicans won the election of 1800, the Jeffersonians found that while they controlled the presidency and Congress, the Federalists still dominated the Supreme Court. One of the first acts of the new administration was to repeal the Judiciary Act of 1800, which had created a number of new judge positions. Although President Adams had attempted to fill the vacancies prior to the end of his term, a number of commissions had not been delivered, and one of the people that was supposed to become a judge, William Marbury, sued Secretary of State James Madison to force him to deliver his commission as a justice of the peace.

1. What did John Adams attempt to do in his final days as president?

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2. Why did Marbury sue James Madison?

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The new chief justice, John Marshall, understood that if the Court awarded Marbury a writ of mandamus (an order to force Madison to deliver the commission) the Jefferson administration would ignore it that would weaken the authority of the courts. On the other hand, if the Court denied the writ, it might appear that the justices had acted out of fear. Either case would not be following the law.

1. What is Marshall’s dilemma?

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Marshall's decision in this case has been hailed as a judicial tour de force. Basically, he said that Madison should have delivered the commission to Marbury, but then said that the section of the Judiciary Act of 1789 that gave the Supreme Court the power to force Madison to deliver the commission was beyond the authority of the Court under Article III of the Constitution, and was therefore null and void. This way he was able to punish the Jeffersonians and yet not create a situation in which a court order would be ignored. By declaring the Judiciary Act of 1789 unconstitutional, John Marshall created the power of **judicial review**.

1. What is Marshall's decision?

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2. What power did Marshall create?

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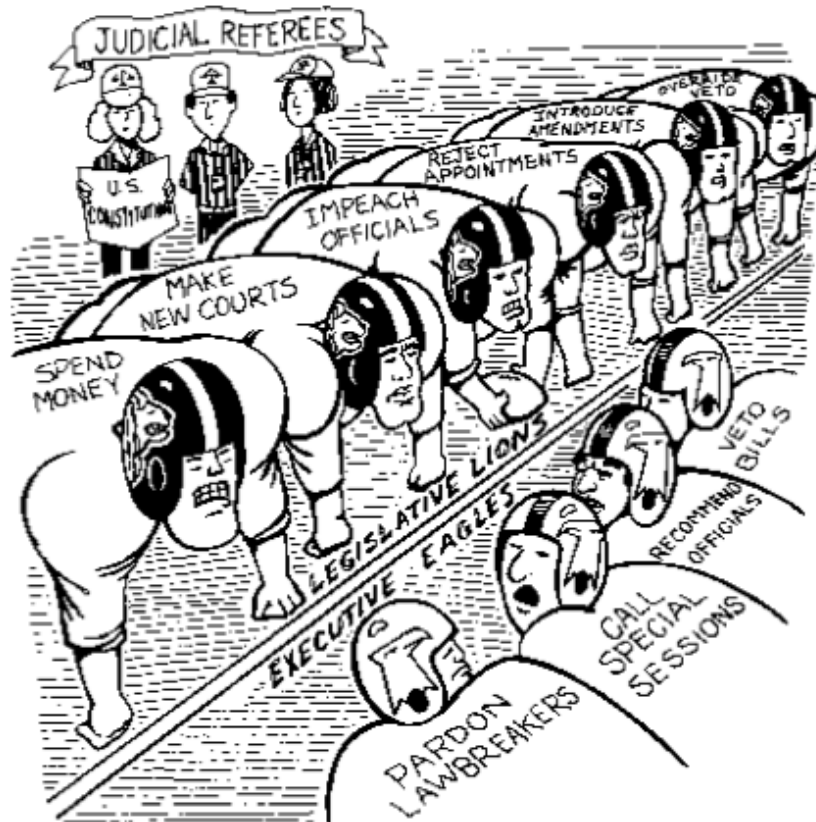
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**Document Analysis****Document 1**

HOW DO THEY EXPECT US TO STOP THEM?

1. What three groups in government are represented in this cartoon?

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2. What is represented by the writing on the backs of the players?

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3. What are referees using as their “rulebook”?

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4. What power did Marbury v. Madison give the “referees” that is not shown in the cartoon?

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5. How does **judicial review** strengthen the role of the judicial branch in this game?

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### Judicial Review HOMEWORK

\_\_\_\_\_/5 Mastered/Passing/Not Mastered

#### Part IV: Document 1: Excerpts of Supreme Court Chief Justice John Marshall’s 1803 decision in Marbury v. Madison.

It is emphatically the province and duty [responsibility] of the judicial department to say what the law is. Those who apply the rule to particular cases, must, of necessity, expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the Constitution; if both the law and the constitution apply a particular case, so that the court must either decide that case conformably to the law disregarding the Constitution; or conformably to the Constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty.

...A law that is repugnant to the Constitution is void, and that *courts*, as well as other departments are bound by that instrument.

The rule must be

- 1. The 1803 Supreme Court case of Marbury v. Madison established the Supreme Court’s power of **judicial review** (the power to declare acts of Congress unconstitutional). What did Marshall mean by the phrase “It is emphatically the province and duty of the judicial department to say what the law is”?

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- 2. What does Marshall say is the duty of the court “when a law is repugnant to the Constitution”?

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- 3. What is important about the court “voiding” a law?

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**Judicial Review  
EXIT TICKET**

\_\_\_\_\_/5 Mastered/Passing/Not Mastered

1. The significance of the Supreme Court case *Marbury v. Madison* is that the decision
  - a. Advanced civil rights for minorities
  - b. Upheld the constitutionality of a national bank
  - c. Limited Presidential control of foreign policy
  - d. Established the power of judicial review
  
2. The decision of the United States Supreme Court in *Marbury v. Madison* (1803) established the power of the
  - a. House of Representatives to impeach the president
  - b. Congress to override a presidential veto
  - c. President to veto a congressional legislation
  - d. Supreme Court to determine the constitutionality of laws
  
3. The Supreme Court's power of judicial review is a result of
  - a. An order by the President
  - b. The Court's own interpretation of the Constitution
  - c. A provision in the Bill of Rights
  - d. The Court's decision to hear appeals regarding taxation
  
4. What action is an example of judicial review?
  - a. The president proposes a bill to reduce the powers of the federal courts
  - b. A state court finds a defendant guilty of murder
  - c. The Supreme Court declares a federal law unconstitutional
  - d. The Senate approves a president's nominee for the Supreme Court