

Two Centuries Later: The Enduring Legacy of Marbury v. Madison (1803)

Content areas: U.S. Government, Law

Grades: 9-12

Time: These five, 45-minute lesson plans are designed to be taught as stand-alone lessons or in a series.

Class Period #1-2 Interactive preparatory lecture and small group discussion.

Homework: All participants have assignments that prepare them for the simulation. (See the Class Period #1 lesson plan).

Assessment tool: Primary source analysis.

Class Period #3 Marbury v. Madison Court Simulation.

Homework/Assessment tool: Time line.

Class Period #4 Debriefing.

Assessment tool: Follow up on simulation.

Class Period #5 Culminating Activity

Assessment tool: Jeopardy Challenge!

Broad Purpose

To commemorate the 200th Anniversary of *Marbury v. Madison* by teaching students about its significance in establishing the concept of **judicial review**. By the end of the unit, students will understand the flow of “power, authority, and governance” as stated in the National Council for the Social Studies Standards. They will understand that judicial review contributes to the system of checks and balances; that it helps to maintain the rule of law; and that it fosters a stable, constitutional democracy. Because the legacy of *Marbury v. Madison* is so important, a key case from the 1900s, and in 2000 was selected to show the pervasive impact of the decision.

Objectives

At the end of the lesson, students will be able to:

- Present the basic facts of *Marbury v. Madison* and place it in its historical context (See Explaining Marbury v. Madison, Setting the Scene).
- Evaluate arguments for and against the power of judicial review (See Appendix).
- Understand that judicial review is crucial to the U.S. system of checks and balances. (See Lesson Overview, Chief Justice Marshall as Skillful Problem Solver)
- Explain the lasting impact of *Marbury v. Madison*. (See *Brown v. Board of Education*, *Bush v. Gore*)

Lesson Plan Overview, Administrative Office of the U.S. Courts

Links to National Standards for Civics and Government

Content Standard III.D.2.

Students should be able to evaluate, take, and defend positions on current issues regarding the judicial protection of individual rights.

Content Standard II.D.3.

Students should be able to evaluate, take, and defend positions on what the fundamental values and principles of American political life are and their importance to the maintenance of constitutional democracy.

Links to National Council for the Social Studies Standards

Power, Authority and Governance

Social studies programs should:

- Help students to understand the purpose of government and how its powers are acquired, used, and justified;
- Help learners to analyze and explain governmental mechanisms to meet the needs and wants of citizens, regulate territory, manage conflict, and establish order and security;
- Help learners identify and describe the basic features of the American political system, and identify representative leaders from various levels and branches of government.

Lesson Overview

When it comes to conflicts, someone has to make the final decision. Interestingly, the writers of the Constitution did not determine which of the three branches of government would be the final arbiter of Constitutional issues. Today, it is assumed that the courts are the final authority on such matters. However, their role wasn't always clear.

Marbury v. Madison firmly established that the Supreme Court of the United States has the power to determine the constitutionality and validity of the acts of the other two branches of government – a concept that is a fundamental characteristic of American government. But this was not always the case. In *Marbury v. Madison*, decided in 1803, the Supreme Court, for the first time, struck down an act of Congress as unconstitutional. This decision created the doctrine of judicial review and set up the Supreme Court of the United States as chief interpreter of the Constitution.

Historians say that the genius of Chief Justice John Marshall's decision is that it established the judiciary's power to review the acts of the Legislative and Executive branches and declare them unconstitutional without creating a constitutional crisis at the time. The Supreme Court's first decision declaring an act of Congress unconstitutional was palatable because it did two things. In it, the Court recognized that Congress gives the Judiciary certain powers and, at the same time, the Court reined in some of its own authority.

Lesson Plan Overview, Administrative Office of the U.S. Courts

By initially exercising judicial review with a case that recognized the power of Congress and limited the power of the Court, Chief Justice Marshall effectively established the Supreme Court

-- not Congress -- as the ultimate Constitutional authority without triggering what could have been destructive opposition from the Legislative and Executive branches.

This skillful handling of a politically charged situation established the Judiciary as an independent, co-equal branch of government. The concept of judicial review is so fundamental to the success and maintenance of American democracy that international delegations of judges and court staff, to this day, study the American Judiciary to learn how they might apply this model in their own countries.

Since *Marbury v. Madison*, the Supreme Court has relied heavily on the precedent set by this case to ensure that government acts comply with the United States Constitution. The decision set the stage for pivotal decisions in every century since it was handed down by the Court. *Marbury v. Madison* has had an impact on critical decisions regarding issues of race (*Brown v. Board of Education, 1954*); and a presidential election (*Bush v. Gore, 2000*); and a myriad of issues that have an impact on the daily life of every American.

Lesson Plan Overview, Administrative Office of the U.S. Courts

Class Periods #1-2

Explaining Marbury v. Madison

Time: 1-2 class periods

Copy and distribute the vocabulary list from Appendix, page 1. Explain the following information about the case (summarized from Rotunda, R., Nowak, J., & Young, J., Treatise on Constitutional Law: Substance and Procedure (1986).

Setting the Scene

In the waning months of President John Adam's term, when Chief Justice Oliver Ellsworth resigned, Adams first sought to reappoint former Chief Justice John Jay to the Court. Jay declined the appointment. Following Jay's refusal, Adams nominated John Marshall. He became the fourth Chief Justice of the United States on February 4, 1801.

In the last few weeks of Adams' administration, before President Thomas Jefferson took office, Congress authorized the appointment of 42 justices of the peace in the District of Columbia and Alexandria, VA. President Adams made appointments to these positions, and they were confirmed by the Senate on March 3, the day before Jefferson took office. The formal appointments were to be delivered by the Secretary of State's Office. However, not all of the commissions were delivered by the deadline that night.

William Marbury was one of those justices of the peace appointed by Adams who failed to receive his commission on time. He brought suit against Secretary of State James Madison for failing to deliver his commission. Marbury went right to the Supreme Court and filed an **original action** seeking a **writ of mandamus** to compel Madison to deliver the commission. Marbury asserted that the Supreme Court was the proper jurisdiction to start this action under Section 13 of the Judiciary Act of 1789. This is the section of the Act that the Supreme Court later declared unconstitutional because it conflicted with Article III of the U.S. Constitution.

President Jefferson believed that a court could not order him to have the commissions delivered and Secretary of State Madison refused to appear before the Supreme Court. The Court then ordered Jefferson to show cause as to why the President should not comply with the writ of mandamus.

In *Marbury*, the Supreme Court, at the beginning of its 1803 term, asserted its power to review the constitutionality of Executive and Legislative actions. At the same time the Court limited its power in this case. The Court decided that it would be unconstitutional for it to issue a writ of mandamus as an original action -- as provided for in the Judiciary Act -- because doing so would violate Section III of the Constitution.

Class Periods 1-2, Administrative Office of the U.S. Courts

The Case in Chief

On February 24, 1803, Chief Justice Marshall delivered the opinion of the Supreme Court in *Marbury v. Madison*. In the opinion the Court found that the President was subject to certain constitutional restraints that could be enforced by the Judiciary. It also found that the Court's powers were limited. The Court could not grant the remedy in an original action because the issue was not within the jurisdiction fixed for the Court by Article III of the Constitution. Marshall concluded that the Supreme Court had the power to declare such a law invalid as a violation of the Constitution.

Marshall began the opinion by framing the case in terms of three issues. First, whether Marbury had a right to the commission; second, whether the laws of the country established a remedy for the deprivation of the right; and third, whether a mandamus could be issued in an original action before the Supreme Court.

Issue #1: Whether Marbury Had a Right to the Commission

Yes. Marshall found that Marbury had a right to the commission once it was signed by the President and sealed by the Secretary of State. The Court might have held that the commission was not in force until the commission was delivered. However, the justices stated that the commission went into effect as soon as the President signed it.

Issue #2: Whether Existing Laws Established a Remedy for the Depri

Yes. The opinion found that a legal remedy was required for a legal wrong. Since the government of the United States is one "of laws and not of men," the courts must grant a remedy for violation of legal rights. The Supreme Court decided that if an Executive branch duty is established by the Constitution or federal law, the Judiciary could enforce it.

Issue #3: Whether the Court Should Issue a Writ of Mandamus Requiring Delivery of the Commission

No. Marshall found a conflict between the Judiciary Act of 1789, established by Congress, and the U.S. Constitution. He found that Section 13 of the Act authorized original actions in the Supreme Court for writs of mandamus to officers of the United States such as the action involved in this case. However, he found Section 13 of the Judiciary Act to be unconstitutional because it was in direct opposition to Article III of the Constitution.

The opinion acknowledged that Congress has the power to alter the jurisdiction of the Court. However, the original jurisdiction for a writ of mandamus, such as the one in this case, was not permitted by the Constitution. In the opinion, Marshall established that a law in conflict with the Constitution is not valid. It also held that the Supreme Court had the power to invalidate or, at least, disregard such a law. The cornerstone of judicial review today is that the Constitution is the law superior to any enacted by Congress; and the Judiciary is required to follow it rather than any inconsistent provisions of federal legislation.

Class Periods 1-2, Administrative Office of the U.S. Courts

Analysis of the Holding

Those in agreement with the decision say that Marshall crafted a solution that was both principled and pragmatic. In fact, the decision required no Court action. Marshall determined

that Marbury was justified in his suit. However, the Judiciary Act, on which his claim was based and which allowed the Supreme Court to deal with an original action for mandamus, conflicted with Article III of the Constitution. The Court declared the Judiciary Act unconstitutional. In this sense, this decision limited the Supreme Court's power. It meant that the Court could not consider original actions for writs of mandamus. However, critics of the decision say that it was overreaching because the Court, basically, defined its own power for which there was no specific mandate in the Constitution.

The Legacy of *Marbury v. Madison*

The decision in *Marbury v. Madison* greatly expanded the power of the Supreme Court by establishing its right to overturn acts of Congress, a power not explicitly granted by the Constitution. The Court exercised the system of checks and balances by assuming the authority to declare acts of Congress, and by implication, acts of the President, unconstitutional. After *Marbury v. Madison*, the Court became the final authority on what the Constitution means. The Supreme Court became, in fact as well as in theory, an equal partner in government. It has played that role ever since.

Courtroom/Classroom Activity

Teacher/Court Representative: Organize the students into small groups. Distribute copies of the two case studies to the groups -- one case per group or two cases per group. Assign each group to determine how the concept of judicial review came into play in each case and report their findings to the entire class.

Case Study I.

Brown v. Board of Education (1954)

Facts: Black children were denied admission to public schools attended by white children under laws requiring or permitting segregation according to race. It was found that the black children's schools and the white children's schools had been or were being equalized with respect to facilities, curricula, qualifications, and salaries of teachers.

Issue: Does segregation of children in public schools, solely on the basis of race, deprive minority children of equal protection of the law even though the physical facilities are equal?

Holding and Decision: Yes. The Supreme Court held that the "separate but equal" doctrine, established in *Plessy v. Ferguson*, has no application in the field of education. Segregation of children in public schools, based solely on their race, violates the Equal Protection Clause of the Fourteenth Amendment. First, the Court considered intangible as well as tangible factors. The fact that the facilities and other tangible factors in the schools have been equalized is not the central issue. Segregation of white and black children in public schools has a detrimental effect on the black children because it is usually interpreted as denoting the inferiority of the black children. A sense of inferiority affects children's motivation to learn. Separate facilities are inherently unequal. Such facilities deprive black children of their right to equal protection of the laws.

Class Periods 1-2, Administrative Office of the U.S. Courts

Judicial Review in *Brown v. Board of Education*

Brown v. Board of Education is an important example of the Court asserting its power to declare the acts of a state government unconstitutional. In this historic case, the Supreme Court declared that racial segregation in public schools was a violation of the Constitution. Specifically, the Court held that the public schools involved in this case violated the Fourteenth Amendment rights of minority children to be treated equally under the law.

Case Study II.

Bush v. Gore (2000)

Facts: In the 2000 Presidential race, Democratic candidates Al Gore and Joe Lieberman filed a complaint contesting the certification (making official) of Florida's election results. The Florida Supreme Court ordered a manual recount of ballots entered on machines that did not record votes for President. Republican candidate George W. Bush filed an emergency application with the U.S. Supreme Court to stop the Florida Supreme Court's order for the manual recount. The United States Supreme Court agreed to take the case.

Issue: Does the use of manual recounts, for which no standards have been set, violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment?

Holding and decision: In a 5-4 decision, the Court decided that there was a violation of the Equal Protection Clause. The Supreme Court held that: (1) manual recounts, as ordered by the Florida Supreme Court, did not satisfy a minimum requirement for non-arbitrary treatment of voters. It also held that remanding the case to the Florida Supreme Court for it to order a constitutionally proper contest was not the appropriate remedy. Therefore, it reversed the judgment of the Supreme Court of Florida, and ended the manual recount.

Judicial Review in *Bush v. Gore*

The Supreme Court of the United States ruled that the manual re-counts of ballots in Florida should be abandoned because the re-counts were unconstitutional and could not be completed by the December 12, 2000, deadline mandated by federal law. Without the precedent set in *Marbury v. Madison*, the Court would not have had the power to resolve such disputes.

Assignment: Preparation for Moot Court Simulation

Homework Assignment A for all Students

Primary Source Analysis

Copy and distribute 1) the Judiciary Act of 1789; 2) Article III, Section 2 of the Constitution (See the Appendix; and 3) the edited version of *Marbury v. Madison*, all found with this lesson. Ask the students to read these three documents and write short-essay answers to the following questions:

- 1.) Summarize, in 1-2 sentences, the significant portion of the Judiciary Act.
Explain how the document was relevant to this case.
Do you agree with Chief Justice Marshall's application of the documents to the case? Why or why not?"
- 2.) Summarize, in 1-2 sentences, the relevant portion of Article III, Section 2 of the Constitution.
 - Explain how the document was relevant to this case.
 - Do you agree with Chief Justice Marshall's application of the documents to the case? Why or why not?

Homework Assignment B

Justices and Lawyers

Writing in two, adjacent columns, one titled: Arguments in Support of Judicial Review; and the other titled: Arguments Against Judicial Review, students draft arguments for and against and rank them from most persuasive to least persuasive. Students should incorporate facts and arguments from the sheets describing the courtroom roles.

Homework Assignment C

Friends of the Court

Students identify what interest group(s) they want to represent and use the form for the amicus curiae brief to write one.

Homework Assignment D

Journalists

Students identify what news organizations they represent and use the Journalists' Tip Sheet to write questions they will ask the parties when they cover the court simulation.

Homework Assignment E

Marbury and Madison

The students playing Marbury and Madison, each are assigned to write a one- or two-page essay about why they agree or disagree with the position taken by the person they have been assigned to play.

Class Periods 1-2: Assignments, Administrative Office of the U.S. Courts

In-Court Session **Class Period #3**

Court Simulation Activity

Time: 45 minutes

Assign students to the following roles: Chief Justice Marshall and five other justices; Marbury and Marbury's attorney; Secretary of State Madison and Madison's attorney; friend(s) of the court; journalists; and a bailiff, who maintains order and enforces the time limits established on the agenda. If the simulation is conducted in a courtroom with a judge, the judge serves as Chief Justice Marshall and the students serve as the other justices. If attorneys participate, students serve as co-counsel.

Suggested Agenda for Court Simulation

Amicus curiae briefs are filed with the Court in advance and are not presented orally. However, in order to give more students speaking parts in the simulation, time is allotted for them to present the briefs in court. Students will have prepared the briefs in advance using the form provided with this lesson.

10 minutes Introductions and presentation of amicus curiae brief(s).

5 minutes Attorney for petitioner Marbury presents case (petitioner may reserve up to 2 minutes -- out of the total of 5 -- for rebuttal).

5 minutes Attorney for respondent Madison presents case.

10 minutes Justices deliberate while journalists interview participants.

15 minutes Justices announce their holding. If a real judge serves as Chief Justice Marshall, he/she gives feedback to all the participants and leads a debriefing of the exercise. Suggested discussion questions are included with this lesson plan.

TOTAL: 45 minutes

Class Period 3, Administrative Office of the U.S. Courts

Marbury v. Madison Simulation

Roles and Main Arguments

ROLE: Chief Justice John Marshall and Other Justices

Profile: John Marshall was the fourth chief justice and a Congressman from Virginia. In the Revolutionary War, Marshall rose to the rank of captain. After the war, he returned to Virginia to practice law in Richmond and became a delegate to the Virginia General Assembly. In 1797, he was appointed a commissioner to France. Two years later, he was elected to Congress, and was later named Secretary of State by President John Adams. Marshall was nominated to be Chief Justice of the United States in 1801. In the course of his 34-year tenure on the Court, Marshall established the Supreme Court as the ultimate body for interpreting the Constitution. The principle was introduced in the case of *Marbury v. Madison*.

Chief Justice Marshall as Skillful Problem Solver: In this case, Marshall cleverly avoided a potential political confrontation between the Executive and judicial branches by upholding the rule of law. He understood that if the Court issued a writ of mandamus (in this instance, an order to force Secretary of State Madison to deliver Marbury's justice of the peace commission) the Jefferson Administration would ignore it. Such a move would significantly weaken the authority of the courts. On the other hand, if the Court did not issue such an order, it might appear that the justices were afraid that their judicial decision would be disregarded by the Executive Branch. Either option would have undermined the supremacy of the rule of law.

Chief Justice Marshall also asserted that the task of courts was one of discovering rather than making law. He thereby managed to increase the Court's credibility and neutrality rather than subordinate it to partisan political agendas. Marshall's decision in this case has been hailed as a judicial tour de force. In essence, he declared that Madison should have delivered the commission to Marbury. He then held that the section of the Judiciary Act of 1789 that gave the Supreme Court the power to issue writs of mandamus was not constitutional (because it exceeded the authority allotted to the Court under Article III of the Constitution) and, therefore, was null and void. He followed the rule of law without creating a situation in which a court order might be ignored.

Class Period 3, Administrative Office of the U.S. Courts

ROLE: William Marbury

(in the courtroom but not at counsel table)

William Marbury was appointed to serve as a justice of the peace in Alexandria, VA, by President John Adams under the Judiciary Act of 1800. When Thomas Jefferson formally took office as President in March, 1801, Marbury's commission had not been delivered, and

Jefferson refused to have it delivered. Although, as Secretary of State, John Marshall was responsible for delivering the commission, he did not do so on time. Since Madison was responsible for the delivery, Marbury sued him in the U.S. Supreme Court to compel him to deliver the commission.

Class Period 3, Administrative Office of the U.S. Courts

ROLE: Attorney for William Marbury

Main arguments:

- Since Marbury's commission had been signed and sealed under the proper authority and procedures, he was entitled to his appointment.
- The court was authorized to issue the writ of mandamus under the Judiciary Act of 1789.
- Since Madison – by not having the commission delivered on time – was not doing his duty as a public official, the court should issue the writ of mandamus to compel him to do so.

Class Period 3, Administrative Office of the U.S. Courts

ROLE: James Madison

(Seated in his office – not the courtroom)

James Madison was Thomas Jefferson's Secretary of State. At that time, there was no Department of Justice. The Department of State, headed by Madison, performed duties that today would be handled by the Department of Justice. That is why it was Secretary of State James Madison who withheld Marbury's commission and was sued by Marbury. Otherwise, Madison's role in the precedent-setting case was minimal.

He is in his office because he refused to accept the jurisdiction of the court in this matter and refused even to appear in court. The parties are not required to appear during oral arguments at the Supreme Court.

Class Period 3, Administrative Office of the U.S. Courts

ROLE: Attorney for James Madison

Main arguments:

- The commission was a mere piece of paper until delivered. Since it was not delivered, Marbury had no right to receive the commission.
 - It is not the Judiciary's role to remedy a legal wrong committed by the Legislature or Executive branch.
- The Supreme Court does not have the power to issue an order to the Executive branch to deliver the commission.

ROLE: Friends of the

The job of the friends of the court is to represent the views and perspectives of an interested organization, political party, business, or individual and to inform the court about how the outcome of the case would have an impact on them. Amicus curiae briefs are filed with the Court in advance of oral arguments and are not presented in the courtroom. In the simulation, however, the friends of the court will present their briefs orally to give more students the opportunity to participate in the activity.

Purpose and Structure of the Amicus Brief

The Supreme Court can grant certiorari (agree to hear) less than one percent of the cases presented to it each year. How does the Court decide which cases to take? Experts suggest that amicus curiae briefs sometimes help in the selection process. An amicus curiae, or "friend of the court," is an interested but uninvolved party such as a special interest group or professional association.

Since interest groups do not lobby justices as they do members of Congress, the amicus brief is an acceptable way for interest groups to inform the Court of their perspective on the issues in a case.

To prepare for the presentation, and to get exposure to the purpose and content of an amicus brief, students identify who would be interested in and affected by this case. As friends of the court, students write a 2-3 page brief to defend that interest. This is the basis of the short presentation to the Court at the beginning of the oral arguments. Here is the basic structure for an amicus curiae brief:

- I. Interest of Amici Curiae
Describe who you represent and their interest in this case.
- II. Summary of Argument
Write 3-4 sentences that summarize the main arguments.
- III. Argument
Write 2-3 headings with the main arguments written in full sentences under each.
- IV. Conclusion
Write 1-2 sentences that summarize the main arguments and write one sentence respectfully requesting the Court to decide in your favor.

For sample amicus briefs, visit http://supreme.lp.findlaw.com/supreme_court/briefs

ROLE: Journalists

Journalists report on the court proceedings. They take notes from which they will write news stories about the case. Notes should include questions to be asked. Journalists should take every opportunity, before and after the court session, and during the justices' deliberation period, to interview participants. Their questions should elicit clarification on facts and issues. They report on how the parties assess the courtroom presentations and the strengths of their respective cases. Journalists will write a news story and report their findings in class the next day.

Journalists' Tip Sheet for Writing a News Story

Preparation for Reporting and Writing

Collect stories about Supreme Court cases from the newspaper to use as examples.
Make a list of the kinds of questions reporters must have asked to get the information in the story.

Headline

Summarizes the story. Must have a verb.

Lead Paragraph

Outlines the main point of the story, conveying the key elements: who, what, when, where.
Should summarize the event so well that the reader gets the essential information without reading further.

Body of the Story

Follows the outline created in the first paragraph.
The story starts with today's major development, then provides the background starting with the most important events and information in the recent past, reporting the most significant facts first.

Assignment: Follow up on

The day after the simulation, student justices turn in opinion forms; student lawyers turn in argument forms; student journalists turn in articles; and student friends of the court turn in amicus curiae briefs.

Teacher gives feedback to students about the simulation.

In-Court or In-Class Period #4

Debriefing the Simulation in the Courtroom or Classroom

Time: 1-2 class periods

After the simulation at the courthouse, if time permits, students are asked what impressions, insights, and conclusions they drew from the court simulation. The list of suggested discussion questions may be used to guide the discussion. Also, the form for students to list arguments for and against judicial review help structure the debriefing.

Sample Discussion Questions for Judges and Other Facilitators After Court Simulation Activity

The following questions are intended to provide examples of discussion starters.

1. One Man's Problem Becomes the Cornerstone of a Democracy

The facts of this case are simple: A man wanted to receive his appointment to the position of justice of the peace. Out of such a straightforward set of circumstances arose one of the most important concepts in American government -- judicial review. Give other examples of how one person's or group's problem resulted in court rulings that have a major impact on Americans and American life?

2. An Ingenious Compromise Averts a Constitutional Crisis

Chief Justice Marshall's ruling is considered an ingenious compromise. Explain the compromise.

3. The Legacy of Marbury v. Madison

Give examples of disputes addressed by judicial review.
Brown v. Board of Education (1954); Bush v. Gore (2000)

4. Taken for Granted: The Importance of the Rule of Law

The rule of law is such a foundation of the American way of life that it is taken for granted. What does this concept mean? What are some words that you associate with the rule of law? How does the legacy of Marbury v. Madison contribute to the rule of law? Give some examples -- from history and current events -- of what happens in this country and other countries when the rule of law is not respected.

Class Period 4, Administrative Office of the U.S. Courts

5. Truly a System of Checks and Balances?

On one hand, the concept of judicial review, which came out of Supreme Court's decision in Marbury v. Madison, is said to have reinforced the system of checks and balances. On the other hand, it accorded additional powers to the federal courts

to oversee and, to some extent, control the actions of the other two, co-equal branches. As a result of this ruling, the Judicial branch has the ability to rule on the Constitutionality of (and overturn) the actions of Congress and the President. Do you think the Supreme Court's ruling truly balanced the system of checks and balances? Why or why not?

Class Period 4, Administrative Office of the U.S. Courts

Debriefing the Court Simulation Activity
Exploring and Understanding the Relationship
Between Judicial Review and the Rule of Law

Discussions are in small groups (questions 1-2) and pairs (question 3). The groups and pairs report their findings to the entire group.

1. In *Marbury v. Madison*, the Court demonstrated how inaction is sometimes the most effective action. Give examples from history and current events when inaction has been/could be the most effective action?
2. In *Marbury v. Madison*, Chief Justice Marshall stated that American government “has been emphatically a government of laws, and not of men.” What does that mean? Does the country’s stability depend solely on certain people remaining in power or does it depend on the functioning of the Constitution, as well as the Executive, Legislative, and Judicial branches of government? Give national and international examples from history and current events when the rule of law is not respected.
3. The concepts of judicial review and checks and balances are distinctive when compared to governments around the world. To help students articulate this concept, organize them into discussion pairs. One person is an exchange student from another country and the other is the host (U.S.) student. The host describes several concepts fundamental to American democracy. The exchange student -- unfamiliar with the American system -- asks questions. The concepts are 1) judicial review; 2) checks and balances.

Assignment: Time Line

Time: 1 class period or one homework assignment

The purpose of this activity is to make sure students understand the sequence of events in the case. Ask students to create a time line of the case, either in class or as a homework assignment. They may use the Internet to conduct additional research.

Sample Time Line

1797 to 1801	John Adams is President.
May, 1800- March, 1801	John Marshall serves as Secretary of State under President John Adams.
1800	Congress passes the Judiciary Act of 1800 that created additional judge positions, including justices of the peace and circuit court judgeships.
November, 1800	Thomas Jefferson is elected President and serves two terms until 1809. His Secretary of State James Madison is responsible for the delivery of commissions to new justices of the peace. The commissions – including that of William Marbury – are not delivered on time.
Early 1801	Congress repeals the Judiciary Act of 1800.
January 31, 1801	John Marshall is named fourth Chief Justice of the Supreme Court.
March 3, 1801	President Adams signs the commissions for the new judgeships created by Congress.
March 4, 1801	Thomas Jefferson takes office. His Secretary of State James Madison is responsible for the delivery of commissions to new justices of the peace. The commissions – including that of William Marbury – are not delivered.
December, 1801	Marbury files suit against Secretary of State Madison.
February 24, 1803	The Supreme Court issues its opinion in the case of Marbury v. Madison.
July 6, 1835	Chief Justice Marshall dies.
1857	Dred Scott v. Sanford
1954	Brown v. Board of Education
2000	Bush v. Gore

Class Period 4, Administrative Office of the U.S. Courts

Class Period #5
Jeopardy Challenge!

Time: 1 class period

The purpose of this activity is to review the key points of the case. Divide the class into small groups of 3-5. Ask each group to choose a team name that relates to *Marbury v. Madison* and to designate one representative who will raise his/her hand for the group. Ask for a volunteer to be the game show host who will call out the questions. Another student will keep time and decide which team representative raises its hand first. From the time the representative raises his/her hand, the team has 30 seconds to provide an answer. Whichever group answers the question correctly chooses the category and point value for the next question.

Jeopardy Challenge Categories**Players****100 Points**

Who was the Chief Justice of the Supreme Court of the United States who wrote the opinion in *Marbury v. Madison*?

A: Chief Justice John Marshall.

200 Points

Who brought the case to the Supreme Court (who was the petitioner)?

A: William Marbury.

300 Points

What President appointed Marbury to the justice of the peace position?

A: John Adams.

400 Points

Who was President when Marbury brought his case to the U.S. Supreme Court?

A: Thomas Jefferson.

500 Points

Who was the Secretary of State who failed to have Marbury's commission delivered on time?

A: James Madison.

Class Period 5, Administrative Office of the U.S. Courts

Facts of the Case**100 Points**

Name and define the key concept established in *Marbury v. Madison*.

- A: Judicial review, which allows the Supreme Court to declare unconstitutional acts of Congress and the President.

200 Points

Why did Marbury sue Madison?

- A: Secretary of State Madison, who was responsible for the delivery of justice of the peace commissions, did not have Marbury's commission delivered. Marbury sued Madison to get the commission so that he (Marbury) could be a justice of the peace.

300 Points

Did the Supreme Court decide that Marbury had a right to the commission?

- A: Yes. The commission was properly signed and sealed. It did not have to be delivered to be official.

400 Points

If the Court found that Marbury had a right to the commission, why didn't the Justices give it to him?

- A: Because the Court decided that it did not have the authority to remedy the situation. Although the Court concluded that Marbury was entitled to the commission, it declared unconstitutional the law (the Judiciary Act of 1789) that would have granted the Court the power to fix the problem.

500 Points

Explain the compromise crafted by Chief Justice Marshall in the decision.

- A: The Court decided that while Marbury was entitled to the commission, the Supreme Court could not – under the Constitution – take the action that would have made it possible. The effect of the Court's decision was to 1) acknowledge that Congress has the authority to give the Judiciary certain powers; 2) limit the Court's own powers.

Class Period 5, Administrative Office of the U.S. Courts

Legacy

100 Points

What is the legacy of Marbury v. Madison?

- A: It made the Judiciary a co-equal branch of government with the Legislative and Executive branches. 2) It established the Supreme Court as the final arbiter of the

Constitution. 3) It gave the Supreme Court the authority to declare unconstitutional acts of Congress and the President. 4) It established that the rule of law would govern Supreme Court decisions. 5) It established the neutrality and credibility of the Supreme Court.

200 Points

Name an 1857 case in which the Supreme Court asserted the power of judicial review on the issue of slavery?

A: Dred Scott v. Sanford

300 Points

Name a 1954 case in which the Supreme Court asserted the power of judicial review on an issue of public school desegregation?

A: Brown v. Board of Education.

400 Points

Name a case in 2000 in which the Supreme Court asserted the power of judicial review on an issue regarding the Presidential election?

A: Bush v. Gore.

500 Points

Who made the following statement and in what Supreme Court case was it made?

“The Constitution is superior to any ordinary act of the legislature ...” and “a law repugnant to the Constitution is void” “It is emphatically the province of the judicial department to say what the law is.”

A: Chief Justice John Marshall in Marbury v. Madison.

Class Period 5, Administrative Office of the U.S. Courts

Concepts

100 Points

Summarize the concept of separation of powers.

- a. There are three independent and co-equal branches of government: Executive, Legislative, and Judicial.

200 Points

Summarize the concept of judicial review.

A: The U.S. Supreme Court has the authority to declare unconstitutional acts of Congress and the President.

300 Points

Summarize the concept of rule of law.

A: Legal conflicts are decided on the basis of laws, not the personal preferences of people in power.

400 Points

Summarize the concept that the Supreme Court is the final arbiter of the U.S. Constitution.

A. Only the Supreme Court decides what is constitutional.

500 Points

What is a writ of mandamus?

A. A court order compelling a public official to take an action or prohibiting a public official from taking an action.

Class Period 5, Administrative Office of the U.S. Courts

Arguments

100 Points

State an argument in favor of judicial review.

A: (See chart)

200 Points

State an argument in opposition to judicial review.

A: (See chart)

300 Points

What is the role of the amicus curiae?

A: To present its perspective on an issue before the Court in way that it hopes will be informative and persuasive.

400 Points

What did Marbury want the Supreme Court to do? Did he receive the remedy he wanted?

A: Order Madison to give him the commission that would have made him a justice of the peace. No. The Supreme Court ruled that it did not have the authority to remedy the problem.

500 Points

Do the parties have to be present at the Supreme Court for oral arguments?

A: No. However, Madison's decision not to appear was considered a protest statement.

