

III. Activities

OVERHEAD MASTER #1

Vocabulary for *Marbury v. Madison*

Uscourts.gov

Amicus curiae brief: A "friend of the court" brief filed by a third party not directly involved in the case. It is meant to inform and influence the Supreme Court about a particular perspective on the issues in the case.

Arbiter: Final decision-maker

Bill of Rights: First Ten Amendments to the Constitution (including the right to free speech, right to be protected from unreasonable searches and seizures, etc.) that establish the fundamental rights enjoyed by Americans.

Checks and balances: System of overlapping the powers of the Legislative, Executive, and Judicial branches to permit each branch to check the actions of the others.

Judicial review: The power of the Judiciary to review legislation or other governmental action in order to determine whether it complies with the U.S. Constitution or state constitutions.

Rule of law: Concept that citizens are governed by the law and institutions, not individuals. The law supercedes all else and is intended to be constant, predictable, and just.

Separation of powers: A basic principle in American government that the Executive, Legislative, and Judicial powers are divided among three independent and co-equal branches of government.

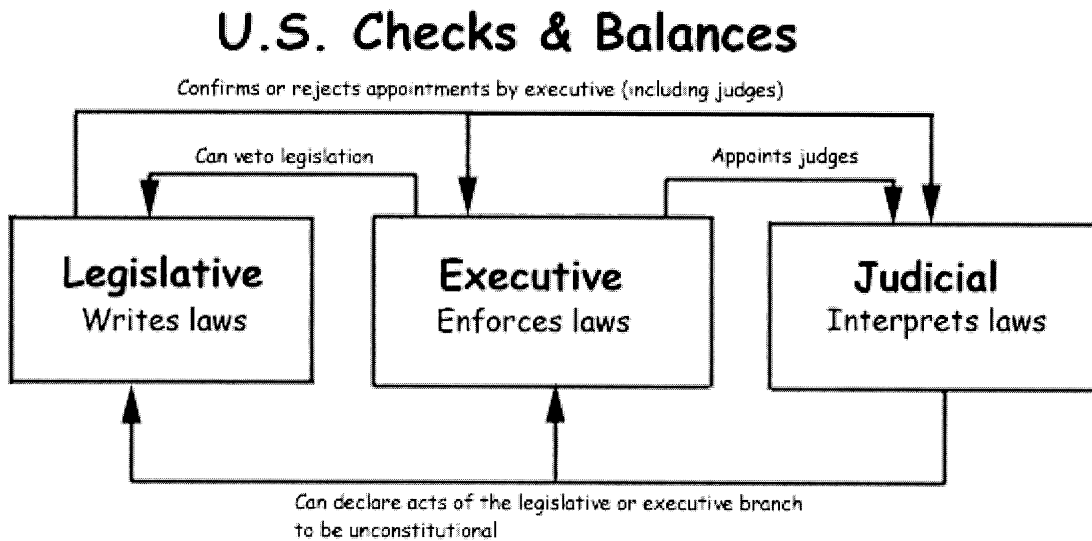
Writ of mandamus: Court order directing an individual or agency to do or not do something, particularly, a judicial order directing a government official to carry out official duties of office or not do something in his/her official capacity.

MARBURY V. MADISON DBQ

Exercise A. Analyzing Sources

Directions: Answer the questions that follow each document.

Document 1:



1. Which branch of government has the power to declare acts (laws) of Congress unconstitutional?

Document 2: Excerpts of Supreme Court Chief Justice John Marshall's 1803 decision in *Marbury v. Madison*.

It is emphatically the province and duty 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 to 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 of the very essence of judicial duty.

If, then, the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply...

From these, and many other selections which might be made, it is apparent that the framers of the Constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature.

Why otherwise does [the Constitution] direct the judges to take an oath to support it? ...

It is also not entirely unworthy of observation that, in declaring what shall be the *supreme* law of the land, the *Constitution* itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in *pursuance* of the Constitution, have that rank.

Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void; and that *courts*, as well as other departments, are bound by that instrument.

The rule must be

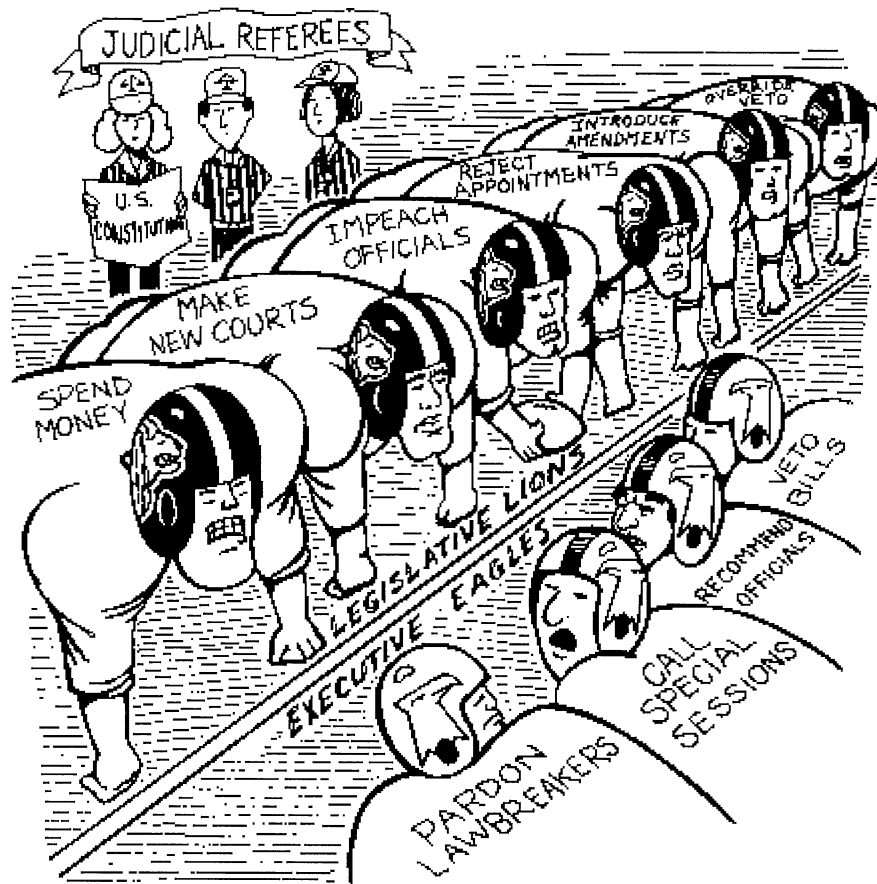
Discharged.

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"? (tip – write in kid language)

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

- 2b. What is important about the court "voiding" a law?

Document 3:



HOW DO THEY EXPECT US TO STOP THEM?

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

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

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

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

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

Exercise B. Writing About Related Sources

Directions: Write a paragraph in response to The Big Question below. Be sure to include in your answer at least two details from the documents on the previous pages. Reviewing your responses to the scaffolding questions will help you answer The Big Question well.

The Big Question:

Does judicial review really strengthen the Constitutional principal of checks and balances or not? Justify your answer.
