

Name _____ Period _____ Date _____

Unit 3: Lesson 21: What is Judicial Review? Why Is It Controversial?

<p>Judicial Philosophy:</p> <p>Judicial Restraint</p> <p>vs.</p> <p>Judicial Activism</p> <p>What is judicial review?</p> <p>Should the Supreme Court have the power to declare acts of the president and Congress unconstitutional?</p> <p>How did the Supreme Court establish the power of judicial review?</p> <p>What events led to the Supreme Court case Marbury v. Madison?</p> <p>What were the main issues in Marbury v. Madison?</p>	<p>is the set of _____ and _____ which dictate how <u>Justices</u> and <u>judges</u> of the <u>United States federal courts</u> may rule in many cases.</p> <p>Judicial _____: The belief that the Court should neither overrule the decisions of elected officials nor make public policy (ex. <i>Plessy v. Ferguson</i> 1896) Upholding state law keeping federal out.</p> <p>Judicial _____: a <u>judicial</u> ruling suspected of being based on _____ or political considerations rather than on existing law (ex. <i>Brown v. Board of Education</i> 1954). Striking down _____ law and imposing federal law and the _____ Clause.</p> <p>The power of the judicial branch to decide if acts of the legislative or executive branches violate the Constitution</p> <p>The British Privy Council had the power to veto colonial legislatures laws. As well, state courts had declared laws made by state legislatures unconstitutional. The Constitution, however, makes no mention of the power of judicial review (read the first sentence of Article III). The judicial power shall be vested in whom? _____</p> <p>Although nothing in the _____ clearly gives the Court this power, many historians believe that most of the Framers assumed that the _____ courts would have this power.</p> <p>In the election of _____ Thomas Jefferson (Republican) defeated John Adams (Federalist) on Feb. 17th, however, did not take office until March 4th. While the _____ were still in power they created numerous new judicial positions and Adams appointed his federalist cronies to those positions and the Federalist Senate approved them, including John _____ to be the new Chief Justice of the Supreme Court...these appointments became known as the “_____ judges”</p> <p>Judicial commissions not delivered by Adam’s Sec of State (Marshall) were then instructed not to be delivered by Jefferson’s new Sec of State (James Madison).</p> <p>William Marbury who had been appointed justice of the peace for Wash. D.C. sued to force the delivery of his commission via a writ of _____ (court order) from the Supreme Court forcing Madison to deliver his commission.</p> <p>Jefferson refused to allow Madison to deliver any of the commissions</p>
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<p>What was Marshall's decision?</p> <p>What was the significance of the Supreme Court's decision in Marbury v. Madison?</p> <p>Why has judicial review remained controversial?</p> <p>What are the 4 methods used to interpret the Constitution?</p>	<p><u>Marshall's Dilemma:</u></p> <ol style="list-style-type: none"> 1. The _____ branch enforces the law, but what if Jefferson refused to follow the Court order? The Court would appear weak and powerless. 2. If the Court did not order the president to deliver the commission it would look _____ regardless. <p><u>Marshall solved the dilemma in an ingenious way by asking and answering the following 3 questions:</u></p> <ol style="list-style-type: none"> 1) Does Marbury have a right to the appointment? YES or NO...it had been signed by the president & sealed by the secretary of state, therefore, Marbury had a right to the office. 2) Do the laws of the country give Marbury a way to have things set right? YES or NO...by refusing to deliver the commissions Madison was breaking the law and, therefore, Marbury should have a legal remedy. 3) Is asking the Supreme Court for a writ of mandamus the right legal remedy? YES or NO...Marshall argued that the part of the Judiciary Act of 1789 that gave the Supreme Court the power to issue a writ of mandamus under original jurisdiction was unconstitutional. Marshall reasoned that by giving the Court a power the Constitution did not, Congress had violated the Constitution and, therefore, that portion of the Judiciary Act was null and void. So the Supreme Court did not order the delivery of the commission because they did not have the authority to do so...Marshall avoided the almost certain embarrassment of having Jefferson refuse to obey the Court's order. <p>Marshall reasoned that when the people adopted the Constitution, they agreed that it would be the _____ law of the land. Therefore, they had consented to be governed by its rules, which included certain limitations on the powers of C_____. If the Court did not have the power of _____ review, there would be no effective way to enforce the limitations placed on the powers of C_____.</p> <p>The judiciary, therefore, is the _____ of the Constitution.</p> <p>Most Americans recognize _____ review as a necessary power in our constitutional framework. The people do not always agree, however, on how the courts should use this power. The Supreme Court hears controversial cases on which Americans have strong feelings and either way the Court decides their will always be those who disagree.</p> <p><u>Identify at least one problem with each method.</u></p> <ol style="list-style-type: none"> 1. Using the literal meaning of the words in the Constitution Problem(s): 2. Intentions of those who wrote the Constitution Problem(s): 3. Using basic principles & values in the perspective of history Problem(s): 4. Using contemporary social values in terms of today's policy needs Problem(s):
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How has judicial review worked in practice?

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Justices use all methods of interpretation. Justices also use _____ courts have established in previous cases; current _____ policy; political & _____ concerns; and their personal political, economic, and _____ beliefs. Despite all of these the justices are conscious of their responsibility to take an _____ view of constitutional issues involved and not decide on the basis of their own _____ views.
How the public views the Court and its authority depends on its being faithful to both the language and _____ of the Constitution.

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1. How would you explain the power of “judicial review”? How did the Supreme Court acquire this power?
 2. Why is Marbury v. Madison a historically important decision?
 3. List the 4 different methods of interpreting the constitution?
 4. Explain the idea that courts should be guided by “precedents” in deciding cases.