Marbury v. Madison DBQ Lesson

Affected 8th grade TEKS:

- **8.17C Government**: Identify the origin of judicial review and analyze examples of congressional and presidential responses;
- **8.16D Government**: Analyze how the U.S. Constitution reflects the principles of limited government;
- **8.19A Government**: Summarize the issues, decisions and significance of landmark Supreme Court cases including Marbury v. Madison, McCullough v. Maryland, and Gibbons v. Ogden;
- **8.30A Social Studies skills**: Differentiate between, locate, and use primary sources such as computer software, databases, media and news services, biographies, interviews, and artifacts to acquire information about the United States;
- **8.30B Social Studies skills**: Analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions.

Procedure:

(Notes to teachers are in bold and parenthesis)

1. **Preview Assignment**: *(Have the students write out the definition of checks and balances. Then, have the students answer the following preview question. This should be on an overhead along with the preview question and both go in the Interactive Notebook).* Estimated time 15-20 minutes.

2. **Preview question**: Describe a situation in which you decided to do something but your parents found your decision to be unacceptable (disgusting) and refused your decision. *(Anticipate questions on the terms repugnant and voided. The preview is designed to foster thinking on balance of power and who has the ultimate authority to decide.)*

3. **Pictoword** *(This could be another option as an introduction to the DBQ)* – Using the definition of checks and balances, create a symbolic representation (graphic) of the phrase, to put into your Interactive Notebook.
Teaching strategies for the DBQ:

(Review the entire DBQ assignment with the students and explain to them that the end goal is to answer the “Big Question”.)

- Document #1- The chart and question are self explanatory.
- Document #2 –Point out that many words have definitions in parenthesis behind the terms. Assist students in answering questions as needed. You will need to give students a time period to finish documents one and two. Estimated time: 15-20 minutes
- Document #3 – Do a class review (Visual Discovery) of the political cartoon and anticipate that the students will have many questions. Use the following questions but keep in mind that your end goal is to get the students thinking about the power of judicial review and its effect on our system of checks and balances.

1. What are the three main parts being represented in the cartoon? The three branches of government. Review the names of the teams, etc.
2. Does one team look stronger than the other? Legislative Lions looks meaner, more of them compared to Executive Eagles.
3. Who is asking the question in the caption of the cartoon? An Executive Eagle
4. Why is he asking the question? The Legislative Lions seem so much stronger, etc.
5. Who are “they”? the fans, the coaches?? Answers may vary.
6. Who is “us”? the Executive Eagles,
7. Who is “them”? The Legislative Lions.
8. What is the role referees play in sporting events? They judge and enforce the rules.
Marbury v. Madison DBQ

Exercise A. Analyzing Sources

Directions: Answer the questions that follow each document.

Document 1:

U.S. Checks & Balances

Confirms or rejects appointments by executive (including judges)

Can veto legislation

Appoints judges

Legislative
Writes laws

Executive
Enforces laws

Judicial
Interprets laws

Can declare acts of the legislative or executive branch to be unconstitutional

1. Which branch of government has the power to declare acts (laws) of Congress unconstitutional?
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 he 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?
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.
MARBYUR V. MADISON DBQ
Answer Key

Exercise A. Analyzing Sources

Directions: Answer the questions that follow each document.

Document 1:

U.S. Checks & Balances

Confirms or rejects appointments by executive (including judges)

Can veto legislation

Appoints judges

Legislative
Writes laws

Executive
Enforces laws

Judicial
Interprets laws

Can declare acts of the legislative or executive branch to be unconstitutional

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

The judicial branch

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.*
2. 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)

**The judicial branch’s job is to decide (interpret) what the law means.**

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

**To declare the law void (cancelled).**

2b. What is important about the court “voiding” a law?

**The court can toss out the law. It can no longer be enforced.**
1. What three groups in government are represented in this cartoon?
   **The executive, legislative, and judicial branches.**

2. What is represented by the writing on the backs of the players?
   **The powers of the executive and legislative branches.**

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

4. What power did Marbury vs. Madison give the “referees” that is not shown in the cartoon? **The power of judicial review.**
5. How does judicial review strengthen the role of the judicial branch in this game?

It gives the judicial branch the ability to declare the actions of the other two branches to be unconstitutional. They now get to be the referees and interpret the rules of the 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.

Answer:

Yes, judicial review helped strengthen the Constitutional principal of checks and balances because it established the courts power “to say what the law is” and “that a law repugnant to the constitution is void”. In other words, the Judicial Branch can prevent a law passed by the legislative branch, or an action done by the executive branch, from being acted on. The flow chart on U.S. Checks and Balances shows that the Judicial Branch interprets the law. The political cartoon in document 3 clearly shows that the judicial branch gets to act as referee and that the Constitution is the rule book that they use to solve disputes about what the Constitution means.

(See Rubric next page)
**DOCUMENT-BASED QUESTION**
**GENERIC SCORING RUBRIC**

<table>
<thead>
<tr>
<th>4</th>
<th>3</th>
<th>2</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Answers all the questions by referring to the documents and bringing in new information</strong></td>
<td>□ Answers most of the questions and refers to the documents</td>
<td>□ Answers some of the questions and refers to some of the documents</td>
<td>□ Answers none of the questions and does not use the documents to support ideas.</td>
</tr>
<tr>
<td>□ Consistently uses accurate data</td>
<td>□ Generally uses accurate data</td>
<td>□ Uses some accurate data</td>
<td>□ Uses no accurate data</td>
</tr>
<tr>
<td>□ Fully develops ideas by using examples, reasons, details, and explanations that support the topic</td>
<td>□ Somewhat develops ideas with supporting evidence</td>
<td>□ Uses little supporting evidence to develop ideas</td>
<td>□ Uses no supporting evidence</td>
</tr>
<tr>
<td>□ Demonstrates a logical plan of organization</td>
<td>□ Uses some organization</td>
<td>□ Attempts to organize but goes off topic</td>
<td>□ Lacks organization of ideas</td>
</tr>
<tr>
<td>□ Consistently expresses ideas clearly</td>
<td>□ Usually expresses ideas clearly</td>
<td>□ Attempts to express ideas clearly</td>
<td>□ Does not express ideas clearly</td>
</tr>
</tbody>
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**Comments:**