
Unit 8:1b The Establishment of Judicial Review

Judicial review is one of the distinctive features of United States constitutional law. Yet, it was not enumerated as a power in Article III. Judicial review also establishes an “Independent Judiciary.” Most countries’ courts can be over ruled by an act of the legislature. While the judiciary relies on the other two branches to complete its mission, and the people voice cheek on the judiciary in the form of amending the Constitution, the courts still say mostly independent of the influence of the other two branches, or public opinion.

The courts’ most important power came from one of its own ruling. In essence Marbury v. Madison became a de facto amendment to the Constitution.

Although it was first asserted in Marbury v. Madison to strike down an act of Congress as inconsistent with the Constitution, judicial review did not spring full-blown from the brain of Chief Justice Marshall. The concept had been long known, having been utilized in a much more limited form by Privy Council review of colonial legislation and its validity under the colonial charters.

Marbury v. Madison (1803)

"The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States;"

Chief Justice Marshall's argument for judicial review of congressional acts in Marbury v. Madison reflected Hamilton’s arguments in Federalist 22 and 78. For example, he had written:

The interpretation of the laws is the proper and peculiar province of the courts. A constitution, is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. The Federalist, # 78

In essence, the Court decided that one of the laws passed by Congress gave it powers that did not agree with the Constitution and was “unconstitutional.”

In Marbury v. Madison, Chief Justice John Marshall, too, from the Court took a small power and gave to it the principle of “Judicial Review.”

Name: _____ Period: _____ Date: _____

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Questions (20):

1. Of the cases we've studied, which is your favorite?

2. What part of the Constitution was reviewed by the Judiciary in that favorite case?

3. Write a sentence that uses both the words "judicial review," and the name and year of your favorite case.

4. When the Brown v. Board decision was made in 1954, few, if any of the state legislatures or governors would have fought for the Nation's schools and services to have been made equal.

How is the Brown case an example of the Court being able to be independent of the Congress, the President and the polling public opinion?
