

Marbury v. Madison / Who Should Decide?— Answer Key

Directions: Read the scenario below and answer the **Questions to Consider**.

The United States Congress passes a law that says all citizens who were not born in this country must return to their country of birth within one month. The president signs the law and says he will have the armed forces help to enforce compliance.

Questions to Consider

1. In the United States, courts have the power to review decisions of other branches and determine their constitutionality, but the final power of judicial review rests with nine appointed justices on the Supreme Court. In England, the decisions of the highest court are subject to review by the legislature. Who is best suited to have this authority? Explain and defend your answer.

Student answers will vary as they can make a case for either answer. They may respond that the Supreme Court is best suited to have this authority because the judges are appointed, which makes them independent and more likely to do what is right rather than what will get them reelected. Others may respond that the legislature is better suited to have this authority because there are more of them and it is less likely that such a large group would collaborate to be corrupt. Furthermore, since they are elected "of the people, by the people," they would protect the people's rights and can correct the judges, should they make any "errors" in judgment.

2. Is a workable system of government possible without judicial review? How would such a system be organized?

It could be difficult to have a workable system without judicial review, but it could be done as the case of England, which has never had judicial review, proves every day. Each branch of government could operate independently and would be "checked" primarily by the other branches in terms of their counteractions or by the people when it came time for elections. That being the case, some unconstitutional actions might occur. For instance, if Congress passed the law given in the example, we'd have to rely more heavily on the president to not enforce it. The people will, in essence, rule on this when it comes time for elections. However, some people might like that Congress had passed this law and might vote the officials back into office. In this scenario, we would experience some tyranny of the majority because of the lack of judicial review.

3. Do the people have any recourse in the scenario above? In other words, can anything be done about this? If so, what?

The people can file a suit urging the courts to declare the law unconstitutional. They can instigate a constitutional amendment to declare the law invalid. They can petition Congress to repeal the law.

4. Does the fact that the Supreme Court currently has the power to review actions of the legislative and executive branches relieve these two branches of the obligation to review their own decisions to be certain they are constitutional?

Student answers will vary but may include the following. The fact that the Court currently has the power to review actions of the legislative and executive branches does not relieve these two branches of the ethical obligation to review their own decisions to be certain they are constitutional. It is their responsibility to try to follow the rule of law and if they frequently abuse or misuse their power, they risk not being reelected.