When Laws Conflict

Hamilton's argument and the decision in Marbury v. Madison

USG.C.4.4.B "Examine the Framers' intent regarding the judiciary's authority, including the principle of judicial review, as described by Hamilton in Federalist Paper No.78 and established in Marbury v. Madison."

NAME _____ DATE _____

1 READ AND MARK

Read it twice

YOUR JOB Circle Hamilton's reason for placing the Constitution above a statute. Then write 1 beside the sentence that identifies the legal conflict in Marbury and 2 beside the sentence that tells how the Court responded.

Judges and the Constitution

1. Imagine a dispute over a law Congress passed. Who has the final word when that law conflicts with the Constitution? In 1788, Alexander Hamilton addressed this problem in Federalist No. 78 while arguing for the proposed Constitution. He described courts as the branch with neither the power to spend money nor the force to carry out decisions. Judges, he argued, exercise judgment rather than political will. Their independence, protected by life tenure during good behavior, would help them decide cases without fearing retaliation from elected officials. Hamilton's argument placed courts inside a system of limited government.

2. Hamilton reasoned that the Constitution comes from the people and has higher authority than laws passed by their representatives. If a statute and the Constitution cannot both govern a case, a judge must follow the Constitution and treat the conflicting statute as invalid. This principle became known as judicial review. Hamilton said this does not make judges superior to Congress. Instead, it makes the people's written limits superior to both branches. Courts cannot simply reject laws they dislike. They must decide an actual case by interpreting the Constitution and the law at issue.

3. In 1803, Marbury v. Madison put that reasoning into action. William Marbury sought a court order requiring delivery of his commission as a federal justice of the peace. Chief Justice John Marshall concluded that Marbury had a right to the commission, but the Supreme Court could not issue the requested order in that case. Marshall read a provision of the Judiciary Act of 1789 as giving the Court original jurisdiction beyond what Article III of the Constitution allowed. The Court treated that portion of the act as unconstitutional and refused to apply it. This established the Supreme Court's power to invalidate a federal law that conflicts with the Constitution.

2 ANSWER WITH EVIDENCE

Use the passage

1. Under Hamilton's approach, when may a judge treat a law passed by Congress as invalid?

2. Why did Hamilton argue that judicial review does not make judges superior to Congress?

3. What conflict did Marshall identify between the Judiciary Act of 1789 and Article III, and how did the Court respond?

4. How does Marbury's outcome illustrate Hamilton's distinction between judgment and political will?

3 YOUR TURN

Your own words

Congress passes a law allowing agents to search any home without a warrant or reason, and a homeowner challenges it under the Fourth Amendment's protection against unreasonable searches. In four or five sentences, explain how a judge should analyze the law using Hamilton's reasoning and the Court's action in Marbury.

ANSWER KEY

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HIGH SCHOOL · USG.C.4.4.B

PART 1 · READ AND MARK

Circle Hamilton's reason for placing the Constitution above a statute. Then write 1 beside the sentence that identifies the legal conflict in Marbury and 2 beside the sentence that tells how the Court responded. Accept any marking that follows this job and points at the right text.

PART 2 · ANSWERS

#	QUESTION	ANSWER
1	Under Hamilton's approach, when may a judge treat a law passed by Congress as invalid?	**When the law conflicts with the Constitution in a case the judge is deciding, not merely because the judge dislikes it.**
2	Why did Hamilton argue that judicial review does not make judges superior to Congress?	**The Constitution comes from the people and places limits on both judges and Congress.**
3	What conflict did Marshall identify between the Judiciary Act of 1789 and Article III, and how did the Court respond?	**Marshall read the act as expanding the Supreme Court's original jurisdiction beyond Article III's limits. The Court treated that portion of the act as unconstitutional and refused to apply it.**
4	How does Marbury's outcome illustrate Hamilton's distinction between judgment and political will?	**Although Marshall concluded that Marbury had a right to his commission, the Court did not issue the order because it found that the Constitution did not permit it to exercise that original jurisdiction.**

PART 3 · YOUR TURN (SAMPLE ANSWER)

A judge would hear the homeowner's case and compare the law with the Fourth Amendment's protection against unreasonable searches. Allowing a search of any home without a warrant or reason conflicts with that protection. Hamilton argued that judges must follow the Constitution, which comes from the people, instead of a conflicting law. As in Marbury, the judge should decline to apply the unconstitutional law, using constitutional judgment rather than personal preference.

Accept responses that connect the Constitution's higher authority to a judge's decision not to apply a conflicting law in an actual case. Students need not claim that every search without a warrant is unconstitutional.