



Curriculum Units by Fellows of the National Initiative
2006 Volume II: The Supreme Court in American Political History

The Powers We Accept: A Brief Unit on the Supreme Court

Curriculum Unit 06.02.02, published September 2006
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Introduction

This unit seeks to explore the role of the Supreme Court in the political history of the United States through a very brief study of three landmark cases. The goal will be to explore these cases in depth, reading both the opinions and history surrounding those opinions in a way that will illuminate not only the powers of the court but also public reaction to its decisions. In this way, the students will compare the court of Marbury vs. Madison with the court of Bush vs. Gore, evaluate the positions and opinions of the court, and explore in relative depth the case of Dred Scott vs. Sanford.

It is the goal of this unit to introduce the court, its history and some of its processes in an extremely concise way. Therefore I have decided to use only three cases, but to study them in some depth. While this choice may lead to a more shallow understanding of the breadth of the court's work over the last two hundred years, it is my hope that it will allow me to cover more of the background and controversy surrounding some of the court's opinions.

Justification

The Supreme Court, as the head of the judiciary branch of our federal government occupies a place of primacy in our national consciousness. In our current political climate the court seems to be the ultimate arbiter of any dispute. This is a much more primary role than that which is described in Article III of the Constitution. Article III Section I states merely that "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." Excepting a situation in which the word "judicial" is taken to mean "absolute," one need not read this clause as an acceptance of the complete authority of the Supreme Court.

If the Constitution does not clearly dictate absolute judicial authority, where did the current role of the court originate? One might look back to the earliest days of the court for some seminal event, which might have precipitated this power. The concept of judicial review, the process by which the Supreme Court reviews acts

of the Congress and the President in terms of their constitutionality, stretches back to 1803, and the case of *Marbury vs. Madison*. It was in this case that Chief Justice John Marshall set forth the justification for this power, along with establishing many of the traditions of Supreme Court opinions to follow.

In *Marbury*, Marshall interpreted Article III of the Constitution to vest in the Supreme Court the authority to declare acts of Congress or the President in violation of the Constitution. The case before the court was one in which a commission had not been delivered to Marbury. From a modern perspective this hardly seems like grounds for a Supreme Court case, but Marshall saw matters differently. He argued that this case was within the jurisdiction of the court, and as such the Judiciary Act of 1789 (which dictated what kinds of cases fell under the jurisdictions of the various courts) must violate the Constitution. He wrote an opinion, which stated that the Judiciary Act of 1789 was unconstitutional, and therefore that in the case of *Marbury*, the Supreme Court could do nothing under the auspices of an unconstitutional law.

Marshall's argument was shaky in many places. He reworded the text of Article III in his writing, in addition to seemingly conjuring up his own notion of Supreme Court power. This is perhaps a result of the soundness of his logic. He argues quite simply "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." When combined with Article IV, which asserts the Constitution as superior to any other law, this reading of judicial power seems to hold water. It is important to remember however that this view was not universally accepted at the time. Thomas Jefferson argued that the opinion of the court was "a worthless piece of paper".

Marshall's perspective on judicial review however, though bold, does not fully answer the questions I have raised about the current power of the court. Even if one accepts the court's power to review acts of Congress and the President, that acceptance does not necessitate the ability to negate those acts. The power to review could easily be construed as limited to rendering non-binding opinions, which advise Congress or the President without commanding them. Later courts argued that judicial review was necessarily binding, and wielded it accordingly.

As a power of the court, it was more than fifty years before judicial review was used again. In the case of *Dred Scott vs. Sandford* of 1857, the court once again exercised the power to strike down acts of Congress. Scott, a slave, argued that when his master brought him into a free state, and a free territory, that as a function of his residence in free states, he was free.

The court, in a 6-2 decision, ruled that Scott was not free. They based their decision on the premise that no Congressional law could deprive a citizen of his property simply as a result of travel among the states. This first ruling invalidated the Missouri Compromise in that, in the view of the court, the compromise did just that.

Furthermore, the court ruled, that Scott lacked standing to bring suit in federal court as a function of his race. Writing for the court, Chief Justice Taney wrote

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.¹

In effect this language ruled that neither Scott, nor any other African American, be they free or slave, could be

a citizen of the United States. Therefore, no African American had standing to bring such a suit in federal court, due to their lack of standing. This is of course an offensive and outrageous opinion now, but at the time it reflected a view of second-class existence, which was largely held throughout the United States.

Equally remarkable was the fact that though there was a great deal of controversy surrounding this ruling, there was little question of the authority of the court in this situation. In the Dred Scott ruling, the court sought to settle the question of whether or not slavery should be allowed in the territories of the United States. This was perhaps the most pressing political question of the day. While a modern view of the court might accept its intervention in this case, the Taney court was entering uncharted territory. There was clear opposition to the court's ruling, but that opposition focused on the outcome of the ruling, not the court's right to rule.

Abraham Lincoln clearly expressed this perspective in the Lincoln Douglas debates of 1858 when he said "We will try to reverse that decision... Somebody has to reverse that decision, since it is made, and we mean to reverse it, and we mean to do it peaceably...." This is not an argument against the authority of the court, it is merely an argument against the decision of the court. He went on however to quote from Jefferson, arguing that to view judges as the "ultimate arbiters of all constitutional questions" would amount to "the despotism of an Oligarchy."

This is a far cry from our current political climate in which judicial authority is seemingly limitless. This debate does however begin to illuminate an answer to my earlier question. Within a space of 50 years the court had progressed to a point where their power of judicial review was accepted, albeit grudgingly. There are cautionary words spoken against succumbing to the court, and angry words spoken against the decision, but no substantial movement (perhaps due to the political climate) towards reform. Thus we begin to see that the power of the court is not only founded in the Constitution, but also in the history and tradition of our government. This history is one of incremental gains in power, rather than a clearly stated constitutional clause or wording.

In recent years, some decisions of the court have caused great controversy, but the right of the court to render those decisions has rarely been questioned. The opinions of the court stand, not only as matters of law, but also as matters of national morality. In cases ranging from abortion to detention policy, national elections to labor law, the Supreme Court speaks for the nation with every opinion.

In the recent case of Bush vs. Gore, the court was asked to effectively decide the presidential election of 2000. Many have held up this moment as proof of the success of our democracy, proof that the American system of government could function even in the face of a difficult and contentious election. Another reading of the events however might question the intervention of the court in an electoral matter. This is especially true if one considers that the Constitution vests the power to decide contested elections clearly under the jurisdiction of the Congress.

A comprehensive study of the Constitution, as well as a course in constitutional law, might lead one to question this seeming disparity. Such a course of study might leave the average person with all the tools necessary, not only to understand the court, but also to evaluate its role in decisions such as these.

Unfortunately, the court is little understood by many Americans. The sources of its power, both logical and historic, are taken for granted and rarely questioned. This may be due to the complex nature of court decisions. It may be due to the unique ethos, which is absent from other federal officials, which perpetually surrounds the court. Judges pronounce their rulings from on high, perhaps leading to a skewed understanding of where they fit in our democracy. Whatever the cause, most Americans are content to accept the current

rulings of the court as if they were gospel. It is only a rare case in modern times that results in serious debate over the role of the court in our society.

If our goal as educators is to create, or mold young minds into critical thinkers, thinkers who question the realities they are presented with, then certainly the court deserves a more in depth study. It would seem that this is a critical failing of our educational system.

Why do we as educators continue to accept a blind faith among our students in the Supreme Court as the ultimate arbiter of justice and conflict in the US? It is incumbent upon us as educators to help our students understand the court in a way that goes deeper than the standard brief review of Marbury, and perhaps a sprinkling of other cases as well. The failing of this means of study is simply that it does not require any comprehensive approach to the decision making process, nor does it require a serious reading of the opinions themselves. At a bare minimum the court clearly deserves the same comprehensive study that the Congress or the President receive.

The goal of this unit is to allow an overview of the court, which includes an in depth view of the court and its power in a timeframe that makes it practical. US history is a complex subject, requiring a teacher to head in many directions at once in hopes of building a clear understanding of the subject. Therefore it is necessary to limit time spent on any one topic, even if that topic is one of the three branches of government.

Thus it can be challenging to cover the court in a way that is fair, and in depth, while leaving time in the curriculum for teaching everything else. Given that, in an extremely simplistic view, the court asserted the power of review over federal matters in Marbury, and retains that power today. It is tempting to discuss the beginning without regard to the evolution of that power. In this way it is possible to avoid teaching the court entirely. This pattern is inappropriate from a historical perspective, and a pedagogical one. Thus I hope that this unit will provide a way of doing this, in a short period of time without giving up depth.

It is my intention to structure this unit around a few exemplary cases, Marbury vs Madison, Dred Scott vs Sanford, and Bush vs Gore to demonstrate the challenges the court has faced, the logical bases of its power and the public acceptance, or rejection of their decisions.

The choice of these three cases is two-fold. Due to the necessity of exploring the facts of the case in relative depth the number of cases has been kept relatively low. Additionally, the cases chosen need to make sense in terms of timing as well. A unit, which covers 200 years of history must make sense in the chronology of the course. Therefore I have chosen 2 cases, which occur very early in the Court's history, and only one modern case for comparison. As a result, this unit could be coherently taught both in the early Federalist period, or in the Antebellum period.

The unit will make use of graphic organizers, discussion and debate to allow the students to keep track of the facts of the cases, while using direct inquiry, and study of primary source documents to convey that information to the students. Due to the dense nature of the writings used, there will be some scaffolding required to help the students to understand the material in a way that is useful.

The unit will progress in depth of understanding, debate and work load from Marbury to Bush, leading to an in depth analysis of the cases, with a more critical perspective applied at the end. Along with building an understanding of the court, this unit will be building a deeper understanding of critically thinking about the court. Thus this unit will accomplish a two-fold goal of building understanding of the court, and building critical thinking skills.

Thus this unit will serve multiple separate pedagogical goals. This is of course a necessary byproduct teaching a complex topic like American History, or the role of the Supreme Court in a limited period of time.

Context

I intend for this unit to be taught in my 10th grade U.S. History 1 course at a magnet high school in New Haven, Connecticut. The class periods are 82 minutes long and meet every other day. The course is designed to serve as an overview of U.S. History up until the period of Reconstruction. That focus is geared to align with the school's English curriculum for 10th graders.

The course centers on improving social studies skills, especially that of essay writing, in addition to teaching history. Throughout the year my students are expected to write a number of formal essays, usually two to three per quarter, in the interest of preparing them for the Connecticut Academic Performance Test (CAPT), which they take in their sophomore year. The CAPT requires a great deal of writing and so I focus on this important skill.

I will teach this unit as part of our discussion on the Antebellum period, though certainly it could be taught in the early Federalist period. I intend to play upon the primary sources (including the Lincoln Douglas debates) as part of the background to the war. In this way the unit will serve multiple content goals, while fitting nicely into the curriculum.

In the New Haven curriculum this subject matter has particular relevance in that this unit will be taught as the capstone of our course. The schedule of courses in New Haven requires that students take World Civilizations in their freshman year, and U.S History 1 and 2 in their sophomore and junior years respectively. I therefore seek to leave my U.S. History students with an overview of history through the Reconstruction that is comprehensive enough to be useful in U.S. History II.

Objectives

These objectives seek to present the historical content in a measurable way, while building from the more basic, to the more complex levels of Bloom's taxonomy. There is a focus on vocabulary, graphic organization and literacy that is in keeping with the goals of my district. Each objective relates loosely to a day or so of teaching, though I expect that some will run into more than one day, while others might come up short.

1. Define the terms, Judiciary, Judicial Review, Writ of Mandamus, concurrence, dissent.
2. Explain the facts of Marbury vs. Madison, organizing them into a graphic organizer.
3. Evaluate the opinion of the Court in Marbury vs. Madison based on a close reading of the opinion.
4. Discuss the facts of Dred Scott vs. Sanford through secondary sources.
5. Analyze the outcomes of the case based on primary source documents including the opinion of the court and excerpts of the Lincoln Douglas debates.
6. Create their own opinion of the court, imagining that they were a member of the Taney court, (write a

concurring or a dissenting opinion)

7. Compare Bush vs. Gore to Marbury and Dred Scott based on the merits of the case, the impact of the case, and the opinion of the court.

Strategies

Objective 1- Vocabulary

The unit will begin with a brief study of vocabulary. In particular we will study the necessary vocabulary for discussion and understanding of judicial power in the United States. These terms, including but not limited to judiciary, and judicial review require a study of history in order to fully understand them. This is useful on a number of levels.

Firstly, if students learn the meaning of judicial review in its historical context, it will be easier for them to understand the case of Marbury vs. Madison, which will follow the study of vocabulary in this unit.

My students will discuss the meaning of these terms (the list of which needs to be extended) in depth including a web-based inquiry project in which the students are asked not only to define the term but give its background, including the origin of the term. In this way students will research the terms rather than simply defining them. Such a study allows for greater synthesis of the terms, and forces the students to explore the terms on multiple levels. This differentiated approach is useful in terms of vocabulary in that it goes beyond rote memorization to include analysis and synthesis.

Additionally, if the students are well versed in these terms they will be better prepared to discuss and evaluate the cases and opinions to come. Without an understanding of this basic terminology any study of the material would be extremely difficult.

Objective 2- The facts of Marbury V. Madison

Once the students have completed their study of vocabulary, they should be prepared to begin their study of the case law. Naturally the first case is Marbury, and this study will begin with a look at the facts of the case. Given the difficult nature of the prose of that era, the overview of facts will take place using secondary sources.

In my classroom we will rely simply on our textbook *The Americans* to provide the relevant background information. The goal in this section is merely to acquaint the students with the basic facts of this case to provide them material for evaluation and discussion.

For organizational purposes I will ask the students to use a two- column note taking strategy in which the first column asks for the main idea and the second asks for details behind that main idea. Each column should include the answers to the Who, What, When, Where, Why and How of the case. In this way students will have to compile all of the basic information of the case, and thereby begin thinking about the case beyond its facts.

In my classroom I will most likely allow the students to work collaboratively, given that reading information and taking notes on that information is not the most interesting work. A group of two or three might be more likely to focus on the material, and I have found this a useful tool in conveying material.

Objective 3- Evaluate Marbury

For the purposes of this objective it will be necessary for the students to read through the text of the Marbury decision. This is of course a very difficult task for many high school students, but if taken step by step, and "translated" properly, the students should be able to access the relevant information even if they are not able to understand all of the nuances of the decision itself.

In my classroom I will provide a great deal of scaffolding for my students, hitting on a series of quotes from within the opinion rather than focusing on the wording of the entire opinion. It is possible to extract much of the relevant material from this decision without reading the entirety of the opinion.

The close reading will begin with a brief review of the facts of the case. The students will have access to their graphic organizers from the previous day, and therefore this should be a relatively simple process. In this way we will review the facts one more time in an effort to solidify their understanding of those facts so as to facilitate discussion of the case itself.

When this is complete the students will be ready to deal with the court's opinion. This overview will begin with going over the questions raised by Chief Justice Marshall in the opinion.

"1st. Has the applicant a right to the commission he demands? 2d. If he has a right, and that right has been violated, do the laws of his country afford him a remedy? 3d. If they do afford him a remedy, is it a mandamus issuing from this court?"²

The whole class will go over these questions together discussing each in some depth to ensure that each is fully understood by the students. This will be an opportunity to review the vocabulary from the beginning of the unit, as well as an opportunity to clarify any questions that the students have before progressing.

Once the students are clear on the meaning of each of the given questions, I will lead them in briefly discussing the first two questions. Given that the answers to the first and second of Marshall's questions are easily found, and require little discussion I will progress rapidly to the third and most difficult question.

The students will undoubtedly have difficulty in finding an answer to this question given the dense nature of the actual opinion, so at this point I will direct them back to their graphic organizer and their vocabulary. In this way the students can look at that outcome of the case with the benefit of sources that are more easily understood. With a brief look into secondary sources, the students will be able to discuss the principle of judicial review.

It will be necessary to guide the students through this section of the discussion, adding facts and directing them to the material where necessary. It is however equally necessary that they understand as much of the case as possible. Therefore the students will be asked to look at specific quotes from the opinion, rather than the whole opinion for the purposes of this discussion.

Firstly they will be asked to compare the following quote to its respective quote from the actual Constitution, noting any discrepancies they find.

- In the distribution of this power it is declared that "the Supreme Court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party. In all other cases, the Supreme Court shall have appellate jurisdiction."³

- In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.⁴

It will be necessary to give the students a chance to mull over the discrepancies here, but it is a necessary part of their understanding the decision. I will ask them to suggest reasons for this discrepancy, but only suggest possible explanations if they are unable to come up with any explanations at all. In this way I will seek to encourage them to draw their own conclusions as long as those conclusions are backed by textual evidence.

Finally the class will read together the following quote from Marbury, discussing it afterwards with regards to its validity and Marshall's motives.

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. [5 U.S. 137, 178] 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.⁵

As an assessment of this whole objective, and as a means of following up the reading of the Marshall quotes, the students will be asked to write a brief assessment of the Marbury opinion, evaluating the validity of the opinion as well as the motives of the court in rendering such an opinion. This assignment, which may be as comprehensive as a full-fledged essay, will be graded based on how strongly they defend their point based on historical evidence.

Objective 4/5- Dred Scott vs. Sanford

For the purposes of objectives 4 and 5 the students will be asked to research the facts of Dred Scott in the same way they researched the facts of Marbury. The students will use their text, or some similar secondary source document to take two column notes of the kind outlined above. In this way they will gain a similar understanding of Dred Scott, and they will continue to hone their note taking skills.

When this is complete, and the class has discussed the facts of Dred Scott, as well as its outcome, the students will be given a chance to weigh in themselves. Firstly, the class will discuss the outcome of the case, as a whole, or in small discussion groups. Students will present pros and cons of the opinion as well as discussing the outcomes they would expect. Given that this will be taught as part of the antebellum period, the students will have some information regarding the escalation of tensions in the country at the time.

The students will be encouraged to express their own opinions on the ruling by writing a very brief position statement with regards to the opinion. When this is complete the students will read the excerpts from the Lincoln Douglas Debates (See resources section) in small groups. They will be tasked with analyzing the argument that each man makes with regards to the court, and to the opinion. If necessary I may prod them

with questions such as "What does Lincoln/Douglas think of the court/ruling?" "How would Lincoln/Douglas deal with the court/ruling?"

This process will not only acquaint them with the chief issues in the Lincoln Douglas debates through the words of the men themselves, but also it will provide the students with the needed background to complete the following objective.

Objective 6- The Taney Court

By this point in the unit the students should have a relatively comprehensive understanding of how the court comes to a decision. They will also understand the basic language of the court, and therefore, they will be relatively well prepared to take on the role themselves. Once they have explored the Dred Scott case and reaction to it, they will have a chance to weigh in for themselves.

The students will first list the pros and cons of each side of the issue. When this is complete they will take part in an activity called "Take a Stand," in which the students stand up and walk to one side of the class if they concur and one side if they dissent, with room in the center for the undecided. From these sides of the room the students must then state, in turn, at least one reason why they chose the side they did. Students who made no choice will also need to state why they are conflicted about making a choice.

For the purposes of this objective, the students will have to take on the role of a member of the Taney court, and write a concurring or dissenting opinion to the Dred Scott decision. They will be expected to use legal language where possible or appropriate, and they will be asked to fully prove their point. In either case they will need to draw upon facts and information from within the opinion to present their argument. Even if they choose to completely agree with the opinion of the court, they must explain which arguments are most convincing, and how those arguments hold up to scrutiny.

Naturally there is no expectation that they will write a legal opinion of the length or depth of an actual Justice, but they will be expected to do their best to approximate the work of the Justices. They may even find it useful to take on the persona of an actual Justice. Ultimately this will lead to an essay, which takes on legal language. This will be an extension of the kind of essays my students frequently write, with a creative twist and an interesting topic.

Objective 7: Bush vs. Gore

It is my goal to present a view of the court, which takes into account the court's long history and gives the students a reasonably modern perspective on the court. For this reason the unit concludes with a critical look at the case of Bush vs. Gore.

In the case of Marbury, the students will gain insight into the workings of the court. In the case of Dred Scott, the students will gain insight into the reaction of the public to the court's decisions. In the case of Bush vs. Gore the students will look at both of these aspects together in one opinion.

Students will read secondary source materials (See Resources Section), using the two-column notes strategy to organize the facts of the case and the outcome. They will then evaluate the work of the court in this case based on criteria previously discussed. Finally they will compare the opinion of the court in this case with that of Marbury in terms of the decision-making process, and Dred Scott in terms of the reaction of the public to the case.

Classroom Activities

Lesson For Objective 2 and 3: Marbury vs. Madison

Goal: To orient the students to the facts of Marbury vs. Madison, in order to study the case.

Objectives:

As a result of this lesson the students will be able to

1. Classify the facts of the case of Marbury through two-column notes.
2. Discuss the case in terms of its facts and its merits.
3. Evaluate the opinion of the Court in Marbury vs. Madison based on a close reading and discussion of the facts of the case.

Materials:

Board, marker, notebooks, pens, Textbooks, readings/quotes

Anticipatory Set: Day 1

At the beginning of day one students will be asked to explain (in their notebooks) the origin of the term "Judicial Review" .

Procedure: Day 1

1. The teacher will begin class by discussing/ reviewing the vocabulary that the students studied on the previous day. The teacher should draw connections between "Judicial Review" and Marbury if the students do not do so.
2. When all of the terms have been discussed, and the connection to Marbury has been established the teacher will Review the process of two column notes (See strategies) with the students explaining that they will be expected to complete two column notes for the passage they are about to read.
3. The teacher will then break the class into pairs (in a particularly high level class the students might work alone, or for further differentiation they might work in larger groups) and the students will read the section on Marbury from their text (*The Americans*), taking notes in the format prescribed.
4. The teacher will use this time to check in with students individually to determine their understanding of the assignment and the process.
5. The teacher will allow adequate time for completion of the notes. When they are complete, he/she will lead the class in a discussion of the case, putting the notes on the board.

Closure: Day 1

The teacher will wrap up class by leading the students in discussing the facts in general. The goal for the end of the class is to allow students to begin formulating opinions about the case material.

Homework: Day 1

For homework the students will be asked to write one page in which they suggest whether or not the court was right in the decision in Marbury as they currently understand it.

Anticipatory Set: Day 2

The students will be asked to write down 5 key facts they remember from the discussion of Marbury from the previous day.

Procedure: Day 2

1. The teacher will begin class on the second day of the lesson by reviewing briefly the facts in the case of Marbury.
2. The teacher will put the basic facts of the case on the board as they come up, as well as soliciting student opinions regarding the case.
3. Once the teacher is satisfied with the students' understanding of the facts, they will raise the questions that Marshall raised in the Marbury opinion (See strategies) leading the students in discussing each. At this point the teacher should clarify any questions the students may have regarding the questions raised.
4. The teacher will then lead the students in discussing the questions. They will have the benefit of using their graphic organizers for this portion of the discussion.
5. The students will then be broken into pairs and asked to compare the quotes (mentioned in the strategies section)- they will be asked to suggest reasons for any discrepancies they find in the quotes.
6. The teacher will lead the students in discussing this point when their work is complete and then direct them to the final quote. The teacher will lead the students in discussion of this quote as well as brainstorming reactions to the opinion itself.

Closure: Day 2

The teacher will wrap up class by briefly clarifying any questions the students have and discussing the homework

Homework: Day 2

For homework the students will be asked to write a 1-2 page evaluation of the Marbury case.

Assessment:

The students will be assessed based on their contributions, their homework and the work that they produce in class.

Lesson for Objectives 4/5: Dred Scott vs. Sanford

Goal: To orient the students to the case of Dred Scott vs. Sanford based upon the facts of the case and the reaction to the case as expressed by the Lincoln/Douglas debates

Objectives:

As a result of this lesson the students will be able to

1. Classify the facts of the case of Dred Scott through two-column notes.
2. Consider the pros and cons of the case.
3. Analyze the outcomes of the case based on primary sources.

Materials:

Board, marker, notebooks, pens, Textbooks, Lincoln/Douglas Debates resources (see resources section)

Anticipatory Set:

Students will begin class by answering the question "How did Marbury vs. Madison lead to judicial review?"

Procedure:

1. The teacher will begin the lesson by leading the students in a brief discussion of the anticipatory set.
2. When this is complete the students will once again work in pairs using their books to take 2 column notes on the facts of Dred Scott, just as they had in Marbury.
3. The teacher will then circulate to check for accuracy, and the students will take their notes.
4. When the students have finished their notes, they will be asked to discuss the pros and cons of the case, listing them and predicting public reaction to the decision.
5. When this is complete the teacher will lead the students in discussion of their findings.
6. The teacher will then explain briefly the Lincoln Douglas debates, passing out the excerpts provided.
7. The students will then use the excerpts to explain Lincoln's position, Douglas' position and their respective arguments (this may run into a second class period)

Closure:

The teacher will wrap up class by briefly leading the students in summarizing the position of both men.

Assessment:

The students will be assessed based on their contributions, their homework and the work that they produce in class.

Homework:

For homework the students will write up a brief (one page) evaluation of the opinion, explaining why it was so controversial.

Lesson for Objective 6: Writing for the Taney court.

Goal: To allow the students to explore the inner workings of the court by writing their own dissenting or concurring opinion.

Objectives:

As a result of this lesson the students will be able to

1. Explain the process by which the court reaches a decision.
2. Evaluate each side of the issue by listing the pros and the cons of either side.

3. Argue for or against the opinion of the court in Dred Scott by writing a concurring or dissenting opinion.

Materials:

Board, marker, notebooks, pens, Textbooks,

Anticipatory Set:

The students will begin class by answering the question "Was the court right or wrong in Dred Scott?"

Procedure:

1. The teacher will begin the lesson by discussing the anticipatory set with the students, taking an informal poll of the opinion of the class.
2. At this point students will be broken into small groups of 2-4 in which they will list pros and cons for both sides of the argument. In this way they will create a graphic organizer, which will help them to evaluate both sides of the issue.
3. When this is complete the teacher will go over the students' answers with the whole class, putting the pros and cons on the board for the class to see and evaluate.
4. The teacher will begin class by asking the students to "Take a Stand" following the procedure outlined in the strategies section.
5. When this is complete the students will be asked to return to their seats and outline their decision. They should provide a thesis statement, and evidence in favor of their position following the process laid out in the strategies section.
6. The teacher will use this time to check in with each student to ensure that they understand what is expected of them.

Closure:

The teacher will wrap up class by briefly reminding the students of their homework.

Assessment:

The students will be assessed based on their contributions, their homework and the work that they produce in class.

Homework:

For homework the students will have to write their first draft of their opinion.

Modifications:

This lesson might carry into a second day if there is a need for greater scaffolding of writing skills, or content.

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