

**Establishing Judicial Review:
Comparing *Bayard v. Singleton* to *Marbury v. Madison***

Overview

Students will learn the major tenets of the *Bayard v. Singleton* case in North Carolina and how it established a precedent for the United States Supreme Court's decision in *Marbury v. Madison*. Students will learn about both cases through guided notes, film clips, and discussion. Students will then compare the cases to one another, illustrating their final understanding by creating a creative and educational rap or Haiku.

Grades

10-11

NC Essential Standards for American History: The Founding Principles, Civics & Economics

- FP.C&G.1.1- Explain how the tensions over power and authority led America's founding fathers to develop a constitutional democracy (e.g., mercantilism, salutary neglect, taxation and representation, boycott and protest, independence, American Revolution, Articles of Confederation, Ben Franklin, George Washington, John Adams, Sons of Liberty, etc.)
- FP.C&G.1.4 - Analyze the principles and ideals underlying American democracy in terms of how they promote freedom (i.e. separation of powers, rule of law, limited government, democracy, consent of the governed / individual rights –life, liberty, pursuit of happiness, self-government, representative democracy, equal opportunity, equal protection under the law, diversity, patriotism, etc.
- FP.C&G.1.5 - Evaluate the fundamental principles of American politics in terms of the extent to which they have been used effectively to maintain constitutional democracy in the United States (e.g., rule of law, limited government, democracy, consent of the governed, etc.
- FP.C&G.2.3 - Evaluate the U.S. Constitution as a "living Constitution" in terms of how the words in the Constitution and Bill of Rights have been interpreted and applied throughout their existence (e.g., precedents, rule of law, Stare decisis, judicial review, supremacy, equal protections, "establishment clause", symbolic speech, due process, right to privacy, etc.)
- FP.C&G.2.6 - Evaluate the authority federal, state and local governments have over individuals' rights and privileges (e.g., Bill of Rights, Delegated Powers, Reserved Powers, Concurrent Powers, Pardons, Writ of habeas corpus, Judicial Process, states' rights, Patriot Act, etc.)
- FP.C&G.5.2 - Analyze state and federal courts by outlining their jurisdictions and the adversarial nature of the judicial process (e.g., Appellate, Exclusive, Concurrent, Original, types of federal courts, types of state courts, oral argument, courtroom rules, Supreme Court, opinions, Court Docket, Prosecutor/Prosecution, Complaint, Defendant, Plaintiff, hearing, bail, indictment, sentencing Complaint, Defendant, Plaintiff, hearing, bail, indictment, sentencing, appeal, etc.).

North Carolina Essential Standards for American History I

- AH1.H.2.2 - Evaluate key turning points from colonization through Reconstruction in terms of their lasting impact (e.g., conflicts, legislation, elections, innovations, leadership, movements, Supreme Court decisions, etc.).

- AH1.H.5.1 - Summarize how the philosophical, ideological and/or religious views on freedom and equality contributed to the development of American political and economic systems through Reconstruction (e.g., natural rights, First Great Awakening, Declaration of Independence, transcendentalism, suffrage, abolition, “slavery as a peculiar institution”, etc)
- AH1.H.5.2 - Explain how judicial, legislative and executive actions have affected the distribution of power between levels of government from colonization through Reconstruction (e.g., the Marshall Court, Jacksonian era, nullification, secession, etc.).

Essential Questions

- What were the facts of the *Marbury v. Madison* case?
- What were the facts of the *Bayard v. Singleton* case?
- What were the major implications of *Bayard v. Singleton* in North Carolina? In the United States?
- How did *Bayard v. Singleton* influence the decision in *Marbury v. Madison*?
- What process did *Bayard v. Singleton* and *Marbury v. Madison* establish in North Carolina and the United States?
- What rights in the Declaration of Rights were in question in the Bayard case?
- What rights were in question in the *Marbury v. Madison* case?

Materials

- *Bayard v. Singleton* and *Marbury v. Madison* Guided Notes, attached
- “Loyalty on Trial” documentary; this video is available online at: <http://library.law.unc.edu/research/northcarolina/loyalty.aspx>
- LCD Projector connected to compute (If you choose to watch the Loyalty on Trial via VHS, a TV is all that is necessary.)
- *Bayard V. Singleton* Film Pause Times & Discussion Questions, attached
- *Marbury v. Madison* video clip at https://www.youtube.com/watch?v=3TVkeRUvX_U (optional)
- Comparing Bayard to Madison, optional worksheet attached
- “Make Your Own Marbury Rap or Haiku”, optional assignment sheets attached

Duration

90 minutes

Procedure

Introduction to Judicial Review

1. Begin class by telling students that a new law is being considered. The plan for this new law is to ban all music players from being used by individuals under the age of 18. Try and make this scenario as believable as possible and tell students you want to know their opinion. Discuss:
 - What if Congress passed this law, but said they did so to protect children’s safety? Is that a legitimate public interest?
 - What if a study showed that individuals under the age of 18 were more likely to suffer from hearing damage when under the age of 18? Would it be justified then?
 - Do we have rights that are protected? What are they protected by (Constitution)?
 - Who makes our laws? (Legislature)
 - What happens when these lawmakers overstep their bounds?

2. Tell students that the courts have a check on the legislative and executive branch called **judicial review**, which keeps lawmakers from overstepping their bounds, by allowing Supreme Court justices to overturn a law if it is unconstitutional. Tell students they will be examining two court cases that established/dealt with the concept of judicial review: ***Bayard v. Singleton*** and ***Marbury v. Madison***. Ask students if they have heard of or already know anything about either case. Let the class know that the first case they will examine, *Bayard v. Singleton* was actually tried in the NC Supreme Court and had a great influence on the generally greater known *Marbury v. Madison* Supreme Court case. These two cases laid the groundwork for the judicial branch's ability to reverse laws considered unconstitutional (like a ban on music players for anyone under 18).

Bayard v. Singleton

3. Begin by passing out the attached *Bayard v. Singleton Guided Notes* and briefly go over them, providing background on the Bayard case. (Let students know that only the front side of the notes will be completed at this point in the lesson.) The Bayard notes, which should take approximately 10 minutes, will provide brief context of the case before students view the film "Loyalty on Trial."
4. Next, tell students they will be learning more about the Bayard case by watching a brief documentary, "Loyalty on Trial," created by the UNC School of Law. This video is available for free download online at <http://library.law.unc.edu/research/northcarolina/loyalty.aspx>. Tell students to pay attention to the film and to take notes on key events.

Even though the video is short (26 minutes) it is recommended that teachers pause at various points in the film to check for comprehension and engage students in discussion. Teachers should use the attached "*Bayard v. Singleton* Film Pause Times & Discussion Questions," which notes recommended times to pause and discuss. Additional teaching materials are available at the UNC Law School Library website: <http://library.law.unc.edu/research/northcarolina/loyalty.aspx>.

5. Upon completion of the video, further discuss::
 - Why was this case important?
 - 1. Involves some of the great North Carolinians in history, 2. Involved many of the controversial issues of the time {i.e. What constituted a "citizen" in North Carolina? What happened to those who were loyal to the English? What rights did loyalists have?}, 3. Should the legislature or the courts have the final word on "the law?"
 - How does the principle of judicial review influence our life today?
 - Discuss how the Supreme Court can rule on the constitutionality of a law passed by Congress and the State Legislature. You may give examples like *Brown v. Board*, *Roe v. Wade*, and other popular cases. Teachers may also want to remind students of the music player conversation from the beginning of the lesson. The Supreme Court could overturn a law passed by Congress banning music players, on grounds that it restricts expression, speech, and the 9th amendment, for example
 - What right did Ashe declare could not be legislated against?
 - The right to vote.) How does that come into play later in North Carolina's history (striking down poll taxes, literacy requirements in voting?
 - Do you feel the justices were impartial in the case? Why or why not?

- While they were revolutionaries, they ultimately ruled for someone who had been a loyalist. Their reasoning was that the legislature had violated the law established in the Constitution.

Delving into *Marbury v. Madison*

6. Ask the students to return to their guided notes page and focus them on the Marbury side of the worksheet. Ensure that students understand the basic facts of Marbury so that they can effectively compare the two cases. Options for providing such background include:
 - Show students the YouTube video at https://www.youtube.com/watch?v=3TVkeRUvX_U. This clip describes the background of *Marbury v. Madison* as well as the importance of judicial review in American Democracy.
 - The YouTube clip is taken from the series, “The Supreme Court,” by PBS. Teachers with access to the series can access the clip on Disc 1, Chapter 3 (the specific times on Disc 1 are 13:00-22:30).
 - Teachers without the ability to show the clip can provide brief background notes on the facts of *Marbury v. Madison* verbally.
7. After viewing the clip and/or completing the guided notes on Marbury, discuss:
 - What is the importance of judicial review? How does it relate to the powers of the Supreme Court?
 - Was judicial review outlined explicitly in the United States Constitution? Explain.
 - Why would Thomas Jefferson be upset with the ruling in this case?
 - In what ways is the *Marbury v. Madison* case similar to *Bayard v. Singleton*?
 - In both the Marbury and Bayard case, neither one of the plaintiffs got what they wanted (in Bayard, the property remained seized and in Marbury, Marbury was denied his commission as a judge). Was that the point of the case, or was there something much greater at play in each?
 - Why is the Bayard case important? (Meaning, is Bayard only important in that it predates *Marbury v. Madison*, or because it empowers North Carolina’s Supreme Court to rule on constitutionality of general assembly laws?)

Culminating Activity: Comparing Bayard to Marbury

8. **Option 1:** Students (individually, in partners, or in small groups) will complete a rap or haiku based on a concept discussed within the class period. There are 8 terms that can be given (see the attached assignment sheets) which will accommodate 16 students if working in partners, 24 in trios; if students are working alone, teachers will need to replicate terms among students. Give students the following instructions:
 - You are responsible for creating a short rap or haiku (30-60 seconds) based on the term assigned to you. The purpose of your rap or haiku is to educate listeners or readers about your topic.
 - You will have 10 minutes to develop your short rap/haiku on your assigned term. You should use what you have learned about *Bayard v. Singleton* and *Marbury v. Madison*.

Teachers should model the process for the class and provide an example (i.e. a rap about the concept of double jeopardy might say: “Yo, you can’t be tried twice for a crime against me, because of a little concept I call double jeopardy!” Students will likely find this humorous, but it will also help get them

in the spirit of the activity. Remind students to be creative and accurate in their work. Teachers may also need to remind students of the format for a haiku: 5 syllables, 7 syllables, 5 syllables.

It is recommended that students be allowed to present their raps or haikus to class, which will serve as a review of key concepts as students listen to one another's presentations. Teachers who are dealing with time constraints and thus prefer having a smaller number of presentations may want to have students complete this activity in larger groups or choose only select students to perform.

Option 2: Have students complete the attached "Comparing Bayard to Madison" worksheet. This may be completed in class, in lieu of the group activity, or for homework.

Resources

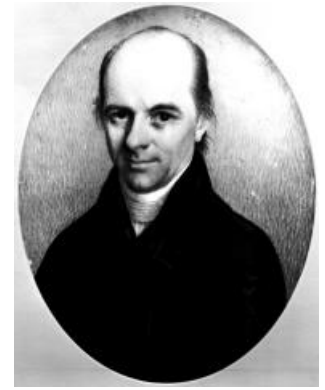
- "Loyalty on Trial" documentary and resources:
<http://library.law.unc.edu/research/northcarolina/loyalty.aspx>
- Background on *Bayard v. Singleton*:
<http://www.northcarolinahistory.org/encyclopedia/117/entry>
- Background on *Marbury v. Madison*:
http://www.pbs.org/wnet/supremecourt/democracy/landmark_marbury.html

Bayard v. Singleton

Name:

Period:

Date:



The Facts of the Case

- The case was decided in _____. The case involved some very important North Carolinians:

James Iredell:

Samuel Cornell:

Abner Nash:

William Richardson Davie:

Samuel Ashe:

- When the Revolutionary War started, Samuel Cornell was one of the richest men in North Carolina. He sides with the _____. After the war, he fled to _____. The North Carolina General Assembly _____ his land. After the war, his daughter _____ returns to North Carolina to _____. She based her claim on the _____.
- The North Carolina General Assembly passed a law that:
- The case is heard in the North Carolina Supreme Court with three judges, all were _____.
- The case was controversial. It established the process of _____ in North Carolina.

Marbury v. Madison

The Facts of the Case



Decided in _____, just after _____.

Some Major Individuals in the Case:

John Marshall: _____

Thomas Jefferson: _____

John Adams: _____

William Marbury: _____

James Madison: _____

Weeks before _____ was inaugurated, _____ filled the courts with appointees. The Secretary of State had to sign the appointments (who was _____ at the time). They can't be delivered in time, so _____ gets his brother to help.

Seventeen appointments go unfulfilled, and _____ declined to grant the appointments.

The Importance of the Case

_____ asked _____ to have his appointment granted, but the current Secretary of State (Madison) would not grant the appointment. _____ in Congress were angry with this, and they _____.

This gave Marshall a dilemma: He could _____, and the court would be _____.

Marshall could _____, and Jefferson would _____.

The Verdict:

This court established the concept of _____. This concept says:

Bayard v. Singleton – Answer Key

Name:

Period:

Date:

The Facts of the Case



The case was decided in 1787. The case involved some very important North Carolinians:

James Iredell: Future Supreme Court Justice

Samuel Cornell: Wealthy Magnate who built New Bern palace

Abner Nash: Rev. War leader (drove out last royal gov.)

William Richardson Davie: “Father” of UNC

Samuel Ashe: Judge in Bayard who made legal history by establishing Judicial Review

When the Revolutionary War started, Samuel Cornell was one of the richest men in North Carolina. He sides with the King of England. After the war, he fled to England, then returned to New York. The North Carolina General Assembly confiscated his land. After the war, his daughter Elizabeth returns to North Carolina to reclaim the family property. She based her claim on the right to property established in the North Carolina Constitution.

The North Carolina General Assembly passed a law that: invalidated claims on lands that were seized during the Revolutionary War without a trial

The case is heard in the North Carolina Supreme Court with three judges, all were revolutionaries.

The case was controversial. It established the process of judicial review in North Carolina.

Marbury v. Madison – Answer Key

The Facts of the Case

Decided in: 1803, just after Jefferson took office.

Some Major Individuals in the Case:

John Marshall: Chief Justice Thomas Jefferson: Current President

John Adams: Former President

William Marbury: Claimant James Madison: Current Secretary of State

Weeks before Jefferson was inaugurated, John Adams filled the courts with appointees. The Secretary of State had to sign the appointments (who was John Marshall at the time). They can't be delivered in time, so Marshall gets his brother to help.

Seventeen appointments go unfulfilled, and Jefferson declined to grant the appointments.

The Importance of the Case

William Marbury asked Chief Justice John Marshall to have his appointment granted, but the current Secretary of State (Madison) would not grant the appointment. Jeffersonians in Congress were angry with this, and they canceled the Supreme Court's term for 14 months.

This gave Marshall a dilemma: He could deny the commission, and the court would be seen as weak.

Marshall could order the appointment, and Jefferson would ignore it, making the court irrelevant.

The Verdict: Marshall denied the appointment, but he did so by saying an act of Congress was UNCONSTITUTIONAL. Marshall said the Supreme Court had the power to overrule an act of Congress because it was its' duty to uphold the Constitution because it is "the supreme law of the land"

This court established the concept of Judicial Review.

This concept says: The Supreme Court has the right to overturn acts of Congress if they are in conflict with the Constitution. This is not spelled out in the Constitution, but is recognized as a result of *Marbury v. Madison*.





Bayard V. Singleton – Teacher Film Pause Times/Discussion Questions

Pause @ 1:52

Q: What is a Tory? What laws did they violate?

A: Tories were known to be loyal to the British during the Revolutionary War. They didn't violate any laws, but they were on the wrong side of history. They adhered to the laws of England, instead of America.

Pause @ 4:10

Q: Should someone lose their rights when they are defeated in war? Should Tories (or French, or German, or any other group of people) lose their property rights when they lose a war?

A: That is a major question in this case.

Q: When else has this happened? When have people's "rights" been taken away because they were on the wrong side of history? Was it fair?

A: Many examples given (Civil Rights, Japanese Internment Camps, etc.). Not fair necessarily, but who can ultimately block the will of those who pass these laws?

Pause @ 6:00

Q: What does Davie mean that "the law is made by men who would interpret it as they would have it?"

A: Number of ways to read this, including that those who make laws often feel that they are above laws that already exist.

Q: Is the law set-in-stone, never changing? Or is it something that evolves constantly? Who makes law, and who steps in when bad laws are made?

A: Not set-in-stone (examples of changing throughout history). It's made by the legislature, but do they step in? (foreshadowing to the rest of the case).

Pause @ 7:36

Q: Can the General Assembly pass a law denying property (or just seizing it)? Could they do that today? What is meant by stating that a judge will apply the law, not make it?

A: This question speaks to whether a law is just or not, and whether property is protected. This issue has come up recently with the concept of eminent domain. What is meant by a judge applying law and not making it is the different roles of the legislature and the judicial branch. The legislature makes laws, and the judicial branch rules on the basis of those laws.

Pause @ 11:15

Q: Why is the right to a trial important? Can it be denied today?

A: All have a right to a trial today, and the General Assembly can't make a law denying it.

Pause @ 16:55

Q: What is ex post facto? What does superior law mean?

A: Ex post facto means you can't be punished for a law after the fact. If a law was made today, if you broke the law yesterday, before it was made, you can't be punished. Superior laws are those who supersede others in authority. Federal laws overrule state. State overrules local, etc.

Pause @ 19:15

Q: Why is it important for judges to be independent?

A: There are many reasons, including to be a check on the legislature, to decide things fairly between two parties, and to be a trusted neutral ground for any issue of law.

Pause @ 22:15

Q: Did Bayard get the property back? Who will decide?

A: No, and a jury will decide. But the principle was established, which was the most important issue of all.

Discuss: Why is it important not to allow a President/Governor/Legislature to overstep their bounds? Is the court's right to overturn legislative acts found in the Constitution?

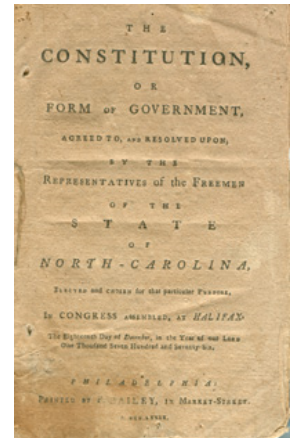
Comparing Bayard to Madison – Side 1

Name:

Period:

Date:

How are Bayard v. Madison similar to one another?



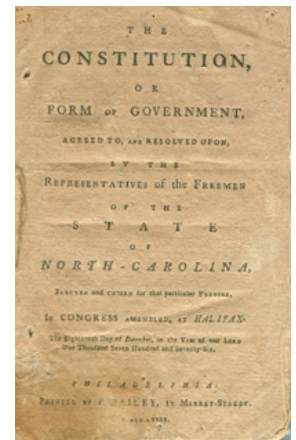
How are they different?

Should the courts be able to overturn acts of the Legislature?

Many of the people involved in *Bayard v. Singleton* were also involved in *Marbury v. Madison*. How do you think their participation in *Bayard* influenced the decision in *Marbury*?

Comparing Bayard to Madison – Side 2

How does judicial review act as a check of power on Congress?



What are some examples you can think of where judicial review of state laws may have impacted America more recently? (Hint: think about the Jim Crow laws in the early 1900s)

If you were a member of the Supreme Court, would you exercise judicial review? Why or why not? If you overturned a law of the legislature, how do you think they would respond?

Make your own
Rap or Haiku!

Your Rap/Haiku Topic: Judicial Review

It's your time to shine! Since you are now an expert on both *Marbury v. Madison* and *Bayard v. Singleton*, your assignment is to create a catchy rap or haiku based on the topic assigned to you.

If you choose to make a rap, it must contain a rhythm/rhyme scheme. If you choose a haiku, it does not have to rhyme, but must be 3 lines with 5 syllables in the first line, 7 syllables in the second line, and 5 syllables in the third line.

First write a simple definition of your assigned topic; then write your rap or Haiku.

My name is T.J., you mighta
heard of me, I've got no
love for Marbury!



Make your own
Rap or Haiku!

Your Rap/Haiku Topic: Property Rights

It's your time to shine! Since you are now an expert on both *Marbury v. Madison* and *Bayard v. Singleton*, your assignment is to create a catchy rap or haiku based on the topic assigned to you.

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Make your own
Rap or Haiku!

Your Rap/Haiku Topic: Explain how a right to a jury trial is protected

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Make your own
Rap or Haiku!

Your Rap/Haiku Topic: Explain Elizabeth Cornell Bayard's role in the Bayard case

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Make your own
Rap or Haiku!

Your Rap/Haiku Topic: Chief Justice John Marshall (Who was he? Why was he important?)

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Make your own
Rap or Haiku!

Your Rap/Haiku Topic: Summarize the General Assembly law that the Bayard case contested & what became of it

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Make your own
Rap or Haiku!

Your Rap/Haiku Topic: Superior Laws (what is meant by this concept)

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Make your own
Rap or Haiku!

Your Rap/Haiku Topic: Ex Post Facto (what does this mean? Why is it important?)

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If you choose to make a rap, it must contain a rhythm/rhyme scheme.

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