

Global Issues in Constitutional Law

By Brian Landsberg & Leslie Gielow Jacobs

Understanding the judicial review issues in *Marbury v. Madison* may be enhanced by contrasting the U.S. system of judicial review with those of the United Kingdom, France, and Canada. In fourteen pages [32-46] the authors cover countries with no traditional judicial review, those with specialized constitutional courts, and those with review by a non-judicial entity.

From the Teacher's Manual

Systems of Constitutional Review. The question this section poses is whether the surface differences among the various systems it describes substantially affect judicial review in practice. This section both shows the impact of *Marbury v. Madison* on other legal systems and also shows that other methods of constitutional review are possible.

- Need for judicial review.

Note 2-4 asks the students to reflect on the common statement that English courts may not review constitutional issues, because England lacks a written constitution. The rise of the administrative state, the development of European Union law, and generational changes require re-assessment of that view.

- Legislative override.

Note 2-5 calls attention to features of Canadian constitutional review. The *Amax Potash* case has obvious parallels with U.S. jurisdiction stripping cases. Section 52(1) of the Canadian Constitution resembles the U.S. Supremacy clause but does not explicitly provide for judicial review, while Section 24(1) explicitly creates judicial review of claims under the Charter of Rights and Freedoms. Section 33, which allows temporary legislative override of constitutional decisions, can be the springboard for a useful discussion of the relationship between judicial review and a democratic system.

- Court as referee.

Note 2-6 contrasts the German Basic Law's description of constitutional review jurisdiction with Article III's simple "arising under" language. The notion of the court as exercising a "referee like function" and the practice of issuing "admonitory" decisions also stand in contrast to U.S. notions of judicial review. Although South Africa adopted the German model of creating a Constitutional Court, the jurisdiction of lower courts over constitutional issues is treated differently.

- Non-judicial constitutional review.

Finally, Note 2-7 examines the French and Chinese systems, which seemingly turn constitutional review over to non-judicial bodies. This note underscores that constitutional review of the validity of statutes may be treated differently than constitutional review of administrative decision-making and executive action.