

**Topic:** Can a President Defy a Supreme Court Ruling?

**Time:**  
Two class periods

**Historical Period:**  
Early 1800's

**Core:**  
US I 6120-0702  
US II 6250-0103  
Gov. 6210-0104

**Objectives:** Students will:

1. Develop an understanding of the historical conflicts between the executive and judicial branches.
2. Discuss and analyze President Andrew Jackson's refusal to enforce judicial decisions in the cases of *Cherokee Nation v. Georgia* and *Worcester v. Georgia*.
3. Discuss and analyze the importance of judicial review in our own system of government.
4. Analyze the dangers of executive defiance of judicial review.

**Procedure:**

1. Read the introduction.
2. In preparation for class discussion, assign students Handouts 1 and 2 to be completed before the class session.
3. Begin class by asking the following questions: "Should the President of the United States be able to refuse to enforce the Supreme Court rulings?", "What about extremely unpopular opinions by the Court?", "Suppose the vast majority of Americans oppose the ruling, shouldn't the President respect the wishes of his constituents?"
4. Ask the class to state the basic facts in the Andrew Jackson/American Indian controversies. Develop the basic facts through one sentence statements from various students.
5. Divide the class into five groups. Distribute Handout 3 (Hypothetical Cases) to all students and have them discuss the three simulated cases. Have each group form a consensus opinion on each case.
6. Lead class discussion of the hypothetical cases. Encourage participation of all members.
7. Have students reread their answers from their homework assignments found in Handout One. Encourage students to re-evaluate and clarify their opinions in light of class discussion.

**Evaluation:**

The homework questions from the handouts will be useful in checking for students' understanding. Also, closely monitor class and small group discussion for mastery of the subject matter. Include several factual as well as opinion questions on your next test over the executive-judicial controversy.

**Handouts/Worksheets:**

1. Andrew Jackson Defies the Supreme Court: The Cases of *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832)
2. Executive vs. Judicial Famous Quotes
3. Should the Executive Branch Ever Defy The Judicial Branch? Hypothetical Cases

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## INTRODUCTION

The United States government is based on the principle of a system of three separate, co-equal, and interdependent branches of government to regulate our nation. As all government students know, the function of the legislative branch is to make the laws, of the executive branch to enforce the laws, and of the judicial branch to interpret the laws. Through the case of *Marbury v. Madison* in 1803, the Supreme Court established the doctrine of judicial review, thus giving the Court the power to rule on the constitutionality of actions of the legislative and executive branches. But what happens when a President refuses to abide by the Supreme Court decision? What happens when he gauges public opinion and feels that most Americans disagree with the Supreme Court's ruling? Should he ignore the decision? The following lesson explores historical conflicts between the executive and judicial branches and asks students to examine these key constitutional questions. The lesson also asks students to discuss hypothetical conflicts between the branches of government and to formulate their own opinions.

HANDOUT 1

**ANDREW JACKSON DEFIES THE SUPREME COURT:  
THE CASES OF *CHEROKEE NATION v. GEORGIA* (1831)  
AND *WORCESTER v. GEORGIA* (1832)**

**INTRODUCTION**

Battles between the executive branch and the judicial branch are not uncommon in American history. There have been a number of famous conflicts between the Presidents of the United States and the Supreme Court. Early examples from our past include Thomas Jefferson and the Democratic-Republican party challenging the constitutional question of judicial review, Abraham Lincoln defying the Supreme Court ruling striking down his suspension of the writ of habeas corpus during the Civil War, and Franklin D. Roosevelt’s attempts to “pack” the Supreme Court in 1937. (See famous Quotes Handout.) More recently, President George Bush criticized the ruling on flag burning as an act of protected political expression. Probably the most famous case of executive defiance of judicial decision making involved President Andrew Jackson and the Supreme Court in the early 1830's. As you read the following article, think through the following questions and be ready to discuss your opinions.

1. Since the majority of Americans opposed the Supreme Court’s ruling in the Georgia cases, was President Jackson correct in not enforcing them?
2. Should the Supreme Court be the final interpreter of the U. S. Constitution or should each branch interpret the Constitution as it applies to that branch’s duties?
3. What action should be taken when a President refuses to enforce a Supreme Court decision?
4. Should a President only enforce decisions that a majority of Americans support? What about an unpopular decision such as the flag burning case?

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The status of the American Indians, like many other issues, was left indefinite under the Constitution. They were denied citizenship, exempted from taxation, and not counted for purposes of representation and direct taxes for states. Congress was instructed only to regulate commerce with the various tribes. From the beginning, the federal government dealt with the Indian tribes as autonomous nations and attempted to remove the Indians as the westward settlement began.

At the time Georgia became a state, many acres of her western boundary were secured at federal expense for the Creek and Cherokee Indian tribes. As Georgia’s population increased, she began to put pressure on the federal government to evacuate much of the Creeks’ land and remove them to other territory west of the Mississippi. In 1827, the Cherokees declared themselves an “independent nation.” In retaliation, the state of Georgia extended state law over all Cherokee land, annulled all federal laws on the disputed territory, and began confiscating land. The Cherokees sued the state of Georgia in two famous cases, *Cherokee Nation v. Georgia*

(1831) and *Worcester v. Georgia* (1832), in defense of Indian rights and federal control of Indian land. The Supreme Court held in an opinion written by Chief Justice John Marshall that an Indian tribe was a “domestic dependent nation” under the control of the United States federal government and that they have the right to all land they occupied under treaties with that government. Marshall stated “the laws of Georgia have no force, and the citizens of Georgia have no right to enter but with the assent of the Cherokee themselves.” Georgia openly defied this decision and continued to control the Cherokee land.

President Andrew Jackson, a man born and raised in the new western settlements, refused to take any steps to implement the Court’s opinion, even though the state of Georgia was clearly defying a federal court ruling. Andrew Jackson is reputed to have stated, “John Marshall has made his decision, now let him enforce it.” The vast majority of Americans accepted the removal of the Indians as desirable and opposed the Supreme Court ruling. Jackson chose to ignore the Court’s authority.

Eventually, the Cherokees were forced out of Georgia completely by federal and state authorities. Their forced trek westward in 1838 became known as “The Trail of Tears” as exhaustion, starvation, and physical attacks accompanied their every step.

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5. Read the quotes in Handout 2. With which ones do you most agree? Disagree? Why or why not?

## **EXECUTIVE VS. JUDICIAL FAMOUS QUOTES**

“It is emphatically the province and duty of the judicial department to say what the law is . . . and that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned . . . and that the courts, as well as other departments, are bound by that instrument.”

John Marshall 1803

“. . . each branch of the government must have a right in cases which arise within the lines of its proper functions, where, equally with the other, it acts in the last resort, and without appeal, to decide on the validity of an act according to its own judgement, and uncontrolled by the opinions of the other departments.”

Thomas Jefferson 1801

“. . . the construction of one department of the powers vested in it, is of higher authority than the construction of any other department . . . therefore the legislature have the exclusive right to interpret the Constitution, in what regard the law making power, and the judges are bound to execute the laws congress makes.”

Senator John Breckenridge 1802

“. . . it is better for the President to violate a single law to a very limited extent than to have the government itself to go to pieces.” (because of a Supreme Court decision).

President Abraham Lincoln 1861

“John Marshall has made his decision, now let him enforce it.”

President Andrew Jackson 1832

HANDOUT 3

**SHOULD THE EXECUTIVE BRANCH EVER DEFY THE JUDICIAL BRANCH?**

## HYPOTHETICAL CASES

1. President George Bush announces that the Supreme Court decision protecting flag burning as a form of political expression protected by the First Amendment was an atrocity. In response, he encourages Congress to pass a law making it a federal offense to desecrate a flag and states that he will prosecute any offenders regardless of what the Supreme Court says. Since 83% of the American public opposes the Supreme Court ruling, would you support the President? Why or why not?
2. The state of Utah bans abortion in all cases in 2002. The law is challenged by the National Organization of Women as being a violation of the constitutional right to privacy. The U. S. Supreme Court strikes down the Utah law as being too restrictive of women's rights. The current president, a strong pro-lifer, announces, "The Supreme Court has made its decision, but I won't enforce it. Utah may do whatever it wishes in regards to abortion." Would you support this presidential action? Why or why not?
3. The Wasco County Commissioners pass an ordinance banning all members of the Rajneeshee religion from living in the county. The Oregon Supreme Court rules the ordinance unconstitutional and a violation of freedom of religion. Governor Steve Taylor announces he will not enforce the Supreme Court ruling and encourages all counties to pass such anti-cult laws. Would you support Governor Taylor's actions? Why or why not?