

My Prerogative?

Listen to the ROOM 2B podcast **My Prerogative** at mrreview.org and complete the following exercise. Be prepared to discuss with your classmates.

1. What is prerogative power? Why was the English King, and our president, given prerogative powers? What are advantages and disadvantages of prerogative powers?
2. Find examples of executive agencies using their discretionary authority to write rules? Who enforces these rules? Is this a conflict of interest? Explain.
3. Investigate how Hamilton in Federalist #70 described the power of our future president. Why do you suppose the Anti-Federalists were concerned?
4. Read the SCOTUS FRQ below and answer the prompts that follow:

When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute...

...We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations.

Source: *Chevron U.S.A., Inc. v. NRDC* (1984)

Based on the information above, respond to the following questions:

- A. Identify a common constitutional principle used to make a ruling in both *Marbury v. Madison* (1803) and *Chevron U.S.A., Inc. v. NRDC* (1984).
- B. Explain how the facts of *Marbury v. Madison* (1803) and the facts of *Chevron U.S.A., Inc. v. NRDC* (1984) led to different holdings.
- C. Describe an action that Congress could take to respond to the *Chevron U.S.A., Inc. v. NRDC* (1984) decision if it disagreed with the decision.