

# CONSOURCE



*The Constitutional Sources Project*

## THE CONSTITUTION IN ACTION: THE EARLY REPUBLIC

### Unit Introduction

The United States Constitution, signed in 1787 and ratified in 1788, provided a skeletal outline, but how would it be applied in the real world?

Some provisions were clear. The president had to be at least thirty-five years of age, so no thirty-one-year-old could ever fill the office unless there were a constitutional amendment. But other provisions raised questions. Presidential appointments to high offices required senatorial consent, but could a president *remove* a top official on his own, without consent? That troublesome question produced a constitutional crisis right off the bat. A bill establishing the Department of Foreign Affairs stated that its head would be “removable from office by the President of the United States.” Many in Congress objected, arguing that if the Senate must consent to an appointment, it must also consent to a dismissal. Senators split evenly on the measure, ten in favor and ten opposed. Vice-President John Adams broke the tie, giving the president alone full power to dismiss appointees. Had Adams voted the other way, our government would look very different today. Cabinet appointees, if they carried favor with senators, would not be dismissed and could last from one administration to the next.

This unit presents students with several such issues faced by Americans in the Early Republic as they tried to interpret and implement the Constitution.

First, a glaring omission: Why was there no Bill of Rights? Should there be one, and if so, what should it include? The lesson “**Origin of the Bill of Rights**” is in two parts. The first places students at state ratifying conventions and asks them what additions or alterations they would like to make to the Constitution. The second places them in the First Federal Congress and asks them to respond to the amendments James Madison has proposed.

During congressional discussions over amendments that would become our Bill of Rights, the House of Representatives debated at length a proposal that would have granted citizens the right to *instruct* their representatives on what issues to address in Congress and even how to vote. This gets to the very heart of what our government is all about. “**Republic or Democracy?**” places students in the First Federal Congress and asks them to consider

whether our government should be a *republic*—a representative government in which elected leaders are free to deliberate and decide on their own—or a *democracy*, in which representatives follow the lead of their constituents.

In the lesson **“Strict v. Loose Construction,”** students consider several related questions faced by President Washington and Congress. Should Washington veto the bill to charter a national bank because the Constitution does not *explicitly* grant that power—or is the power to charter a national bank *implied* by powers that are explicitly granted? As members of the First Federal Congress, should they approve a measure for financing and maintaining lighthouses, even though their authority to address that matter was not explicitly granted? Do they have the power to regulate working conditions of merchant seamen? Support higher education? Promote scientific inquiry? By confronting a variety of issues, not merely the national bank controversy, students can see that balancing the “necessary and proper” clause of the Constitution with the Tenth Amendment’s declaration of reserved powers is no easy matter, and that the founding generation split on the issue multiple times, as we do today.

Next, students explore **“Who Shapes Foreign Policy?”** Does the Constitution grant that power to Congress or to the President? By considering Washington’s Neutrality Proclamation of 1793 and Jay’s Treaty in historical context, students will see that constitutional interpretations depend in some measure on politics, with players on both sides of an issue marshalling constitutional arguments to support their positions.

In **“State Challenges to Federal Authority: The Kentucky and Virginia Resolutions,”** students first become Republican members of the Kentucky or Virginia legislatures and consider how they will oppose the Alien and Sedition Acts. Constitutionally, can a state legislature “nullify” a federal act if it violates the federal Constitution? Who is to decide what violates the Constitution? Can a state, acting on the people’s behalf, “interpose” between the federal government and the people? Students then act as members of other state legislatures and consider how to respond to Kentucky and Virginia. By engaging in this historical moment, students wrestle with the ongoing tension between Article V, Section 2, of the Constitution, which establishes the federal government as the “supreme Law of the Land,” and the Tenth Amendment, which reserves powers “not delegated to the United States” to the states or the people.

**“Political Parties and Presidential Electors: The Election of 1800”** places students in the Early Republic and asks them to engage in the politics of those times. Acting as either Federalists or Republicans, they will be asked to develop strategies for electing their party’s standard bearer as president, using the Constitution’s complex system of presidential electors to their advantage at three distinct stages. (a) As state legislators, they determine how electors are to be chosen, a power granted to those bodies by the Constitution. (b) As electors, they decide whether to vote for *both* of their party’s nominees or whether to “throw one away” so their vice-presidential candidate does not “overrun” their choice for president. (c) As Federalist members of the House of Representatives, they will decide whether to vote for Aaron Burr, a Republican of dubious reputation, in order to prevent Thomas Jefferson, a hardened opponent of Federalist policies, from becoming president. By participating in these critical decisions, they will see how the system of presidential electors, which the framers had designed in order to minimize partisanship, was played to partisan advantage by both sides.