

CONSOURCE



The Constitutional Sources Project

THE CONSTITUTION IN ACTION: THE EARLY REPUBLIC

Strict v. Loose Construction

TIME AND GRADE LEVEL

Two 45 or 50 minute class periods in a **Grade 9-12** US history, civics, or government course.

PURPOSE AND CRITICAL ENGAGEMENT QUESTIONS

History is the chronicle of choices made by actors/agents/protagonists in specific contexts. This simulation places students in the Early Republic and asks them to engage with questions of Constitutional interpretation faced by President Washington and the First Federal Congress. Did the Constitution empower Congress to charter a national bank? Finance and maintain lighthouses? 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.

LESSON OBJECTIVES

*Students will be able to explain the tension between the “necessary and proper” clause, which the framers deemed essential to the functioning of the federal government, and the Tenth Amendment’s declaration that all powers not listed in the Constitution were reserved to the states or the people.

*Students will be able to converse on the subject using the term “strict versus loose construction,” as we say today, or the debate over “implied powers,” as people said in the Early Republic.

*Students will be able to present both sides of specific historical debates that centered on the legitimacy of implied powers.

*Students will be able to explain the debates over specific issues in the political contexts of the times.

*Students will be able to show instances in which James Madison came down on both sides of this issue.

*Students will be able to show instances in which liberals and conservatives today use both strict and loose interpretations of the Constitution, depending on political contexts.

OVERVIEW OF THE LESSON

Prefatory homework for day one:

Handout A: Is a National Bank Constitutional?

In class, day one:

1. Homework review: 10 minutes
2. Presentation of a second issue: Does the Constitution empower the federal government to finance and maintain lighthouses? 10 minutes
3. Students debate the national bank and lighthouse issues: 10-15 minutes
4. Debate groups report back to the class: 10 minutes
5. Assignment of prefatory homework for the second day: 5 minutes.

Prefatory homework for day two:

Handout B: Merchant Seamen

In class, day two:

1. Homework review: 5 minutes
2. Presentation of further issues: Does the Constitution empower the federal government to support higher education or scientific inquiry? 10 minutes
3. Students debate whether Congress has the power to regulate the working conditions of merchant seamen, support higher education, or promote scientific inquiry: 15 minutes
4. Presentation and discussion of historical outcomes and class discussion of loose versus strict interpretations of the Constitution today: 15-20 minutes.

Summary Homework / Extended Activities

MATERIALS

Background Handouts:

A. Is a National Bank Constitutional?

Classroom Handouts:

B. Lighthouses

C. Merchant Seamen

D. Education

E. Scientific Inquiry

F. Historical Outcomes

G. Strict *and* Loose Construction: Why the Framers had it both ways

H. Vocabulary List

Links:

Original United States Constitution, accessible [HERE](#).

PREFATORY HOMEWORK

Distribute **Handout A: “Is a National Bank Constitutional?”** Call attention to the question at the end of that sheet, and note that responses can be brief; the arguments will be pursued in greater depth, and weighed against each other, in class.

CLASS ACTIVITIES, DAY ONE: 45-50 MINUTES

1. HOMEWORK REVIEW AND INTRODUCTION TO THE LESSON: 10 minutes

Review briefly the arguments on both sides. Also, note that in the Early Republic, people who engaged in the debate over loose versus strict interpretations of the Constitution used a different terminology. The question, as they put it, was whether the federal government possessed powers that were *implied* but not expressly stated. Were, or were there not, *powers of implication*?

2. PRESENTATION OF A SECOND ISSUE: DOES THE CONSTITUTION EMPOWER THE FEDERAL GOVERNMENT TO FINANCE AND MAINTAIN LIGHTHOUSES? 10 minutes

Introduction to the class: The bank controversy was not the only time in the early years that members of Congress questioned whether they were empowered to act on matters not *expressly* listed in the Constitution. Before engaging further with the national bank, to gain perspective, we will consider another issue that Congress considered: Did the Congress have the constitutional power to finance and maintain lighthouses?

Distribute **Handout B: “Lighthouses.”** Allow time to read and then ask if students have any questions before debating the issue.

3. STUDENTS DEBATE THE NATIONAL BANK AND LIGHTHOUSE ISSUES: 10-15 minutes

Discussion and debate in breakout groups. Tell students they are to place themselves not in our times but in the Founding Era. As members of the First Federal Congress, they will be setting precedents for how the new Constitution is to be interpreted. Tell them, too, that at the close of the lesson, and in their extended activities, they will address loose versus strict interpretations of the Constitution today.

4. DEBATE GROUPS REPORT BACK TO THE CLASS: 10 minutes

Continue the discussion by comparing student responses to the two issues. Note that Madison argued for a loose construction for lighthouses but a strict construction for the national bank. What about students? Are they consistent? Should they (and Madison) be consistent, or are the issues sufficiently dissimilar to warrant different responses?

5. ASSIGNMENT OF PREFATORY HOMEWORK FOR THE SECOND DAY: 5 minutes.

Distribute **Handout C: “Merchant Seamen.”** Tell students they will be addressing three additional issues, the first of which concerns working conditions for merchant seamen. Ask them to offer brief written responses for their homework, which will help them organize their thoughts for the in-class debate.

CLASS ACTIVITIES, DAY TWO: 45-50 MINUTES

1. Homework review: 5 minutes

Review briefly the arguments on both sides. Tell students they will be weighing in on the constitutionality of regulating working conditions for merchant seaman along with two additional issues.

2. Presentation of further issues: Does the Constitution empower the federal government to support higher education or scientific inquiry? 10 minutes

Distribute **Handout D: “Education,”** and **Handout E: “Scientific Inquiry.”** Students read these, individually or together. They need to have a copy of the original United States Constitution for reference, accessible [HERE](#).

3. Students debate whether Congress has the power to regulate the working conditions of merchant seamen, support higher education, or promote scientific inquiry: 15 minutes

Discussion and debate in breakout groups. Remind students that they are to place themselves not in our times but in the Founding Era.

4. Presentation and discussion of historical outcomes and class discussions of loose versus strict interpretations of the Constitution today: 15-20 minutes.

Refer to **Handout F: “Historical Outcomes”** and **Handout G: “Strict *and* Loose Construction: Why the Framers Had It Both Ways.”** Students can read these or teacher can relate the information orally. Presentation should be interactive, with students responding to any or all of the issues and outcomes.

This is the time to open a discussion on strict versus loose construction today. Questions to pursue are suggested below, as “extended activities.”

SUMMARY HOMEWORK/EXTENDED ACTIVITIES

Discuss or write essays on any of the following topics:

1. Although Madison favored a loose construction when considering Congress’s power to construct lighthouses, care for merchant seamen, and engage in scientific inquiry, he argued for a strict construction when opposing the Bank of the United States. Jefferson also favored a strict construction in the national bank issue, but twelve years later, when serving as president, he purchased Louisiana, even though he fretted that the Constitution did not grant the president *express* power to purchase lands. Investigate and discuss the evolution of Madison’s and Jefferson’s stances.

2. Consider more broadly: Are methods of constitutional interpretation sometimes influenced by the *substance* of the debate? Are political figures always consistent in their constitutional arguments? Why might Madison and Jefferson argue for a strict interpretation in one case but a loose interpretation in another? Or were they in fact consistent in their views?

3. Consider this way to look at politics today. Conservatives favor a strict interpretation when it comes to the federal government spending money, but they tend to favor legislation like the Defense of Marriage Act, which defined marriage as between a man and a woman, although the Constitution does not expressly empower Congress to address such matters. On the other hand, liberals favor a loose interpretation in economic matters but insist of a strict one when arguing that Congress has no power to legislate in “bedroom” issues. Do you agree with this view, that both sides waver with respect to strict versus loose interpretation? If so, elaborate; if not, use examples to demonstrate how either liberals or conservatives are consistent in their constitutional interpretation.

4. Do you think Congress has the power to address the following matters, which arose long after the framers drafted the Constitution? If so, is the power express or implied? And under what clause?

- a. Develop an air force.
- b. Engage in cancer research.
- c. Distribute information about the health effects of tobacco.
- d. Determine food and drug safety.
- e. Engage in space research.

- f. Launch and maintain satellites that facilitate communications.
- g. Monitor hurricanes and distribute warnings.
- h. Research climate change.

5. Some say that many activities of the federal government are covered by such phrases as “provide for the common defence” and “promote the general Welfare” and “secure the Blessings of Liberty” in the Constitution’s preamble. Consider: Are these phrases so broad as to make *all* governmental activities constitutional—except, of course, for those the Constitution specifically prohibits? On the other hand, how else can the government undertake activities that are essential to the well being of Americans today but were not relevant to the world of the framers, and hence not listed in Article I, Section 8, of the Constitution?

Strict v. Loose Construction Handout A: Is a National Bank Constitutional?

In December 1790 Alexander Hamilton, Secretary of the Treasury, proposed that Congress charter a national bank. The Bank of the United States would be directed and capitalized (financed) primarily by private investors but receive up to twenty percent of its startup funds from the federal government. Bank notes issued from this formidable private-public partnership would function as liquid capital, more solid than the paper currency issued by the confederation government, which had lost virtually all its value. Functionally, the bank seemed like a good way to get the nation's economy rolling while not endangering public credit, and both houses of Congress, despite objections from some members, approved it. George Washington, however, had his doubts: where, exactly, did the United States Constitution authorize such an arrangement? If chartering a national bank was not among the powers granted to Congress, should the president veto the measure?

The first clause of Article I, Section 8 of the Constitution empowered Congress to lay taxes and pay debts, while the second clause permitted it to borrow money. Clearly, Congress was expected to oversee the nation's finances, but the Constitution did *not* mention chartering banks, which in the past had been a province of the states.¹ The Tenth Amendment stated: **“The powers not granted to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the people.”** According to a strict reading of that amendment, a national bank would appear to be unconstitutional.

But did powers have to be *expressly* granted? The First Federal Congress, when drafting the Tenth Amendment, had rejected Thomas Tudor Tucker's motion that would require powers to be “*expressly* granted.” James Madison argued at that time: “It was impossible to confine a Government to the exercise of express powers; there must necessarily be admitted powers by implication, unless the Constitution descended to recount every minutia.”² Indeed, the framers had recognized that they couldn't think of everything, so the final power they granted to Congress (Article I, Section 8, Clause 18) created some wiggle room: **Congress could “make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States.”** No delegate at the Constitutional Convention had argued against that provision.

Understandably perplexed, Washington asked Attorney General Edmund Randolph for a legal opinion. Randolph came back with a decisive answer:

¹ State constitutions didn't mention chartering banks either, but those constitutions had not listed specific powers. State governments were expected to do whatever governments customarily do, so long as they did not violate the Articles of Confederation or intrude on basic rights of the people—rights that several state constitutions *did* list. The framers of the Constitution, in order to delineate which powers belonged to the federal government and which belonged to the states, listed powers belonging to the federal government.

² [*Annals of Congress*, 1:790 \(August 18, 1789\).](#)

“Congress did not possess a Constitutional authority to incorporate the Bank of the United States. There was no specific clause empowering it to do so, and the “necessary and proper” clause of the Constitution was subject to dangerous abuse: “Let it be propounded as an eternal question to those, who build new powers on this clause, whether the latitude of construction which they arrogate, will not terminate in an unlimited power in Congress?”³

Washington then asked Secretary of State Thomas Jefferson to weigh in. Jefferson understood the practical reasons for preferring bank notes to paper money, but that did not justify bypassing the Constitution:

“Perhaps indeed bank bills may be a more *convenient* vehicle than treasury orders, but a little *difference* in the degree of *convenience*, cannot constitute the necessity which the constitution makes the ground for assuming any non-enumerated power.”⁴

Swayed by these arguments, Washington leaned toward vetoing the bank and asked James Madison to draft a veto message “to be ready in case his judgment should finally decide agst [against] the Bill for incorporating a National Bank, the Bill being there before him.” If Washington had made such a determination, and if he had followed Madison’s draft, here is how he would have explained his decision:

“I object to the Bill because it is an essential principle of the Government that powers not delegated by the Constitution cannot be rightfully exercised; because the power proposed by the bill to be received is not expressly delegated; and because I cannot satisfy myself that it results from any express power by fair and safe rules of implication.”⁵

Before issuing his final decision, however, Washington forwarded Randolph’s and Jefferson’s arguments to Hamilton and asked for a response “so that I may be fully possessed of the argument *for* and *against* the measure before I express any opinion of my own.” Here is an excerpt from what Hamilton said:

“Every power vested in a government ... includes ... a right to employ all the *means* requisite, and *fairly applicable* to the attainment of the *ends* of such power, and which are not precluded by restrictions and exceptions specified in the Constitution, or not immoral, or not contrary to the ends of political society...

“The whole turn of the [necessary and proper] clause indicates, that it was the intent of the convention, by that clause to give a liberal latitude to the exercise of the specified powers. The expressions have peculiar comprehensiveness. They are, ‘to make *all laws*, necessary and proper for *carrying into execution* the foregoing powers and *all other powers*

³ [Randolph to Washington, February 12, 1791, W. W. Abbot and Dorothy Twohig, eds., *Papers of George Washington* \(Presidential Series\), 7:337.](#)

⁴ [Jefferson to Washington, February 15, 1791, Ibid., 7:352.](#) (Emphases in the original)

⁵ [Madison to Washington, February 21, 1791, Ibid., 7:395.](#)

vested by the constitution in the *government* of the United States, or in any *department* or *officer* thereof...’

“The powers contained in a constitution of government, especially those which concern the general administration of the affairs of a country, its finances, trade, defence etc. ought to be construed liberally, in advancement of the public good. The means by which national exigencies are to be provided for [and] national prosperity promoted, are of such infinite variety, extent and complexity that there must, of necessity be great latitude of discretion in the selection and application of those means.”⁶

STUDENT RESPONSE: In class, you will be asked to weigh in on this debate. Before you do, summarize in writing what you think is the strongest point for each side.

⁶ [Hamilton to Washington, February 23, 1791, Ibid., 7:425, 429, 430.](#) (Emphases in the original)

Strict v. Loose Construction Handout B: Lighthouses

One of the first acts proposed in the First Federal Congress was a “tonnage duty” — a federal tax on all ships, based on weight. In the House of Representatives, James Madison argued that the duty was “necessary for the support of light-houses, hospitals for disabled seamen, and other establishments incident to commerce.”¹ Several members of Congress thought that although a lighthouse was located in particular state, the commerce it enabled benefitted all states—so the federal government, not the states, should fund it. Yet the Constitution did not *expressly* empower Congress to run lighthouses.

On July 1, 1789, “A Bill for the Establishment and Support of Light Houses, Beacons, and Buoys, and for authorizing the several States to provide and regulate Pilots” came before the House. This bill provided federal support for lighthouses once states had relinquished control. Representatives from the North, where numerous lighthouses alerted sailors to rocky shores, supported the bill; those from the South, where gentle coastlines required fewer lighthouses, opposed what they viewed as handouts to northern states. Federal control was an unconstitutional “infringement of states rights,” southerners argued. South Carolina’s Thomas Tudor Tucker moved to place lighthouses “in the hands and under the control of the state government.”²

On the other side, Thomas Fitzsimons of Pennsylvania argued that the Constitution, “in giving the regulation and commerce to Congress, had conferred every power which was incidental and necessary to it.” Article I, Section 8, Clause 3, gave Congress the power to “regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes,” and in his view, “regulation respecting light houses and pilots were a part of the commercial system” that “had been given up by the States.”

Tucker countered that if the federal government took lighthouses from the states, it could also “take possession of the mouths of rivers, and seize all such convenient places as they should deem proper for the regulation of trade.”

STUDENT RESPONSE: Based on your reading of the Constitution, not on your state’s interests, do you think the Lighthouse Act of 1789 was constitutional?

¹ *Annals of Congress*, 1:183 (April 21, 1789).

² “The Lighthouses Act of 1789,” US Senate Historical Office, 1991:
https://www.uscg.mil/history/docs/1789_LH_Act.pdf

Strict v. Loose Construction Handout C: Merchant Seamen

In the summer of 1790, “An Act for the Government and Regulation of Seamen in the Merchants Service” came before the House of Representatives. This bill required all ship owners to offer contracts to the sailors they employed and pay the men promptly. Ships crossing the Atlantic were required to “have on board, well secured under deck, at least sixty gallons of water, one hundred pounds of salted flesh meat, and one hundred pounds of wholesome ship-bread, for every person on board such ship or vessel, over and besides such other provisions, stores and live-stock as shall by the master or passengers be put on board, and in like proportion for shorter or longer voyages.” (For every day sailors received short rations, they would receive double pay.) The bill also protected owners by placing harsh penalties on deserters.

The most striking provision concerned medical care:

“Section 8: That every ship or vessel belonging to a citizen or citizens of the United States, of the burthen of one hundred and fifty tons or upwards, navigated by ten or more persons in the whole, and bound on a voyage without the limits of the United States, shall be provided with a chest of medicines, put up by some apothecary of known reputation, and accompanied by directions for administering the same; and the said medicines shall be examined by the same or some other apothecary, once at least in every year, and supplied with fresh medicines in the place of such as shall have been used or spoiled; and in default of having such medicine chest so provided, and kept fit for use, the master or commander of such ship or vessel shall provide and pay for all such advice, medicine, or attendance of physicians, as any of the crew shall stand in need of in case of sickness, at every port or place where the ship or vessel may touch or trade at during the voyage, without any deduction from the wages of such sick seaman or mariner.”¹

The bill was certainly well intentioned, but was it constitutional? James Madison, who argued against implied powers in the National Bank controversy, had argued at the Constitutional Convention, on September 15, that passing tonnage duties to provide for “the support of Seamen” was a power granted to Congress under the regulation of commerce clause, even if this power was not *explicitly* granted.

STUDENT RESPONSE: Do you think this bill was constitutional? Can requiring ship owners to stock adequate provisions and provide medical care for sailors be considered a regulation of commerce, permitted by Article I, Section 8, Clause 3 of the Constitution? If so, is Congress’s power “expressly granted,” or is it a power “by implication”?

¹https://en.wikisource.org/wiki/United_States_Statutes_at_Large/Volume_1/1st_Congress/2nd_Session/Chapter_29

Strict v. Loose Construction Handout D: Education

On [January 8, 1790](#), [President Washington presented his first State of the Union address](#) to Congress. He made several recommendations and closed with this:

“There is nothing, which can better deserve your patronage, than the promotion of Science and Literature. Knowledge is in every Country the surest basis of public happiness... To the security of a free Constitution it contributes in various ways: By convincing those, who are entrusted with the public administration, that every valuable end of Government is best answered by the enlightened confidence of the people: And by teaching the people themselves to know and to value their own rights; to discern and provide against invasions of them; to distinguish between oppression and the necessary exercise of lawful authority; ... to discriminate the spirit of liberty from that of licentiousness, cherishing the first, avoiding the last, and uniting a speedy, but temperate vigilance against encroachments, with an inviolable respect to the laws. Whether this desirable object will be best promoted by affording aids to Seminaries of Learning already established—by the institution of a national University—or by any other expedients, will be well worthy of a place in the deliberations of the Legislature.”¹

STUDENT RESPONSE: Washington believed that citizens should learn to “value their own rights” but also have “an inviolable respect to the laws”; they learn to “distinguish between oppression and the necessary exercise of lawful authority.” Achieving this balance is admirable, but is the federal government empowered by the Constitution to provide, or give aid to, civic education? Consider these questions:

- a. Do any of the powers granted in Article I, Section 8, *expressly* cover this?
- b. Might civic education be “necessary and proper” to facilitate any of the powers listed in that section?
- c. Might civic education help “promote the general Welfare” or “secure the Blessings of Liberty”—broad goals stated in the preamble?
- d. Might the preamble be so broad as to justify almost any governmental activity? If so, can the “necessary and proper” criteria help us decide which of these activities are constitutional?
- e. In this particular instance, could Washington make a case that in order to “secure the Blessings of of Liberty,” it is “necessary and proper” to teach citizens how to “discriminate the spirit of liberty from that of licentiousness”? Or is that stretching “necessary and proper” too far?

¹ <http://founders.archives.gov/documents/Washington/05-04-02-0361>

Strict v. Loose Construction Handout E: Scientific Inquiry

On April 20, 1789, ten days before George Washington's presidential inauguration, two men asked Congress to support a private scientific expedition to Baffin's Bay to investigate the magnetic north pole. James Madison quickly endorsed the measure:

“Well aware as I am that public bodies are liable to be assailed by visionary projectors, I nevertheless wish to ascertain the probability of the magnetic theory. If there is any considerable probability that the projected voyage would be successful, or throw any valuable light on the discovery of longitude, it certainly comports with the honor and dignity of Government to give it their countenance and support. ... I am also well aware that the deranged situation of our treasury would not warrant us in spending considerable sums in visionary pursuits; but if an inconsiderable sum will answer on this occasion, and there is a probability of improving the science of navigation, I see no reason against it.”¹

At the Constitutional Convention, on August 18, Madison had suggested empowering Congress “to encourage by premiums & provisions, the advancement of useful knowledge and discoveries,” but his proposal had been sent to committee and was never reported out. The only power granted in Article I, Section 8 of the Constitution that touches on scientific inquiry is Clause 8: “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” Thomas Tudor Tucker did not think that clause applied in this case. According to the *Annals of Congress*:

“Mr. TUCKER expressed a doubt whether the Legislature has power, by the Constitution, to go further in rewarding the inventors of useful machines, or discoveries in sciences, than merely to secure to them for a time the right of making, publishing and vending them: in case of a doubt, he thought it best to err on the safe side.”²

STUDENT RESPONSE: In order to determine whether the Constitution empowered Congress to support the Baffin's Bay expedition, consider these questions:

- a. Does Clause 8 grant Congress the *express* authority to promote scientific inquiry by any means, or only by securing exclusive rights to discoveries?
- b. Do the words “to promote the Progress of Science and the useful Arts” establish scientific inquiry as a *general* goal of the Constitution?
- c. If so, would an expedition to the magnetic North Pole be justified by the “necessary and proper” clause?

¹ *Annals of Congress* 1:179 (April 20, 1789).

² *Ibid.*, 180.

- d. If not, might the expedition be justified by a combination of the general aims in the Preamble and the “necessary and proper” clause? Or is that too much of a stretch?
- e. What about scientific inquiries in matters of health, like prevention of smallpox—or, in today’s world, finding a cure for cancer? Would funding these be considered “necessary and proper” to “promote the general Welfare”?
- f. What about scientific inquiries to investigate the causes and likely effects of global climate change? Would funding these be considered “necessary and proper” to “promote the general Welfare”?
- g. If you conclude that the federal government is *not* empowered to enter these realms, how is research into cancer and climate change to be funded?

Strict v. Loose Construction Handout F: Historical Outcomes

National Bank: Washington sided with Hamilton and did not veto the act to establish the Bank of the United States. He had been advocating for a strong central government for years, and to veto the bank bill would have undercut his work on several counts. Substantively, because he trusted Hamilton's judgment on financial affairs, he thought a national bank would help get the nation on its feet. Politically, it would have alienated his Federalist allies. Because this would be his first veto, and because both houses of Congress had passed the measure by wide majorities, Washington's "negative" would be presented as a usurpation of his powers, even though it was safely within his constitutional prerogatives. Finally, if a national bank failed to meet the criterion for "necessary and proper," Washington reasoned that other worthwhile projects would likely fail as well and the new government might be crippled.

James Madison had stated in [*The Federalist No. 45*](#): "The powers delegated by the proposed Constitution to the federal government are few and defined," but he interpreted those powers loosely when he supported hospitals for disabled seamen and the expedition to Baffin's Bay. (He also argued that the census could be used to acquire useful information, such as a person's occupation, although the Constitution had required a census every ten years only to determine the apportionment of representatives in Congress.) Not until his opposition to the Bank of the United States did he argue in the First Federal Congress for a strict interpretation of the Constitution. The debate over the national bank — Hamilton's loose interpretation versus the strict interpretation advocated by Madison, Jefferson, and Randolph — figured significantly in the development of two political parties in the 1790s.

Lighthouses: The Lighthouse Act of 1789 was signed into law August 7.

Merchant Seamen: The "Act for the Government and Regulation of Seamen in the Merchants Service" was signed into law on July 20, 1790.

Education: Congress did not act on Washington's suggestion. In his final address to Congress in 1796 the president renewed his recommendation, but again, Congress did not act. Not until the Civil War did Congress give federal aid to education in the form of land grants for colleges. Starting in 1867, a federal Department of Education gave assistance to state school systems. In World War II the federal government started giving financial aid to veterans. In 1958, at the height of the Cold War, Congress passed the National Defense Education Act (NDEA), an attempt to "keep up with the Russians" after the USSR launched the first space satellite. The NDEA seemed at the time "necessary and proper" to "provide for the common defence" of the nation.

Scientific Inquiry: The Baffin's Bay issue was not determined on constitutional grounds. Because of "the deranged state of our finances," Congress did not provide funds for the expedition. It did, however, grant the two organizers of the expedition exclusive rights to their inventions and writings concerning the earth's magnetic points.

Handout G: Strict *and* Loose Construction: Why the Framers Had It Both Ways

Today, we still quarrel over “strict” versus “broad” constructions of the Constitution, much as Americans did in the 1790s. We do so because the Constitution signals mixed messages, and that is neither an accident nor a mistake. The framers refused to declare unflinchingly for “strict” or for “broad” because either choice, unmodified, would have been untenable. Without enumerating powers, the Constitution would permit the indefinite expansion of federal authority, yet without the flexibility inherent in implied powers, Congress could allocate no funds to help build dikes, dams, bridges, highways, or airports; monitor weather to warn people of hurricanes and tornadoes; finance research for the eradication of smallpox (one of the great scourges of the founding generation) or cancer; or operate the Library of Congress and the Smithsonian Institution. Admittedly, *all* would not be lost. Even now, under Article I, Section 8, Clauses 10 and 11, Congress would still possess the authority to “punish Piracies” and “grant Letters of Marque and Reprisal.”

Strict v. Loose Construction Handout H: Vocabulary List

1. Precedent: An earlier event or action that is regarded as an example or guide to be considered in subsequent similar circumstances.
2. Strict Construction: A rigid, literal interpretation of a statute or document.
3. Loose Construction: A broad, flexible interpretation of a statute or document.
4. Confederation: A league or alliance, especially of confederate states.
5. Charter: A written grant by a country's legislative or sovereign power, by which an institution such as a company is created and its rights and privileges defined.
6. Minutia: The small, precise, or trivial details of something.
7. Propound: To put forward, such as an idea or point of view, for consideration by others
Arrogate: To take or claim without justification.
8. Exigency: An urgent need or demand.
9. Prerogative: A right or privilege exclusive to a particular individual or class.