

The Fragile Constitution in America: 1791-1854

How was the power of the federal government challenged in the young nation?



Standard 11.1: Students analyze the significant events in the founding of the nation and its attempts to realize the philosophy of government described in the Declaration of Independence.

3. Understand the history of the Constitution after 1787 with emphasis on federal versus state authority and growing democratization.

This activity focuses on seven challenges to the federal government at home. You should understand that the federal government did not have the central place in public life that it has today. Several challenges to the authority of the federal government are presented through a series of primary resources. Background is provided to place each challenge in an historical context.

1. On your own sheets of paper or in your notebook, answer the questions for the documents that deal with the reasons for the conflict, the way in which the government was challenged, and the view of government taken by the participants. You should try to paraphrase the resource to make sure you understand it.

2. On the worksheet provided, define the key terms and record the information for each of the challenges.

3. In the essay question for this unit, you will be asked to draw conclusions about the effect of the challenges on the power of the federal government, **drawing upon at least five of the seven documents.** The question you will answer will be: **How was the power of the federal government challenged in the young nation? Did the federal government gain power, maintain power, or lose power in the period 1791-1854? Give specific reasons to explain your opinion.**



How was the power of the federal government challenged in the young nation?

Document A: The Bank of the United States (National Bank, 1791) pgs. 75, 88

Background

Alexander Hamilton, Secretary of the Treasury under President George Washington, wanted to create a “national bank” that would establish credit and financial order for the new nation. The bank would be controlled by private individuals but overseen by the federal government. It would hold the government's money and also provide the paper currency for the United States, as well as earn interest on money collected and loaned to individuals and states. Some people protested that this bank would favor rich bankers and businessmen in the Northeast. Others did not feel that the government possessed the power to create such a bank under **Article I, Section 8 of the Constitution (page 88)**. In spite of these protests Congress approved the Bank of the United States in 1791. Secretary of State Thomas Jefferson wrote a formal opinion to President Washington expressing his view of the national bank. The following is an excerpt from that letter.

Thomas Jefferson's View of the **National Bank**

I consider the foundation of the Constitution as laid on this ground -- that all powers not delegated to the United States, by the Constitution, nor prohibited by it to the states, are reserved to the states, or to the people (Tenth Amendment). To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States by the Constitution.

Directions: Using all the information shown above answer questions 1-4.

1. What were the reasons for the conflict?
2. How did Thomas Jefferson challenge the power of the federal government?
3. What specific power of the federal government did he challenge?
4. What is Thomas Jefferson's view of the power of the federal government in this conflict?

Use your textbook or other resources to answer the following question.

5. What was the outcome of Jefferson's challenge?

Document B: The Whiskey Rebellion (1791), pg. 76

Background

To raise money to pay off the nation's debt from the Revolutionary War, Treasury Secretary Alexander Hamilton proposed the first "excise tax" (tax on an internally-produced good or commodity) and the federal government began to tax whiskey in 1791. Many protested the tax, especially farmers in western Pennsylvania. These farmers turned some of their perishable grain into whiskey, which could then be used as a medium of exchange in a region that did not have a reliable supply of hard currency. This tax hurt them directly and many refused to pay it. Some farmers used violence against the tax collectors, local police, and magistrates who sought to enforce the excise tax.

The federal government was forced to respond.

George Washington's Response to the **Whiskey Rebellion**

[B]y a law of the United States entitled 'An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions,' it is enacted 'that whenever the laws of the United States shall be opposed or the execution thereof obstructed in any State by combinations too powerful to be suppressed by the ordinary course of judicial proceedings...it shall be lawful for the President of the United States to call forth the militia of such State to suppress such combinations and to cause the laws to be duly executed. And if the militia of the State where such combinations may happen shall refuse or be insufficient to suppress the same, it shall be lawful for the President, if the Legislature of the United States shall not be in session, to call forth and employ such numbers of the militia of any other State or States most convenient thereto as may be necessary;...'

Directions: Using all the information shown above answer questions 1-4.

1. What were the reasons for the conflict?
2. How did the farmers of western Pennsylvania challenge the power of the federal government?
3. What specific power of the federal government did the farmers of Pennsylvania challenge?
4. What is George Washington's view of the power of the federal government in this conflict?

Use your textbook or other resources to answer the following question.

5. What action did Washington take regarding this challenge?

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**Document C: The Virginia and Kentucky Resolves (Resolutions)
in response to The Alien and Sedition Acts (1798), pgs. 78-79**

Background

As a young nation, the United States feared being drawn into wars between Great Britain and France. In 1798, after a diplomatic incident in which French officials insulted the American officials by demanding a bribe, Congress enacted, and President John Adams signed into law, the **Alien and Sedition Acts**, which were to stay in effect until 1801. The Alien Act controlled immigration from Europe and made it harder for an immigrant to become an American citizen. The Sedition Act made it illegal for anyone to say, write, or publish criticism of the government or of the President. People who violated the Alien Act would be thrown out of the country; people who violated the Sedition Act would be fined and jailed. In the **Virginia and Kentucky Resolutions**, both states denounced the Alien and Sedition Acts as unconstitutional, but the other state governments refused to listen. James Madison wrote the Virginia Resolutions, Thomas Jefferson wrote the Kentucky Resolutions.

Virginia's Response to the Alien and Sedition Acts

Resolved...

That the [Virginia] General Assembly doth particularly PROTEST against the palpable and alarming infractions of the Constitution in the two late cases of the 'Alien and Sedition Acts,' passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government, and which, by uniting legislative and judicial powers to those of [the] executive, subverts the general principles of free government, as well as the particular organization and positive provisions of the Federal Constitution: and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto, --a power which, more than any other, ought to produce universal alarm, because it is leveled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right....

That the good people of this commonwealth, the General Assembly doth solemnly appeal to the like dispositions of the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid, are unconstitutional; and that the necessary and proper measures will be taken by each, for co-operating with this state, in maintaining the Authorities, Rights, and Liberties, referred to the States respectively, or to the people.

Directions: Using all the information shown above answer questions 1-4.

1. What were the reasons for the conflict?
2. How did the state of Virginia challenge the power of the federal government?
3. What specific power of the federal government did the state of Virginia challenge?
4. What is the state of Virginia's view of the power of the federal government in this conflict?

Use your textbook or other resources to answer the following question.

5. What was the outcome of this challenge?

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Document D: *Marbury v. Madison* (1803), 113, 118-119

Background

At the end of his term, President John Adams appointed William Marbury as justice of the peace for the District of Columbia. The Secretary of State, John Marshall (the same person who Adams appointed Chief Justice and who issued the ruling in this case) failed to deliver the commission to Marbury and left that task to the new Secretary of State, James Madison. Upon his inauguration, Thomas Jefferson told Madison not to deliver the commissions. (Jefferson would have liked to fill the commission with a fellow Democratic-Republican, rather than a Federalist like Marbury.) Marbury sued and asked the Supreme Court to issue a writ (a court order) that would require Madison to deliver his commission.

In his opinion, Chief Justice Marshall said that while Marbury was entitled to the commission, the Supreme Court did not have the power to issue the writ. This was because the Judiciary Act of 1789, the act written by Congress which authorized the Supreme Court to issue such writs, was unconstitutional. Thus, the Court gave up the power to issue these writs, but asserted for itself a power granted nowhere in the Constitution: the power of **judicial review**. The power of judicial review says that if a law written by the legislature conflicts with the Constitution, the judicial branch (the Supreme Court) can declare the law “null and void;” that is, unconstitutional.

Marbury v. Madison: John Marshall's Opinion

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other the courts must decide on the operation of each....

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty....

Directions: Using all the information shown above answer questions 1-4.

1. Aside from the individuals involved, what groups or institutions were in conflict here?
2. Elsewhere in his opinion, Marshall criticized President Jefferson for not delivering Marbury's commission. What is the irony in Marshall's criticism?
3. How did Marshall avoid an ultimate “showdown” with the President?
4. How did John Marshall view the power of the federal government in this conflict?

Extra Credit: Use your textbook or other resources to answer the following question.

5. When was the next time the Supreme Court struck down an act of Congress?

Document E: *McCulloch v. Maryland* (1819), pg. 122

Background

The idea of a national bank had been very controversial from its beginning in 1791. In fact, in 1811 Congress failed to renew the charter for the bank. In 1816 a second bank of the United States was approved with another twenty-year charter. Criticism of the constitutionality of the bank continued. The state of Maryland brought the issue to the Supreme Court by attempting to collect fees from one of the national bank's branches. In *McCulloch v. Maryland* (1819), Chief Justice John Marshall delivered the Court's opinion on state vs. federal power and the constitutionality of the bank as an exercise of the **"necessary and proper" (elastic) clause of the Constitution (Art. I, Sec. 8, page 88)**.

McCulloch v. Maryland: John Marshall's Opinion

If any one proposition could command the universal assent of mankind, we might expect it would be this: that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason: the people have, in express terms, decided it, by saying, 'this constitution, and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,' and by requiring that the members of the State legislatures, and the officers of the executive and judicial departments of the States, shall take the oath of fidelity to it.

The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land, 'anything in the constitution or laws of any State, to the contrary, notwithstanding.'...

After the most deliberate consideration, it is the unanimous and decided opinion of this court, that the act to incorporate the Bank of the United States is a law made in pursuance of the constitution, and is a part of the supreme law of the land....

Directions: Using all the information shown above answer questions 1-4.

1. What were the reasons for the conflict?
2. How did the state of Maryland challenge the power of the federal government?
3. What specific power of the federal government did the state of Maryland challenge?
4. How did John Marshall view the power of the federal government in this conflict?

Use your textbook or other resources to answer the following question.

5. What was the outcome of the state of Maryland's challenge? Whatever became of the Bank of the United States (it's no longer around)?

Document F: Nullification Crisis (1832), pg. 124, 126

Background

Andrew Jackson's first term as President, beginning in 1829, was preoccupied by a contest between Martin Van Buren, his secretary of state, and southerner John C. Calhoun, who had been reelected vice president, to secure a position as Jackson's successor. While the three men initially agreed on most positions regarding a national government of limited powers, Calhoun's position on the use of high tariffs (a tariff is a tax on imports) to protect domestic production had changed as a result of the growing anti-protectionist sentiment in his native South Carolina. This had led him to support the theory of **nullification**, which argued a state's right to nullify (invalidate) an act of the national government that it felt to be unconstitutional.

The nullification dispute, along with other personal issues, brought about Calhoun's followers being eliminated from the cabinet, and Calhoun resigned as vice-president in 1832. Martin Van Buren, the Secretary of State, who had loyally backed Jackson, replaced Calhoun as the president's "heir apparent," or likely favored successor.

The issue of nullification came to a head the next year, when South Carolina adopted an ordinance of nullification declaring that the high protective tariffs, or taxes on imports, of 1828 and 1832 were invalid inside the borders of the state of South Carolina. Privately, Jackson threatened to hang Calhoun. Publicly, he prepared to use military force against South Carolina. In a proclamation, Jackson denounced nullification as treason:

Andrew Jackson's Nullification Proclamation:

The Constitution has given, expressly, to Congress the right of raising revenue and of determining the sum the public needs will require. The States have no control over the exercise of this right other than that which results from the power of changing the representatives.... The Constitution has given it to the representatives of *all* the people, checked by the representatives of the States and by the Executive power. South Carolina wants to give it to the legislature or the convention of a *single* State, where neither the people of the different States, nor the States in their separate capacity, nor the president elected by the people have any representation.

I consider the power of one State to annul (nullify) a law of the United States incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which it is founded, and destructive of the great object for which it was formed.

1. Aside from the individuals involved, what groups or institutions were in conflict here?
2. What power of the state government of South Carolina did the federal government challenge?
3. What specific power of the federal government did the state of South Carolina challenge?
4. What was Jackson's reasoning behind his argument that nullification was unconstitutional?

Use your textbook or other resources to answer the following question.

5. What was the outcome of the challenge made by South Carolina?

Document G: The Kansas-Nebraska Act (1854), pg. 160

Background

In 1820, Congress passed the Missouri Compromise that temporarily resolved the disagreements over whether slavery would be allowed in new states. The Compromise admitted Maine as free state and Missouri as a slave state, and used the southern border of Missouri as the north/south dividing line for future admissions. New states south of the 36°-30' latitude could allow slavery; slavery would be prohibited in new states north of that line.

Partly to create incentive opportunities for a transcontinental railroad, in 1854 the Congress—under control of the Democratic Party—repealed the Missouri Compromise and enacted the Kansas-Nebraska Act. This new law created the territories of Kansas and Nebraska (both north of the 36-30' line) and allowed the settlers in those territories to decide for themselves whether or not to allow slavery under a concept supported by Illinois Senator Stephen Douglas known as “**popular sovereignty**.”

Stephen Douglas on the Kansas-Nebraska Act:

Why can we not withdraw the vexed question from politics? Why can we not adopt the principle of this bill as a rule of action in all new territorial organizations? Why can we not deprive these agitators of the vocation, and render it impossible for senators to come here upon bargains on the slavery question?... leave the people, under the Constitution, to do as they may see proper in respect to their own internal affairs... The bill does equal and exact justice to the whole Union, and every part of it; it violates the rights of no state or territory... and leaves the people thereof to the free enjoyment of all their rights.”

If the people of Kansas want a slaveholding state, let them have it, and if they want a free state they have a right to it, and it is not for the people of Illinois, or Missouri, or New York, or Kentucky, to complain, whatever the decision of Kansas may be.

1. What was the cause of the conflict in this case?
2. What power of the federal government was challenged by the new bill?
3. To whom might Douglas have been referring to as “agitators of the vocation”?
4. How does Douglas justify his argument to repeal the Missouri Compromise?

Use your textbook or other resources to answer the following question.

5. What was the reaction to the Kansas-Nebraska Act in the North? How did the bill affect tensions between North and South?

The Fragile Constitution in America: 1791-1854 Name _____ Per ____

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Directions: define the key terms for each resource, list the specific powers of the federal government that were challenged, and summarize the outcome of that challenge.

Document	Define term & specific power that was challenged	Outcome of the challenge
A: Jefferson on the National Bank	Key term: National Bank	
B: Washington on the Whiskey Rebellion	Key term: Whiskey Rebellion	
C: Virginia & Kentucky Resolutions	Key terms: Alien and Sedition Acts, Virginia & Kentucky Resolutions	
D: <i>Marbury v. Madison</i>	Key term: judicial review	

The Fragile Constitution in America: 1791-1854 Name _____ Per ____

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Document	Define term & specific power that was challenged	Outcome of the challenge
E: <i>McCullough v. Maryland</i>	Key term: "necessary and proper" (elastic) clause of the Constitution	
F: Jackson on the Nullification Crisis	Key term: nullification	
G: The Kansas-Nebraska Act	Key term: "popular sovereignty"	