

## CONSTITUTIONAL CONNECTION

To create a context for this lesson, students complete **Constitutional Connection: The President and Federal Power**.

# JAMES MADISON



## OVERVIEW

James Madison, justly recognized as the “Father” of the Constitution, believed that republican liberty was best preserved by the strict enumeration of governmental powers. At the Constitutional Convention, Madison recommended that the national government be empowered to grant charters of incorporation for the construction of canals in order to promote transportation and commerce among the states. This recommendation, however, was not adopted by the delegates. Decades later, President Madison refused to sign legislation authorizing the expenditure of federal funds to support “internal improvements.” With this veto, Madison revealed the depth of his commitment to a strict interpretation of the principle of delegated and enumerated powers.

### OBJECTIVES

Students will:

- ✎ Understand James Madison’s view of federal power.
- ✎ Understand Madison’s reasons for viewing unlimited federal power as a threat to liberty.
- ✎ Apply Madison’s reasoning to determine how he would have assessed the constitutionality of federal laws.
- ✎ Appreciate Madison’s contributions to limited government and liberty.

### CRITICAL ENGAGEMENT

#### QUESTION

What was President James Madison’s view of federal power?

### MATERIALS

- ✎ **Handout A:** James Madison and the Bonus Bill
- ✎ **Handout B:** Article I, Section 8 Slips
- ✎ **Handout C:** To Veto, or Not to Veto?
- ✎ **Handout D:** Madison, Federal Law, and You

### BACKGROUND/HOMEWORK

- A. Have students read **Handout A: James Madison and the Bonus Bill** and answer the questions.
- B. Choose five students and assign them the roles of James Madison, James Wilson, Ben Franklin, Roger Sherman, and Rufus King. Let them know that next class you will invite them to improvise a scene that might have taken place at the Constitutional Convention during debate on Madison’s proposal that Congress be given power to grant charters of incorporation for the construction of canals.

In their role play, they should include:

- ✎ Madison, Wilson, and Franklin’s reasons for suggesting and supporting the proposal
- ✎ Sherman and King’s reasons for objecting to the proposal

### WARM UP [ 10 minutes ]

Have the five students perform their scenes using **Handout A**.

### ACTIVITY [ 30 minutes ]

- A. Arrange desks in a circle. Using a hat, nametag, or other object, designate one student to play the role of “President Madison.”
- B. Give the other students, who will serve as “Congress,” one slip each from **Handout B: Article I, Section 8 Slips**.
- C. Put up an overhead of **Handout C: To Veto, or Not to Veto**. Reveal the first proposed federal law, taking care not to reveal the outcome. Members of “Congress” should examine their slip from **Handout B** and decide if it gives them the power to pass this bill. If they believe it does, they should raise their hand and explain their reasoning to the group.
- D. “President Madison” should now decide whether to sign or veto it. Remind the student playing Madison that s/he should assess the constitutionality of the proposal as President Madison would have.
- E. Reveal the outcome using **Handout C**.
- F. Have students pass their slip or President Madison object to the person to their left. Repeat the activity for the rest of the proposed laws.
- G. Have students complete **Handout D: Madison, Federal Law, and You** individually in class or for homework.

### WRAP-UP [ 10 minutes ]

- A. Ask students to recall Sherman and King’s objections to the proposed power of Congress to grant charters of incorporation for the construction of canals. Have any of those objections become relevant today?

### HOMEWORK

Have students read Madison’s veto message to Congress at [www.ArticleII.org/FederalPower](http://www.ArticleII.org/FederalPower) and put each paragraph into their own words. How would they summarize his veto message in one sentence?

### THE ISSUES ENDURE

Have students use recent news articles, such as those found at [www.BillofRightsInstitute.org/headlines](http://www.BillofRightsInstitute.org/headlines) to analyze similarities and differences between Madison’s understanding of the powers of the federal government and current approaches to its powers. How are terms such as “earmarks,” “pork-barrel projects,” and “logrolling” related to these current controversies?

# A JAMES MADISON AND THE BONUS BILL

James Madison walked into the Philadelphia tavern alone. It was May of 1787 and none of the other delegates to the Constitutional Convention had arrived yet. Madison was the only one there. But he didn't mind. After all the thinking and writing and planning he'd done on what the new government should look like, he didn't mind a few more days. Madison pulled up a chair, dropped a stack of papers and several heavy books on the wooden table, and sat down to review his notes once more.

## THE CONSTITUTIONAL CONVENTION

The Convention began in late May, and as the summer went on the delegates came to agreements on many aspects of the new federal government. Many of James Madison's ideas formed the backbone of the new constitution: a plan for a republic that was "partly national, and partly federal," as Madison would later describe it. The new national government was to have "national powers," which had "national ends" or purposes for the entire nation. The states retained important powers to address tasks that did not require national direction or management.

On September 14, as the Convention drew to a close, James Madison, along with delegates Benjamin Franklin and James Wilson, proposed that Congress be given the explicit power to grant charters of incorporation for the construction of canals. They believed this would allow the federal government to promote transportation and commerce among the states. Madison explained that, since the new constitution would remove the political obstacles among the states, "a removal

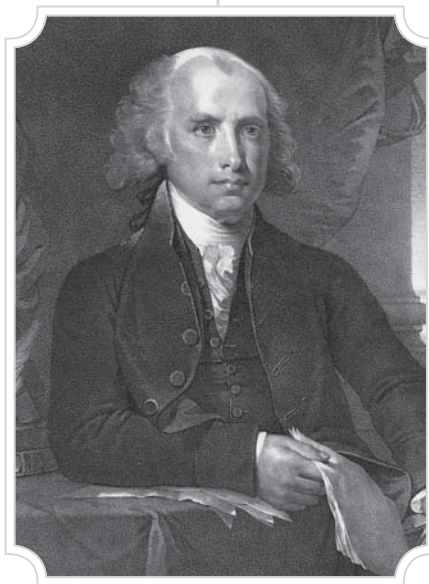
of the natural ones as far as possible ought to follow."

But delegate Roger Sherman of Connecticut objected. He pointed out that the people of the whole nation would be taxed for such internal improvements but the economic benefits would be felt only in the specific locations where they were built. Fellow New Englander Rufus King also objected, noting that these projects would lead to competition among the states for the federal funds to be spent. The proposal failed. Thus began a controversy as old as the Constitution: To what extent and in what ways does the Constitution permit Congress to spend money to promote the "general welfare"?

## PRESIDENT MADISON

James Madison was elected president in 1808. In his first Inaugural Address, President Madison pledged "to support the Constitution, which is the cement of the Union, as well in its limitations as in its authorities; to respect the rights and authorities reserved to the States and to the people..."

By 1815, President Madison presided over a country of eight million people. The nation spread over the territory from the Atlantic seacoast past the Appalachians, from Maine to Georgia, and spilling into the area along the Mississippi River. Commerce, transportation, and communication across this vast territory were difficult and, for some areas, practically nonexistent. It was clear that without significant improvements in the nation's infrastructure, the commercial and agricultural development of the new nation would be crippled. But who would provide this new





development: the federal government, or the states?

President Madison agreed with Thomas Jefferson that, while such improvements were desirable, even essential, it would be necessary to amend the Constitution in order to give Congress the authority to embark on such projects. When Madison was able to turn his attention to domestic policy after the end of the War of 1812, he urged that Congress propose a Constitutional amendment that would authorize the federal government to begin building national roads and canals.

### THE “BONUS BILL”

Congress did not address the constitutional issue. Instead, the Congress drafted a bill that would apply profits from the newly reauthorized National Bank toward the building of roads and canals. In his last official act as President, Madison vetoed the “Bonus Bill” as it was called.

In his veto message, Madison noted that neither the power to regulate commerce, nor to provide for the common defense, nor to promote the general welfare could be understood to grant Congress the power to construct roads and canals. He wrote that “the legislative powers vested in Congress are specified and enumerated in the eighth section of the first article of the Constitution, and it does not appear that the power proposed to be exercised by the bill is among the enumerated powers, or that it

falls by any just interpretation with the power to make laws necessary and proper for carrying into execution those or other powers vested by the Constitution in the Government of the United States.”

In Madison’s view, the fact that an important policy was a great idea and would lead to significant improvements did not make it constitutional: “I am not unaware of the great importance of roads and canals and the improved navigation of water courses... But seeing that such a power is not expressly given by the Constitution, and believing that it cannot be deduced from any part of it...I have no option but to withhold my signature from it.”

Finally, Madison believed that interpreting the powers of the federal government too loosely would lead the federal government to become too powerful. He wrote, “the permanent success of the Constitution depends on a definite partition of powers between the general and the state governments, and that no adequate landmarks would be left by the constructive extension of the powers of Congress as proposed in the bill.” If the limits of the Constitution were not respected, the national government would overpower the state governments.

Because of his conviction that the powers of the federal government must be limited to those enumerated by the Constitution, President Madison used the veto power to prevent the Congress from carrying out a goal that he himself had advocated thirty years earlier.

## COMPREHENSION AND CRITICAL THINKING QUESTIONS

1. What proposal of Madison’s regarding canals was voted down at the Constitutional Convention?
2. Why did Roger Sherman and Rufus King object to Madison’s proposal at the Convention?
3. What was the “Bonus Bill”?
4. Why did Madison veto the “Bonus Bill”?
5. Do you believe Madison was correct to veto the “Bonus Bill”? Why or why not?



# ARTICLE I, SECTION 8 SLIPS

## CLAUSE 1

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

## CLAUSE 2

The Congress shall have power ...To borrow money on the credit of the United States;

## CLAUSE 3

The Congress shall have power ...To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

## CLAUSE 4

The Congress shall have power ...To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

## CLAUSE 5

The Congress shall have power ...To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

## CLAUSE 6

The Congress shall have power ...To provide for the punishment of counterfeiting the securities and current coin of the United States;

## CLAUSE 7

The Congress shall have power ...To establish post offices and post roads;



## ARTICLE I, SECTION 8 SLIPS (CONT.)

### CLAUSE 8

The Congress shall have power ...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;

### CLAUSE 9

The Congress shall have power ...To constitute tribunals inferior to the Supreme Court;

### CLAUSE 10

The Congress shall have power ...To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

### CLAUSE 11

The Congress shall have power ... To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

### CLAUSE 12

The Congress shall have power ... To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

### CLAUSE 13

The Congress shall have power ... To provide and maintain a navy;

### CLAUSE 14

The Congress shall have power ... To make rules for the government and regulation of the land and naval forces;



## ARTICLE I, SECTION 8 SLIPS (CONT.)

### CLAUSE 15

The Congress shall have power ... To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

### CLAUSE 16

The Congress shall have power ... To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

### CLAUSE 17

The Congress shall have power ... To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;

### CLAUSE 18

The Congress shall have power ... To make all laws which 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, or in any department or officer thereof.



# TO VETO, OR NOT TO VETO?

## 1. CONGRESS WANTS TO AUTHORIZE THE CREATION OF A NATIONAL BANK.

**Outcome:** On April 10, 1816, Congress passed an act entitled “An Act to Incorporate the Subscribers to the Bank of the United States.” President Madison agreed with the constitutionality of this act. Many states opposed branches of the National Bank within their borders. In *McCullough v. Maryland* (1819), the Supreme Court upheld the creation of the bank.

Supreme Court Chief Justice John Marshall wrote, “Should Congress, in the execution of its powers, adopt measures which are prohibited by the constitution; or ... pass laws for the accomplishment of objects not entrusted to the government; [the Court would] say that such an act was not the law of the land....

Although, among the enumerated powers of government, we do not find the word ‘bank,’ ...we find the great powers to lay and collect taxes; to borrow money; to regulate commerce ... Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.”

## 2. CONGRESS WANTS TO PASS A BILL ESTABLISHING A NATIONAL MINIMUM WAGE AND A MAXIMUM 44-HOUR WORK WEEK.

**Outcome:** Congress enacted the Fair Labor Standards Act in 1938, claiming power to do so under the Commerce Clause (Clause 3). It was signed by President Franklin Roosevelt and upheld by the Supreme Court in *United States v. Darby* (1941).

## 3. CONGRESS WANTS TO PASS A BILL CREATING “GUN-FREE SCHOOL ZONES,” MAKING IT ILLEGAL TO HAVE A FIREARM IN SCHOOL ZONES.

**Outcome:** Citing its power to regulate interstate commerce, Congress enacted the Gun-Free School Zones Act of 1990 which made it a federal crime to possess a gun in the vicinity of schools. The Act was signed into law by President George H. W. Bush. The Supreme Court struck the law down on the grounds that Congress had exceeded its constitutional authority under the Commerce Clause in *US v. Lopez* (1995).

## 4. CONGRESS WANTS TO PASS A LAW CALLED THE CONTROLLED SUBSTANCES ACT. AMONG MANY OTHER REGULATIONS, THE LAW BANS POSSESSION OF MARIJUANA.

**Outcome:** In *Gonzalez v. Raich* (2005), the Supreme Court upheld the Controlled Substances Act and affirmed the power of the executive branch to ban local use and cultivation of marijuana, even for medical purposes. The Court reasoned, “The [state] exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market.” Therefore, the Court argued, the “aggregate impact on the national market” would be “substantial.” Because personal use would substantially affect interstate commerce, the Court held it was within Congress’s power to regulate.





# MADISON, FEDERAL LAW, AND YOU

LAW/CASE	WHAT DID THE CHALLENGED LAW DO?	DO YOU BELIEVE MADISON WOULD HAVE SIGNED THIS BILL?	WHY OR WHY NOT?
"BONUS BILL" (1817)	Congress would apply profits from the newly reauthorized national bank toward the building of roads and canals.	No	
<i>MCCULLOUGH V. MARYLAND</i> (1819)	Congress authorizes the creation of a National Bank.		
FAIR LABOR STANDARDS ACT (1938)	Congress sets a national minimum wage, and a maximum 44-hour work week.		
GUN FREE SCHOOL ZONES ACT (1995)	Congress creates "gun-free school zones," making it illegal to have a firearm in school zones.		
<i>GONZALEZ V. RAICH</i> (2005)	The Controlled Substances Act bans local use and cultivation of marijuana for personal medicinal use.		

