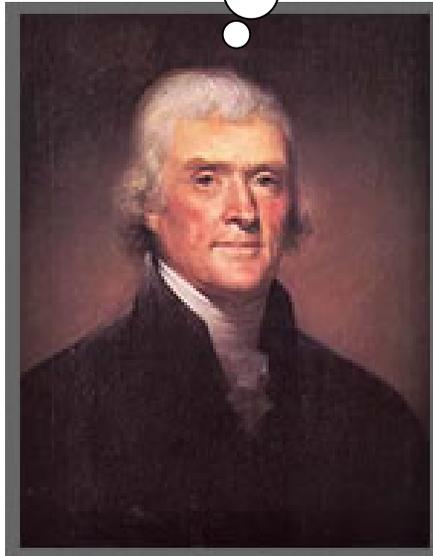


*“...nothing  
must be  
said...”*



by  
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Teaching American History Workshop  
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**Essential Question:** Is there a pattern of continuity or change?

### **Formative Assessment Prompts:**

**Instructional Chunk #1:** is it appropriate to use implied powers to create a national bank?

**Instructional Chunk #2:** is it appropriate to use implied powers to pass a sedition act?

**Instructional Chunk #3:** is it appropriate to use implied powers to purchase land?

**Instructional Chunk #4:** did President Thomas Jefferson's position on implied powers change or stay the same?

### **Standard Addressed:**

**Grades 4-5, H2b:** Students will examine historical materials relating to a particular region, society, or theme; chronologically arrange them; and analyze change over time.

**Grades 6-8, H1:** Students will examine historical materials relating to a particular region, society, or theme; and analyze change over time; and make logical inferences concerning cause and effect.

**Grades 9-12:** Students will analyze historical materials to trace the development of an idea or trend across space or over a prolonged period of time in order to explain patterns of historical continuity and change.

### **Problematic Prior Knowledge (PPL) Addressed**

- Those who change positions are hypocrites.

### **Activating Strategies:**

Strategy 1: ask students to describe a belief that they have that has remained consistent over time.

Strategy 2: ask students to describe a belief that they have that has changed over time.

Strategy 3: ask students if they think it is OK for a politician to change positions on issues.

### **Key Vocabulary** to preview

- Delegated powers
- Reserved powers
- Implied powers
- Elastic clause
- Sedition

## Teaching Strategies:

- Case studies
- Simulations
- Debates
- Document analysis.

## Graphic Organizer(s) Used:

- Frayer Model (optional).

## Materials Needed:

- Copies of Handouts #1-3.
- Copies of the “Document Cards” on pages 9-12 (see Instructional Chunk 4 Procedures on page 4 of this lesson.

## Differentiation Strategies:

- Use of excerpted documents.
- Reading buddies.

## Instructional Plan:

***Instructional Chunk #1:*** what was Thomas Jefferson’s stance on implied powers during the national bank debate in 1791?

### 1. Procedures:

- a. Tell students that they are going to role play in order to debate 3 proposals that were made during the first two decades after the Constitution went into effect i.e. during the presidencies of George Washington, John Adams, and Thomas Jefferson. The debates will focus on the use of implied powers. Ask if anyone knows what implied powers are. If not, offer a definition such as they are powers not explicitly listed in the Constitution. Explain that the men who wrote the Constitution included a clause that grants Congress the power to make laws that are “*necessary and proper*” for doing things that the Constitution does say Congress can do. A question that emerges from time to time is *what is “necessary and proper?”*

Optional: have students complete a Frayer Model for the term *implied powers*.

- b. Place students in triads. Have the 3 students in each group count off from 1-3. Describe the following roles for the students:
  - i. Students #1: will play the role of a member of Congress who has to decide to vote for or against a bill to create a national bank for the United States.
  - ii. Students #2: have to try to convince the congressman to vote **for** the creation of the bank.

- iii. Students #3: have to try to convince the congressman to vote **against** the bank bill. Distribute copies of Handout #1.

Give students time to read Handout #1. Students #2 present their arguments. Then Students #3 present theirs. Student #1 can ask questions at any time.

2. **Debrief:**

- ask the students to drop their roles and explain why they would or would not have supported the use of the implied powers in this case.
- Tell the students that Congress did use implied powers to create a national bank in 1791.

3. **Check for Understanding/Summarizing Activity:**

**Instructional Chunk #2:** is it appropriate to use implied powers to pass a wartime sedition act?

- c. Tell students that they are now going to role-play and debate a Sedition bill that would make it illegal during wartime to write, speak, or print anything of “a false, scandalous and malicious” nature against the government or any officer of the government .
- d. Students remain in their original triads but switch roles. The 1s become 2s; the 2s become 3s; and the 3s become 1s. Describe the following roles for the students:
  - i. Students #1: will play the role of a member of Congress who has to decide to vote for or against a wartime Sedition bill.
  - ii. Students #2: have to try to convince the congressman to vote **for** the passage of a wartime Sedition act.
  - iii. Students #3: have to try to convince the congressman to vote **against** the passage of a wartime Sedition act. Distribute copies of Handout #2.

Give students time to read Handout #2. Students #2 present their arguments. Then Students #3 present theirs. Student #1 can ask questions at any time.

4. **Debrief:**

- ask the students to drop their roles and explain why they would or would not have supported the use of the implied powers in this case.
- Tell the students that Congress did use implied powers to pass a Sedition Act in 1798.

1. **Check for Understanding/Summarizing Activity:**

**Instructional Chunk #3:** is it appropriate to use implied powers to purchase land?

- e. Tell students that they are now going to role-play and debate a bill to purchase land from another country. Problem is...the Constitution does not give Congress the power to purchase land.
- f. Students remain in their original triads but switch roles one more time. The 1s become

2s; the 2s become 3s; and the 3s become 1s. Describe the following roles for the students:

- i. Students #1: will play the role of a member of Congress who has to decide to vote for or against an opportunity to buy a huge chunk of land that will double the size of the United States.
- ii. Students #2: have to try to convince the congressman to vote **for** the purchase of land from another country.
- iii. Students #3: have to try to convince the congressman to vote **against** the purchase of land from another country. Distribute copies of Handout #3.

Give students time to read Handout #3. Students #2 present their arguments. Then Students #3 present theirs. Student #1 can ask questions at any time.

**5. Debrief:**

- ask the students to drop their roles and explain why they would or would not have supported the use of the implied powers in this case.
- Tell the students that Congress did use implied powers to pass a purchase Louisiana in 1803.

**1. Check for Understanding/Summarizing Activity:**

**Instructional Chunk #3:** did President Thomas Jefferson’s position on implied powers change or stay the same?

**1. Procedures:**

Pages 10-13 of this lesson contain 4 document “cards” that need to be Xeroxed, double sided so that the document number appears on one side while the document excerpt appears on the other. Once you Xerox the document number and document excerpt back to back, cut the 4 documents into 4 cards.

Tell students that they are now going to analyze historical materials relating to Thomas Jefferson for evidence of his thinking about implied powers over the course of 12 years from 1791 he was serving as President George Washington’s Secretary of State through 1803 when he was in his first term as the third President of the United States.

Place a set of the 4 document cards on the students desks with the “Document #” showing but the document excerpt itself face down. Taking turns one student in each triad will pick up a document card in numerical order beginning with Document #1, turn it over, and read the document excerpt to the others in the group. Each time they are to consider the following questions:

- What position did Thomas Jefferson take on the use of implied powers?
- When did he take each position?
- Was his position justified?
- Did Jefferson’s position change or remain the same from 1791-1803

**2. Debrief: ask the students...**

- Did Thomas Jefferson’s position on the use of implied powers change or remain the same over time?
- Why did Thomas Jefferson write “nothing must be said” to his friend, Senator John Breckinridge in 1803?
- How should history judge Thomas Jefferson in terms of his position(s) on the use of implied powers from 1791-1803?

**3. Check for Understanding/Summarizing Activity:**

### **Summarizing Strategy:**

Have students complete Handout 4: “Analyzing Continuity and Change Over Time.”

# Handout #1

## Case 1: Congress Considers Creating a National Bank (1791)



Background: The nation’s economy has been bad for over a decade. As a result, the country has little if any credit.

Arguments For a Bank	Arguments Against a Bank
<ul style="list-style-type: none"> <li>• Although the Constitution does not specifically grant Congress the power to create a national bank, Article 1, Clause 8, Section 18 [now known as the elastic clause] does give Congress the power to “make all laws which shall be <i>necessary and proper</i>” for carrying out the duties of the United States government. A national bank is both a “necessary and proper” part of the governments’ power collect tax money. The power to create a national bank is a legitimate, <i>implied</i> power.</li> <li>• There is nothing dangerous about a bank.</li> <li>• Those who wrote the Constitution could not think of every power a government might need to serve the interests of the country. If a Constitution is not permitted to grow, it will not endure.</li> <li>• The Constitution was written to create “a more perfect Union.” A bank will help achieve that goal.</li> </ul>	<ul style="list-style-type: none"> <li>• The Constitution does not grant the national government a power to create banks.</li> <li>• It is a very dangerous idea to allow the national government to give itself powers. This is the first step toward tyranny!</li> <li>• The proposed 10<sup>th</sup> Amendment to the Constitution specifically states that powers not delegated to the national government are “reserved to the states.” This means that the power to create banks rests exclusively with the states.</li> <li>• Our country is committed to the principles of limited government and popular sovereignty. If the government wants to do something that is not in the Constitution, it should only be done through the amendment process.</li> </ul>

You Decide: Should our government create a national bank? Explain & support your point of view.

## Handout #2

### Case 2: Congress Considers a Sedition Act (1798)



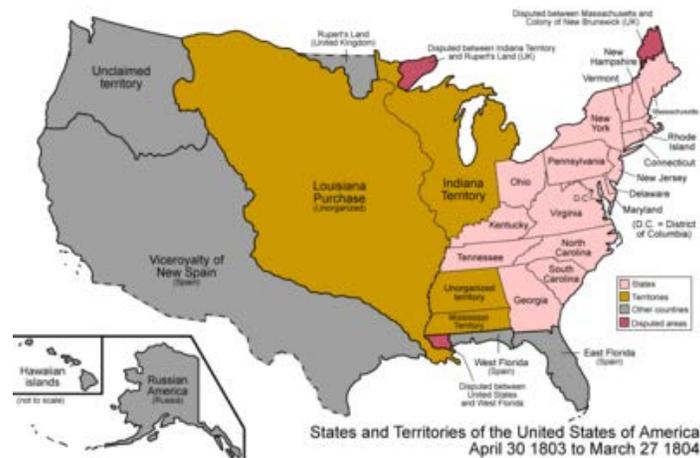
Background: There are growing numbers of individuals who are criticizing of the government’s policies. More importantly, this is happening at a time when there is a serious national emergency. The nation is involved in a war that it cannot afford to lose. The Sedition act would make it illegal to write, speak, or print anything of “a false, scandalous and malicious” nature against the government or any officer of the government.

Argument for a Sedition Act	Arguments Against a Sedition Act
<ul style="list-style-type: none"> <li>• No rights are unlimited.</li> <li>• The freedoms of speech and the press were never intended to protect those whose lies cause injury to others.</li> <li>• Freedom of action does not mean that government cannot punish those who rob or murder others. Government has just as much a right to punish those who abuse their freedom of speech as it does to punish those who abuse their freedoms of speech and the press.</li> <li>• What you say safely in one situation may result in great danger in another situation.</li> <li>• If we lose the war there won’t be any rights or freedoms to enjoy.</li> </ul>	<ul style="list-style-type: none"> <li>• Amendment I specifically guarantees freedom of speech and the press.</li> <li>• Congress should not be allowed to assume a power that it is specifically denied.</li> <li>• The people of the United States are committed to the principle of limited government. The Constitution helps to achieve this goal by granting only those powers that are <i>delegated</i> in writing.</li> <li>• If we open the door to assuming power for a good purpose, the door is open to assuming power for an evil purpose.</li> </ul>

You Decide: Should our government pass a Sedition Act? Explain & support your point of view.

## Handout #3

### Case 3: Congress Considers Purchasing Louisiana (1803)



Background: France has made an offer to sell the territory of Louisiana to the United States. The purchase will double the size of the United States.

Arguments for Purchasing Louisiana	Arguments Against Purchasing Louisiana
<ul style="list-style-type: none"> <li>• Our government can gain land by conquering it. Why not by buying it?</li> <li>• No harm can come from buying land.</li> <li>• If the government has to spend time debating an amendment, France will have time to change its mind. Opportunities must be seized when they present themselves.</li> <li>• If we don't purchase Louisiana, it may be sold to one of our enemies.</li> </ul>	<ul style="list-style-type: none"> <li>• There Constitution does not delegate a power to purchase land.</li> <li>• If we open the door to assuming power for a good purpose, the door is open to assuming power for an evil purpose.</li> <li>• Our country is committed to the principles of limited government and popular sovereignty. If the government wants to do something that is not in the Constitution, it should only be done through the amendment process.</li> <li>• There is a danger in bringing people into our country who do not share our values, beliefs, principles, or commitment to liberty.</li> </ul>

You Decide: Should our government purchase Louisiana? Explain & support your point of view.

# **Document 1**

## **1791**

# **Document 2**

## **1798**

## **Thomas Jefferson on the Creation of a National Bank**

*“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...*

*Nor are they within...the general phrases...*

*It [a loose interpretation] would reduce the whole instrument [Constitution] to a single phrase, that of instituting Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.”*

Thomas Jefferson  
February 15, 1791

## **Thomas Jefferson on the Alien and Sedition Acts (1798)**

*“...whenever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force...”*

Kentucky Resolutions  
Thomas Jefferson [anonymous author]  
Passed November 16, 1798

**Document 3**

**1803**

**Document 4**

**1803**

### **Thomas Jefferson on the Purchase of Louisiana**

*“This treaty [to purchase Louisiana] must, of course, be laid before both houses, because both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying and paying for it so as to secure a good which would otherwise probably be never again in their power. But I suppose they must then appeal to the nation for an additional article to the Constitution, approving and confirming an act which the nation had not previously authorized. The Constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union.”*

Jefferson to his friend John Breckinridge, US Senator (KY)  
August 12, 1803

### **Thomas Jefferson on the Purchase of Louisiana**

*“I wrote to you on the 12<sup>th</sup> inst. On the subject of Louisiana and the constitutional provision that might be necessary for it. A letter received yesterday shows that nothing must be said on that subject which may be a pretext for retracting but that we should do, sub silentio, what shall be found necessary. Be so good, therefore, as to consider that part of my letter as confidential...”*

Jefferson to John Breckinridge  
August 18, 1803

### Handout 4: Analyzing Continuity and “Change” Over Time

**Directions:** use the space on the back of the coins (below the “heads” side) to summarize how Thomas Jefferson’s position on implied powers changed or remained the same over time from 1791-1801.

