

DOCUMENTS

The passage of a bill creating the Bank of the United States in 1791 occasioned the first debate concerning the constitutionality of an Act of Congress. In the following two pieces, one from Jefferson, and one from Alexander Hamilton, the issues of implied powers and the appropriate use of the “necessary and proper” clause are debated for the first time in the new government.

As you read this document, focus on answering the following questions:

1. What were Jefferson’s reservations on creating the Bank? How does he justify his position?
2. How did Hamilton defend the bank bill? How does he justify the use of the “necessary and proper” clause.

“Jefferson Versus Hamilton on the Bank”

Jefferson
February 15, 1791

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 (12th [10th] amend.). To take a single step beyond the boundaries thus specifically 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.

The second general phrase is “to make all laws necessary and proper for carrying into execution the enumerated powers.” But they can all be carried into execution without a bank. A bank therefore is not necessary, and consequently not authorized by this phrase.

It has been much urged that a bank will give great facility or convenience in the collection of taxes. Suppose this were true; yet the Constitution allows only the

Hamilton
February 23, 1791

If the end be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that end, and is not forbidden by any particular provision of the Constitution, it may safely be deemed to come within the compass of the national authority.

There is also this further criterion, which may materially assist the decision: Does the proposed measure abridge a pre-existing right of any state or of any individual? If it does not, there is a strong presumption in favor of its constitutionality.

“Necessary” often means no more than needful, requisite, incidental, useful, or conducive to. . . . [A] restrictive interpretation of the word “necessary” is also contrary to this sound maxim of construction: namely, that the powers contained in a constitution ought to be construed liberally in advancement of the public good.

A hope is entertained that it has, by this time, been made to appear to the

means which are “necessary,” not those which are merely “convenient,” for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase as to give any non-enumerated power, it [the latitude] will go to every one; for there is not one [power] which ingenuity may not torture into a convenience, in some instance or other, to some one of so long a list of enumerated powers. It would swallow up all the delegated powers [of the states,] and reduce the whole to one power.

satisfaction of the President, that a bank has a natural relation to the power of collecting taxes—to that of regulating trade—to that of providing for the common defense—and that, as the bill under consideration contemplates the government in the light of a joint proprietor of the stock of the bank, it brings the case within the provision of the clause of the Constitution which immediately respects [relates to] the property of the United States. (Evidently Art. N, Sec. III, para. 2: “The Congress shall have power to make all needful rules and regulations respecting the territory or other property belonging to the United States.”)

H. C. Lodge, ed., *The Works of Alexander Hamilton* (1904), vol. 3, pp. 458, 452, 455, 485–486; and P. L. Ford, ed., *The Writings of Thomas Jefferson* (New York: G. P. Putnam’s Sons, 1895), vol. 5, pp. 285, 287.