

3. Jefferson Versus Hamilton on the Bank (1791)

There were only three banks in the entire country when Hamilton, in 1790, proposed the Bank of the United States as the keystone of his financial edifice. Modeled on the Bank of England and located in Philadelphia, it would be capitalized at \$10 million, one-fifth of which might be held by the federal government. As a private concern under strict government supervision, it would be useful to the Treasury in issuing notes, safeguarding surplus tax money, and facilitating numerous public financial transactions. Before signing such a bank bill, Washington solicited the views of his cabinet members. The opinions of Jefferson, given below, elicited a rebuttal from Hamilton, also given below. Note that Jefferson, the strict constructionist of the Constitution, based his case on the Tenth Amendment in the Bill of Rights, about to be ratified. Hamilton, the loose constructionist of the Constitution, based his views on the implied powers in Article I, Section VIII, paragraph 18, which stipulates that Congress is empowered “to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.” Which of the two men seems to be on sounder ground in interpreting “necessary”?

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

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,

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

Jefferson

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 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. . . .

Hamilton

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 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. IV, 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. . . .”]

C. Overawing the Whiskey Boys

I. Hamilton Upholds Law Enforcement (1794)

Secretary Hamilton’s excise tax on whiskey hit the impoverished Pennsylvania frontiersmen especially hard. Their roads were so poor that they could profitably transport their corn and rye to market only in liquid concentrate form. If sued by the government, they were forced to incur the heavy expense of traveling three hundred miles and undergoing trial before strange judges and jurors. Numerous other grievances caused the Whiskey Boys to form armed mobs that intimidated would-be taxpayers or roughly handled the federal tax collectors. Some agents were tarred, feathered, and beaten; the home of one was burned. An outraged Hamilton, prejudiced against those who “babble republicanism,” set forth these views in the press over the pen name “Tully.” What are the strengths and weaknesses of his argument?

Let us see then what is this question. It is plainly this: Shall the majority govern or be governed? Shall the nation rule or be ruled? Shall the general will prevail, or the will of a faction? Shall there be government or no government? It is impossible

¹H. C. Lodge, ed., *The Works of Alexander Hamilton* (1904), vol. 6, pp. 414–416 (August 26, 1794).