

James Madison

Speech on the Bank Bill

February 2, 1791

Secretary of State Thomas Jefferson and Secretary of the Treasury Alexander Hamilton receive much of the attention of historians and political scientists for their competing opinions on the constitutionality of creating a national bank. However, James Madison also developed an important argument in remarks on the bill in Congress. Madison begins his speech by discussing the bill on policy grounds, contending that creating a national bank would be inadvisable as a matter of policy. He then turns to the constitutional question: "Is the power of establishing an incorporated bank among the powers vested by the constitution in the legislature of the United States?"

An interpretation that destroys the very characteristic of the Government cannot be just... In controverted cases, the meaning of the parties [who agreed to] the instrument, if to be collected by reasonable evidence, is a proper guide. Contemporary and concurrent expositions [*by which Madison means the debates in the ratifying conventions, the Federalist Papers, etc.*] are a reasonable evidence of the meaning of the parties...

... [Take] notice of the peculiar manner in which the federal government is limited. It is not a general grant, out of which particular powers are excepted – it is a grant of particular powers only, leaving the general mass in other hands. So it had been understood by its friends and its foes, and so it was to be interpreted.

... Reviewing the constitution ... it was not possible to discover in it the power to incorporate a Bank. The only clauses under which such a power could be pretended, are ...

1. The power to lay and collect taxes to pay the debts, and provide for the common defence and general welfare: Or,
2. The power to borrow money on the credit of the United States: Or,
3. The power to pass all laws necessary and proper to carry into execution those powers.

The bill did not come within the first power. It laid no tax to pay the debts, or provide for the general welfare. It laid no tax whatever. It was altogether foreign to the subject.

No argument could be drawn from the terms "common defence, and general welfare." The power as to these general purposes, was limited to acts laying taxes for them; and the general purposes themselves were limited and explained by the particular enumeration subjoined. To understand these terms in any sense, that would justify the power in question, would give to Congress an unlimited power; would render nugatory the enumeration of particular powers; would supercede all the powers reserved to the state governments. These terms are copied from

the articles of confederation; had it ever been pretended, that they were to be understood otherwise than as here explained?

. . . The second clause to be examined is that, which empowers Congress to borrow money.

Is this a bill to borrow money? It does not borrow a shilling . . .

The *third* clause is that which gives the power to pass all laws necessary and proper to execute the specified powers.

Whatever meaning this clause may have, none can be admitted, that would give an unlimited discretion to Congress.

Its meaning must, according to the natural and obvious force of the terms and the context, be limited to means *necessary* to the *end*, and *incident* to the *nature* of the specified powers.

The clause is in fact merely declaratory of what would have resulted by unavoidable implication, as the appropriate, and . . . technical means of executing those powers. In this sense it had been explained by the friends of the constitution, and ratified by the state conventions.

The essential characteristic of the government, as composed of limited and enumerated powers, would be destroyed: If instead of direct and incidental means, any means could be used, which . . . 'might be conceived to be conducive to the successful conducting of the finances; or might be *conceived* to *tend* to give *facility* to the obtaining of loans.' [Pay] attention to the diffuse and ductile terms which had been found requisite to cover the stretch of power contained in the bill. [Compare] them with the terms *necessary* and *proper*, used in the Constitution, and [consider] whether it was possible to view the two descriptions as synon[y]mous, or the one as a fair and safe commentary on the other.

. . . If . . . Congress by virtue of the power to borrow money, can create the ability to lend, they may by virtue of the power to levy money, create the ability to pay it. The ability to pay taxes depends on the general wealth of the society, and this, on the general prosperity of agriculture, manufactures and commerce. Congress then may give bounties and make regulations on all of these objects.

The States have . . . a concurrent right to lay and collect taxes. This power is secured to them not by its being expressly reserved, but by its not being ceded by the constitution. The reasons for the bill cannot be admitted, because they would invalidate that right; why may it not be *conceived* by Congress, that an uniform and exclusive imposition of taxes [would be conducive to the purposes outlined in the bill].

. . . Mark the reasoning on which the validity of the bill depends. To borrow money is made the *end* and the accumulation of capitals, *implied* as the *means*. The accumulation of capitals is

then the *end*, and a bank *implied* as the *means*. The bank is then the *end*, and a charter of incorporation, a monopoly, capital punishments, &c. *implied* as the *means*.

If implications, thus remote and thus multiplied, can be linked together, a chain may be formed that will reach every object of legislation, every object within the whole compass of political economy.

The latitude of interpretation required by the bill is condemned by the rule furnished by the constitution itself.

. . . [Congress] have the power “to declare war,” to which armies are more incident, than incorporated Banks, to borrowing; yet is expressly added, the power “to raise and support armies”; and to this again, the express power “to make rules and regulations for the government of armies” . . .

The regulation and calling out of the militia are more appurtenant to war, than the proposed bank, to borrowing; yet the former is not left to construction.

The very power to borrow money is a less remote implication from the power of war, than an incorporated monopoly bank, from the power of borrowing – yet the power to borrow is not left to implication.

. . . The examples cited . . . sufficiently inculcate . . . a rule of interpretation, very different from that on which the bill rests. They condemn the exercise of any power, particularly a great and important power, which is not evidently and necessarily involved in an express power.

It cannot be denied that the power proposed to be exercised is an important power . . .

As a charter of incorporation the bill creates an artificial person previously not existing in law. It confers important civil rights and attributes, which could not otherwise be claimed . . .

The bill gives a power to purchase and hold lands; Congress themselves could not purchase lands within a State “without the consent of its legislature.” How could they delegate a power to others which they did not possess themselves?

. . . It involves a monopoly, which affects the equal rights of every citizen.

It leads to a penal regulation, perhaps capital punishments, one of the most solemn acts of sovereign authority.

[This power] could never be deemed an accessory or subaltern power, to be deduced by implication, as a means of executing another power; it was in its nature a distinct, an independent and substantive prerogative, which not being enumerated in the constitution

could never have been meant to be included in it, and not being included could never be rightfully exercised.

[There is a distinction] between a power necessary and proper for the government or union, and a power necessary and proper for executing the enumerated powers. In the latter case, the powers included in each of the enumerated powers were not expressed, but to be drawn from the nature of each. In the former, the powers composing the government were expressly enumerated. This constituted the peculiar nature of the government, no power therefore not enumerated, could be inferred from the general nature of government. Had the power of making treaties, for example, been omitted, however necessary it might have been, the defect could only have been lamented, or supplied by an amendment of the constitution.

But the proposed bank could not even be called necessary to the government; at most it could be but convenient . . .

. . . The defence against the [criticism of the Constitution during the ratification debates] founded on the want of a bill of rights, presupposed . . . that the powers not given were retained; and that those given were not to be extended by remote implications. On any other supposition, the power of Congress to abridge the freedom of the press, or the rights of conscience, &c. could not have been disproved.

The explanations in the state conventions all turned on the same fundamental principle, and on the principle that the terms necessary and proper gave no additional powers . . .

The explanatory declarations and amendments accompanying the ratifications of the several states formed a striking evidence, wearing the same complexion . . .

The explanatory [*Ninth and Tenth*] amendments proposed by Congress . . . proceeded on a rule of construction, excluding the latitude now contended for. These explanations were the more to be respected, as they had not only been proposed by Congress, but ratified by nearly three-fourths of the states . . .

It appear[s] . . . that the power exercised by the bill was condemned by the silence of the constitution; was condemned by the rule of interpretation arising out of the constitution; was condemned by its tendency to destroy the main characteristic of the constitution; was condemned by the expositions of the friends of the constitution, whilst depending before the public; was condemned by the apparent intention of the parties which ratified the constitution; was condemned by the explanatory [*Ninth and Tenth*] amendments proposed by Congress . . . and [I hope it will] receive its final condemnation, by the vote of this house.