

Handout B: Cabinet Member Reports

Document 1: Secretary of State Thomas Jefferson, Opinion on the Constitutionality of the Bill for Establishing a National Bank, 1791

Text
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.” [Tenth Amendment]. To take a single step beyond the boundaries thus specially 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 other powers assumed by this bill have not, in my opinion, been delegated to the United States, by the Constitution.
I. They are not among the powers specially enumerated. . . .
They are not to do anything they please to provide for the general welfare. . . . Giving a distinct and independent power to do any act they please, which may be good for the Union, would render all the preceding and subsequent enumerations of power completely useless. It would reduce the whole instrument to a single phrase, that of instituting a 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.

Review Question:

1. Name at least two main reasons Jefferson gave for not interpreting the powers of Congress broadly.

Document 2: Memorandum #1: Attorney General Edmund Randolph to George Washington, February 12, 1791

Text
The general qualities of the federal government, independent of the Constitution, and the specified powers, being thus insufficient to uphold the incorporation of a bank; we come to the last enquiry, which has been already anticipated, whether it [a National Bank] be sanctified by the power to make all Laws which shall be necessary and proper for carrying into execution the powers, vested by the Constitution. To be necessary is to be incidental . . . the natural means of executing a power.
The phrase, “and proper,” if it has any meaning, does not enlarge the powers of Congress, but rather restricts them. For no power is to be assumed under the general clause, but such as is not only necessary but proper, or perhaps expedient also. . . .
However, let it be propounded as an eternal question to those, who build new powers on this clause, whether the latitude of construction which they arrogate, will not terminate in an unlimited power in Congress?
In every aspect therefore under which the attorney general can view the act, so far as it incorporates the bank, he is bound to declare his opinion to be against its constitutionality.

Review Question:

1. According to Randolph’s reasoning, how should the word “necessary” be defined?
2. In your own words, explain Randolph’s view that “The phrase, ‘and proper,’ if it has any meaning, does not enlarge the powers of Congress, but rather restricts them.”

Document 3: Secretary of the Treasury Alexander Hamilton's Opinion as to the Constitutionality of the Bank of the United States, 1791

Text
It is not denied that there are implied as well as express powers, and that the former are as effectually delegated as the latter [latter]. . . .
Then it follows, that as a power of erecting a corporation [such as the bank] may as well be implied as any other thing, it may as well be employed as an instrument or mean of carrying into execution any of the specified powers, as any other instrument or mean whatever. The only question must be in this, as in every other case, whether the mean to be employed or in this instance, the corporation to be erected, has a natural relation to any of the acknowledged objects or lawful ends of the government. Thus a corporation may not be erected by Congress for superintending the police of the city of Philadelphia, because they are not authorized to regulate the police of that city. But one may be erected in relation to the collection of taxes, or to the trade with foreign countries, or to the trade between the States, or with the Indian tribes; because it is the province of the federal government to regulate those objects, and because it is incident to a general sovereign or legislative power to regulate a thing, to employ all the means which relate to its regulation to the best and greatest advantage. . . .
To establish such a right, it remains to show the relation of such an institution to one or more of the specified powers of the government. Accordingly it is affirmed that it has a relation, more or less direct, to the power of collecting taxes, to that of borrowing money, to that of regulating trade between the States, and to those of raising and maintaining fleets and armies. . . .
The constitutionality of all this would not admit of a question, and yet it would amount to the institution of a bank, with a view to the more convenient collection of taxes. . . . To deny the power of the government to add these ingredients to the plan, would be to refine away all government.

Review Question:

1. Trace the main ideas in the steps Hamilton followed to reason that creation of the first national bank was a constitutional exercise of the power of Congress.
2. What were the financial and constitutional arguments provided by each of the cabinet members?
3. After receiving the advice offered by Jefferson, Randolph, and Hamilton, how would you decide regarding the constitutionality of the national bank?