On the Constitutionality of the Bank

Alexander Hamilton

OVERVIEW

Congress granted a charter for a national bank, but President George Washington was not certain the act was constitutional. Before signing it, he asked Secretary of Treasury Alexander Hamilton, who had recommended the bank, and Secretary of State Thomas Jefferson, who opposed it, to submit their opinions. The following excerpts are from Hamilton's 1791 report, which carried the day.

GUIDED READING As you read, consider the following questions:

- According to Hamilton, why must a federal government raise money?
- What do you think is Hamilton's most convincing argument for the constitutionality of a national bank?

It ought to be premised that the objections of the Secretary of State and Attorney-General are founded on a general denial of the authority of the United States to erect corporations. The latter, indeed, expressly admits, that if there be anything in the bill which is not warranted by the Constitution, it is the clause of incorporation.

Now it appears to the Secretary of the Treasury that this *general principle* is *inherent* in the very *definition* of government and *essential* to every step of the progress to be made by that of the United States, namely: That every power vested in a government is in its nature *sovereign* and includes, by *force* of the *term,* a right to employ all the *means* requisite and fairly applicable to the attainment of the *ends* of such power, and which are not precluded by restrictions and exceptions specified in the Constitution, or not immoral, or not contrary to the *essential ends* of political society. . . .

This general and indisputable principle puts at once an end to the *abstract* question whether the United States have power to erect a *corporation;* that is to say, to give a *legal* or *artificial capacity* to one or more persons, distinct from the *natural.* For it is unquestionably incident to *sovereign power* to erect corporations, and consequently to *that* of the United States, in *relation* to the *objects* intrusted to the management of the government. . . .

. . . It is conceded that *implied powers* are to be considered as delegated equally with *express ones.* Then it follows that, as a power of erecting a corporation 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. . . .

It leaves, therefore, a criterion of what is constitutional and of what is not so. This criterion is the *end,* to which the measure relates as a *mean.* If the *end* be clearly comprehended within any of the specified powers, and if the measures have an obvious relation to that *end,* and is not forbidden by a 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, and slighter relations to any declared object of the Constitution may be permitted to turn the scale. . . .

It is presumed to have been satisfactorily shown in the course of the preceding observations:

1. That the power of the government, *as* to the objects intrusted to its management, is, in its nature, sovereign.

2. That the right of erecting corporations is one inherent in, and inseparable from, the idea of sovereign power.

3. That the position that the government of the United States can exercise no power but such as is delegated to it by its Constitution does not militate against this principle.

4. That the word *necessary,* in the general clause, can have no *restrictive* operation derogating from the force of this principle; indeed, that the degree in which a measure is or is not *necessary* cannot be a *test of constitutional right* but of *expediency only.*

5. That the power to erect corporations is not to be considered as an *independent* or *substantive* power but as an *incidental* and *auxiliary* one and was therefore more properly left to implication than expressly granted.

6. That the principle in question does not extend the power of the government beyond the prescribed limits, because it only affirms a power to *incorporate* for purposes *within the sphere* of the *specified powers.* . . .

The support of government—the support of troops for the common defense—the payment of the public debt, are the true *final causes* for raising money. The disposition and regulation of it, when raised, are the steps by which it is applied to the *ends* for which it was raised, not the *ends* themselves. Hence, therefore, the money to be raised by taxes, as well as any other personal property, must be supposed to come within the meaning, as they certainly do within the letter, of authority to make all needful rules and regulations concerning the property of the United States. . . .

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 the property of the United States.

Under a conviction that such a relation subsists, the Secretary of the Treasury, with all deference, conceives, that it will result as a necessary consequence from the position, that all the specified powers of government are sovereign, as to the proper objects; that the incorporation of a bank is a constitutional measure; and that the objections taken to the bill, in this respect, are ill founded.