



Madison's Complete Remarks on the Constitutionality of a National Bank <http://edsitement.neh.gov>

House of Representatives, February 2, 1791

NOTE: What follows is the complete version of Madison's remarks, which are available online in Elliot's Debates on the EDSITEment resource **American Memory** [<http://memory.loc.gov>].

Mr. MADISON did not oppose all the banking systems, but did not approve of the plan now under consideration.

Upon the general view of banks, he recapitulated the several advantages which may be derived from them. The public credit; he granted, might be raised for a time, but only partially. Banks, he conceived, tended to diminish the quantity of precious metals in a country; and the articles received in lieu of a portion of them, which was banished, conferred no substantial benefit on the country. He dwelt on the casualties that banks are subject to.

To be essentially useful in so extensive a country, banks, he said, should be fixed in different parts of the United States; and in this view, the local banks of the several states, he said, could be employed with more advantage than if any other banking system was substituted. Circumstances, in Great Britain, he observed, required that there should be one bank, as the object there is to concentrate the wealth of the country to a point, as the interest of their public debt is all paid in one place. Here a difference in circumstances called for another kind of policy: the public debt is paid in all the different states.

He then expressly denied the power of Congress to establish banks. And this, he said, was not a novel opinion; he had long entertained it. All power, he said, had its limits; those of the general government were ceded from the mass of general power inherent in the people, and were consequently confined within the bounds fixed by their act of cession. The Constitution was this act; and to warrant Congress in exercising the power, the grant of it should be pointed out in that instrument. This, he said, had not been done; he presumed it could not be done. If we ventured to construe the Constitution, such construction only was admissible, as it carefully preserved entire the idea on which that Constitution is founded.

He adverted to the clauses in the Constitution which had been adduced as conveying this power of incorporation. He said he could not find it in that of laying taxes. He presumed it was impossible to deduce it from the power given to Congress to provide for the general welfare. If it is admitted that the right exists there, every guard set to the powers of the Constitution is broken down, and the limitations become nugatory.

The present Congress, it was said, had all the powers of the old Confederation, and more. Under the old government a bank had been established; and thence it was deduced that the present legislature had indubitably that power. The exigencies of government were such, he answered,

under the old Confederation, as to justify almost any infraction of parchment rights; but the old Congress were conscious they had not every power necessary for the complete establishment of a bank, and recommended to the individual states to make sundry regulations for the complete establishment of the institution.

To exercise the power included in the bill was an infringement on the rights of the several states; for they could establish [b]anks within their respective jurisdictions, and prohibit the establishment of any others. A law existed in one of the states prohibitory of cash notes of hand, payable on demand. The power of making such a law could not, [h]e presumed, be denied to the states: and if this was granted, and such laws were in force, it certainly would effectually exclude the establishment of a bank.

This power of establishing a bank had been, he said, deduced from the right, granted in the Constitution, of borrowing money; but this, he conceived, was not a bill to borrow money. It was said that Congress had not only this power to borrow money, but to enable people to lend. In answer to this, he observed that, if Congress had a right to enable those people to lend, who are willing, but not able, it might be said that they have a right to compel those to lend, who were able, and not willing.

He adverted to that clause in the Constitution which empowers Congress to pass all the laws necessary to carry its powers into execution, and, observing on the diffusive and ductile interpretation of these words, and the boundless latitude of construction given them by the friends of the bank, said that, by their construction, every possible power might be exercised.

The government would then be paramount in all public cases: charters, incorporations, and monopolies, might be given, and every limitation effectually swept away, and could supersede the establishment of every bank in the several states. The doctrine of implication, he warned the friends to this system, was a dangerous one, which, multiplied and combined in the manner some gentlemen appeared to contemplate, would form a chain reaching every object of legislation of the United States. This power to incorporate, he contended, was of primary importance, and could by no means be viewed as a subaltern, and therefore ought to be laid down in the Constitution, to warrant Congress in the exercise of it, and ought not to be considered as resulting from any other power.

Incorporation, he said, is important as the power of naturalization; and Congress, he presumed, would not exercise the power of naturalizing a foreigner, unless expressly authorized by the Constitution. He read a sentence in the bill respecting the power of making such regulations as were not contrary to law. What law? Was it the law of the United States? There were so few, that this allowed a very considerable latitude to the power of making regulations, and more than any member, he conceived, would wish to grant. Were the laws of the individual states contemplated by this provision? Then it would be in the power of the separate states to defeat an institution of the Union. He asked by what authority Congress empowered a corporation to possess real estate. He reprobated this idea. To establish this bank was, he said, establishing a monopoly guaranteed in such a manner that no similar privilege could be granted to any other number of persons whatever. He denied the necessity of instituting a bank at the present time. The Constitution ought not to be violated without urgent necessity indeed. There were banks, in several of the

states, from which some advantages could be derived which could not be gained from an institution on the plan proposed.

In confirmation of his sentiments, he adduced certain passages from speeches made in several of the state conventions by those in favor of adopting the Constitution. These passages were fully in favor of this idea--that the general government could not exceed the expressly-delegated powers. In confirmation also of this sentiment, he adduced the amendments proposed by Congress to the Constitution.

He urged, from a variety of considerations, the postponement of the business to the next session of Congress.

... on the meaning of the words necessary and proper.

Mr. MADISON. Those two words had been, by some, taken in a very limited sense, and were thought only to extend to the passing of such laws as were indispensably necessary to the very existence of the government. He was disposed to think that a more liberal construction should be put on them,--indeed, the conduct of the legislature had allowed them a fuller meaning,--for very few acts of the legislature could be proved essentially necessary to the absolute existence of government. He wished the words understood so as to permit the adoption of measures the best calculated to attain the ends of government, and produce the greatest quantum of public utility.

In the Constitution, the great ends of government were particularly enumerated; but all the means were not, nor could they all be, pointed out, without making the Constitution a complete code of laws: some discretionary power, and reasonable latitude, must be left to the judgment of the legislature. The Constitution, he said, had given power to Congress to lay and collect taxes; but the quantum, nature, means of collecting; &c., were of necessity left to the honest and sober discretion of the legislature.

It authorized Congress to borrow money; but of whom, on what terms, and in what manner, it had not ventured to determine; these points of secondary importance were also left to the wisdom of the legislature. The more important powers are specially granted; but the choice from the known and useful means of carrying the power into effect, is left to the decision of the legislature. He enumerated some other powers which are specified in the Constitution as belonging to Congress, and of which the means of execution are not mentioned; and concluded this part of his argument by observing that, if the bank which it was proposed to establish by the bill before the house could be proven necessary and proper to carry into execution any one of the powers given to Congress by the Constitution, this would at once determine the constitutionality of the measure.

He would not, he said, dwell any longer on the constitutionality of the plan under consideration, but would only observe that no power could be exercised by Congress, if the letter of the Constitution was strictly adhered to, and no latitude of construction allowed, and all the good that might be reasonably expected from an efficient government entirely frustrated.