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SPEECH

OF

MR. MOORE, OF NEW YORK,

ON THE

BILL IMPOSING ADDITIONAL DUTIES,

AS

DEPOSITORIES IN CERTAIN CASES,

ON

PUBLIC OFFICERS.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, OCTOBER 13, 1837.

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SPEECH.

MR. CHAIRMAN: It is with a degree of reluctance that I solicit the indulgence of the committee at this late period of the session. It is well known that, since I have had the honor of a seat in this house, I have troubled it but seldom with remarks of my own. Indeed, I have long considered it neither proper nor respectful in any member of any legislative body to engross the time to be devoted to public business in speech-making, unless the speaker have it in his power to impart some important information, or shed new light on the subject of debate. And here, sir, I feel bound to confess, that were I now to be governed strictly by this rule, I would have refrained from participating in this discussion.

Mr. Chairman, I regret to say, that such is the poor and unprofitable fashion of the times, that unless the people's representatives occasionally make long and lusty speeches, they are but too liable to incur the people's displeasure. And for this reason they often deem it *expedient* to make elaborate speeches on some given subject, that shall, when printed, occupy so many columns of a newspaper, or so many pages of a pamphlet. In order to comply with this requisition, the member is often compelled, especially when the subject does not happen to be a very fruitful one, or the speaker does not chance to possess that kind of creative power which can produce *something* out of *nothing*, so to draw out and dilute his ideas, that the reader, should he judge from their texture and gossamer properties, would be liable to conclude, that, like the spider's web, they had been spun rather from the bowels than the brain. The cause of this evil, sir, lies, in a great measure, with the people themselves. The representative, unless he inflicts some half dozen speeches upon the body to which he may belong, in the course of a session—whether called for or not, whether to the purpose or not—returns to his constituents under the apprehension that he will not receive at their hands the gratifying welcome of "well done, good and faithful servant." The political aspirant, therefore, must either make up his mind to swim with the current of public opinion, and speak often; or to remain silent, and sink beneath its waves. And as legislators, like other men, are more or less moved by self-love, pride, and ambition—passions upon which hang the fever of the world, and which stimulate men to action—they are but too liable to consult their own rather than their country's interest, and to embarrass the business of the nation, by making speeches designed for *home consumption*, and their own political aggrandizement. Sir, I intend no disrespect to the members of this body, nor to the people who send them here. I but speak of a custom which I conceive to be justly obnoxious to censure. I speak of men as I find them, and as they are. I am aware, sir, of the irrelevancy of these remarks, and will not further occupy the time of the committee by pursuing them.

Previously to approaching the subject, properly before the committee, I will briefly notice certain remarks of the gentleman from Pennsylvania, (Mr. Naylor,) who has just taken his seat. He has paid high and deserved

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compliments to the workingmen of the north—to their intelligence, and to their integrity. To those sentiments my heart most cordially responded. He represented himself to be a *workingman*; he professed great regard for the interests of workingmen; he declaimed most energetically in their behalf; *but* he uniformly votes against every measure which they advocate. During the present session he has voted for the United States Bank; he has expressed his determination to vote against the bill on your table. But he knows that the workingmen are opposed to the United States Bank; that they are in favor of the divorce bill, so called; and I feel justified in saying, that ninety-nine out of every hundred workingmen are favorable to this bill. Sir, the relation in which I stand to the laboring classes enables me to judge of their views on this subject. I am in daily correspondence with workingmen in different parts of the Union; and I know that an unanimity of opinion and of sentiments in its favor prevails amongst them. Sir, I cannot conceive how the honorable gentleman can reconcile his professions with his practice. If he knows the feelings and the opinions of the workingmen, as he ought to know them; and if he estimates their intelligence and their integrity as he professes to estimate them; why then does he go counter to their views and to their will? Sir, the laboring classes have had too many such advocates! They have been too often flattered and betrayed by politicians! Too often deceived by those who caressed and bepraised them! But, sir, the gentleman from Pennsylvania, not content with eulogizing the laboring men of the north, has made a false issue with the gentleman from South Carolina, (Mr. Pickens,) by misrepresenting his views. Sir, what was the position taken by the gentleman from South Carolina? I understood him to say that the incorporated monopolies of the north were inimical to the interests and the liberties of the laboring classes; were calculated to abridge their natural and political freedom, and to subject them to a moneyed aristocracy; and, for the expression of these sentiments, the gentleman from Pennsylvania has thought proper to rebuke him. But let me tell the gentleman from Pennsylvania, that the laboring classes of the north *are* apprehensive of the very evils so ably depicted by the gentleman from South Carolina. Look at their organs; consult their papers; and you will find that exclusive legislation—that the grants of chartered monopolies—are regarded by them as hostile to their interests and dangerous to their liberties. And did not the gentleman from Pennsylvania, previous to his election, and during the canvass, did not he intimate his opposition to these very moneyed monopolies, now dignified by him under the title of *institutions*? And how has he answered the expectations which he created by his professions? By voting for a United States Bank! By opposing the bill which proposes to disconnect bank and State! In a word, by warring with all the principles and opposing all the wishes of the laboring classes! "If such be thy gods, O! Israel! wo! wo! to those who bow before them!"

I now, sir, feel constrained to notice, briefly, some remarks which were made yesterday by my honorable and much respected colleague (Mr. Hoffman) while addressing this committee on the bill under consideration. I understood him to say, sir, that the present Chief Magistrate is, in a great degree, indebted to the influence of the banks for his political elevation. Sir, I deny the correctness of this assertion. I am satisfied that Martin Van Buren owes his elevation to his own merits, and to the unbought suffrages of a majority of the American people. But, sir. if my colleague

represents this matter truly, and the election of Mr. Van Buren to the Presidency was achieved through bank officers or bank influence, what an important lesson does it teach us? And how forcibly does it illustrate the dangers of the banking system? If banks band together in one political contest, they may in another. If they unite their energies in behalf of one individual, they also may unite in behalf of another, without any regard to his merits, his virtues, or his qualifications, provided he will lend himself to their interests. This is a fruitful theme, but I will not pursue it at present. I now turn to the subject of *political changes*, on which my colleague has said so much. If I mistake not, he took occasion to rebuke the chairman of the Committee of Ways and Means for certain *alleged* political somersets, which he is said to have made some few years since. My friend over the way (Mr. Cambreleng) is fully competent to defend himself from the charge, and I shall, therefore, leave this part of the subject in his hands. On the general topic of *political changes*, my colleague (Mr. Hoffman) has all the advantages over me which practice and experience can give. It would, therefore, be manifestly imprudent for me to enter the lists with so old and so experienced a tactician in this branch of *political science*. Did I desire instruction on this subject, my colleague would be the very first man to whom I would apply. He should be my preceptor above all others; for I am satisfied that none can be better qualified than himself, to descant on the facility with which political changes can be made; none have the power to speak more feelingly and understandingly on the subject. It was but a short time since, sir, when my colleague and myself stood foremost in the ranks of the democracy; when the old wigwam resounded with our respective voices; when we advocated the same measures and the same men; when we sang the same political hosannahs, and worshipped at the same political altar. But, sir, that time has passed; and my colleague, instead of joining with me in the old rallying cry, chooses to lift up his musical voice in a political palinode; and we now find ourselves planted foot to foot as political opponents, instead of standing shoulder to shoulder, as political associates, as we were wont to stand. In the course of his remarks, my colleague discoursed right eloquently on the calamities of the times and on the sufferings of the people. But on this topic he is not singular nor alone. All his whig brethren have strenuously emulated each other in their extraordinary professions of peculiar love for the patient people. When I reflect on the wonderful solicitude manifested by the members of the opposition for the welfare of the nation, I cannot withhold an expression of admiration at the patriotic and benevolent spirit which pervades and warms and expands their benevolent bosoms.

We have heard gentlemen from the East and the West, from the North and the South, mingling their notes of lamentation over the sufferings of the unfortunate wherever found. Every fibre of their heads and hearts, every feeling of their souls and bodies, appears to be attuned to benevolence, and to vibrate with deepest sympathy at the calamities which they assure us have befallen our common country. Sir, these are honorable feelings, and highly creditable to human nature. Patriotism so exalted, philanthropy so generous, sympathy so sincere, benevolence so pure, holy, and *disinterested*, cannot fail to challenge our warmest admiration. When we hear men sincerely deplore the misfortunes of their fellows, we cannot but admire, honor, and respect them. But how are these feelings of respect and admiration strengthened and augmented when we behold them exerting

their utmost energies in behalf of the unfortunate; when we see them prmptly and eagerly rushing to the rescue?

And, sir, here I must be permitted to intimate to my political opponents, that in order firmly to establish their characters for *superior* patriotism and philanthropy, it will be necessary for them to *act* as well as to *feel*. If you know the remedy, gentlemen, and apply it not, the sincerity of your professions may be doubted. The uncharitable may surmise that party is your object, and public good the scapegoat. Sir, what would we think of the patriotism of the man who was able, but unwilling, to succour his country in the hour of her extremity? Or what would we say of the benevolence of a physician who refused to administer to his sick and dying patient, the remedies which he knew would restore him to life, health, and vigor? And are not gentlemen aware, that after having so constantly, so earnestly, and so eloquently, bewailed the fallen fortunes of their country, they will naturally be looked to by that country with anxious shuddering solicitude for the remedies competent to heal the deep disease, which, we are told, is preying upon its vitals? Are they not aware that their benevolence will be questioned, and their sincerity doubted, even by the confiding and the faithful?

But, sir, we have been told that the friends of the administration have the *power*, and that the *responsibility* rests with them! Sir, what are we to understand by this? Is it meant to be insinuated that the administration party in this house have the *power* to relieve the distresses of this country, but that they have not the *will* to exercise it? Is it meant to be affirmed that the dominant party are so utterly destitute of feeling and of patriotism, as willingly and intentionally to withhold the aid which they might rightfully and constitutionally extend to the people? Is it their intention to represent us to the American people in so odious and offensive a light? Sir, I am aware that the gentlemen in the opposition have long claimed all the wisdom, and all the worth, and all the decency; but I did not suppose, until now, that they also claimed all the patriotism, and all the benevolence, and all the sympathy.

For one, sir, I protest against such unwarrantable and unfounded pretensions. I am clearly against this additional *monopoly*. If the gentlemen really possess all the charity and benevolence which they claim, I trust that they will not be inexorable towards us; that they will not thrust us beyond the pale of humanity; that they will not strip us of all the common attributes of civilized men, nor paint us as savages or brutes, by representing us to be deaf or indifferent to the voice of distress. Why should we be thus treated as guilty of the grossest injustice—of the most flagrant inhumanity? If the gentlemen of the opposition do not consider *adequate* the means of relief proposed by the Executive, let them suggest such as will be effective, and, my life on it, if these means shall be just, proper, and constitutional, the friends of the administration will cheerfully yield them their most cordial and hearty support. We confess that we know no other remedies for the ills complained of than those we have already suggested. And if the gentlemen in the opposition have it in their power, as they would have us and the country believe, of proposing an efficacious and constitutional remedy, for heaven's sake let them tell us what it is! If there be a balm in Gilead—if there be a physician there—let him administer the balm to our afflicted country. Do not, I beseech you, gentlemen, do not any longer keep secret your political catholicon, like quack physicians;

but, like good and true patriots, make it publicly known, that it may be employed for the healing of the nation.

My colleague has *pronounced* the sub-treasury system *unconstitutional*, but did not attempt to *prove* it so. Now, sir, by way of a set off, I pronounce *unconstitutional* the substitute of my colleague, a national bank; and so I shall endeavor to prove it by calm and dispassionate argument. A national bank, being the principal antagonist measure to the bill under discussion, I shall confine my remarks principally to that subject; and, as this is the only point that has not been fully and thoroughly discussed in the progress of this debate, there will be the greater propriety in this course. I shall, therefore, attempt to argue at length this part of the subject.

I can find no authority in the constitution for granting charters of incorporation, of whatever name, kind, or description; and no honorable gentleman, I presume, will hazard the declaration that such power is *directly* given to Congress by the constitution. The most hardy and reckless advocates of a national bank have never ventured to affirm that such power was specific and direct—that the warrant was express. They all resort to the doctrine of implication and construction. Sir, let us examine this doctrine; let us take up the constitution in a spirit of honesty and soberness, and see what clause of that instrument, if any, vests in Congress even an *implied* power to incorporate a national bank

Sir, I am aware of the vastness of the subject which I propose to examine. I am aware that the constitutionality of a national bank has been repeatedly discussed by the most eminent jurists and statesmen of the nation. And I am also aware that an attempt, on my part, to grapple with a subject of such magnitude, and under such circumstances, will be attributed by many to a want of discretion, if not to a culpable vanity. Be it so. I conceive it to be my duty—I know it to be my right—to express my views fully on this subject; and, although I may be unable to shed any additional light on this long agitated and vexatious question, yet I will, nevertheless, state the arguments and considerations which exert a controlling influence on my judgment. Permit me then, sir, to call, for a moment, the attention of the committee to the peculiar character of our Government. It is conceded by all parties, I believe, to be a government of limited and specified powers; which powers are expressly prescribed by the constitution. To the constitution, then, and to the constitution alone, must Congress look for all and every power they would exercise. Unless, therefore, the power to grant charters of incorporation be expressly granted by the constitution, the exercise of such power, on the part of Congress, would be a violation of that instrument. But, say gentlemen, although we do not pretend to assert, that the power to incorporate is given in direct terms to Congress by the constitution, we contend, nevertheless, that such power is derived by fair and legitimate construction. But, when the advocates of this doctrine have been called upon to designate the clause of the constitution which confers on Congress the power to incorporate a bank, they have been sadly puzzled to comply with the requisition, but have wandered and wandered from article to article, and from clause to clause, seeking in vain for authority. When driven from one position they flee to another; ever vacillating; never fixed in their views; never satisfied with their own, nor with each others' arguments. No unity of opinion prevails among them as to the particular clause in the constitution, where this doctrine of construction and implication, authorizing acts of incorporation, is

to be found: but, like certain deluded ones of old, one cries, lo! it is here—and another, lo! it is there; when, as was the case with the asses of Kish, it happens to be "nowhere." But, sir, let us examine those parts of the constitution where this power is said to reside. Some have attempted to locate it in the first article of the eighth section of the constitution, which gives Congress the power "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States." The power to "lay and collect taxes" and to "pay the debts of the United States:" in other words, the power to raise and appropriate money, and the power to grant charters of incorporation, I believe never have been, and I presume never will be, regarded as synonymous, even by the most desperate "constructionists." Those, therefore, who pretend to find authority to grant charters of incorporation, in the article under consideration, must look for it in the words "common defence and general welfare." And it is from these words that some pretend to derive the power to incorporate a national bank. Can those who have contended for this construction have considered well of the consequences which must inevitably follow from an exercise of such implied powers? Have they reflected, that, by giving to these words the construction they contend for, they render the enumerated powers of the constitution nugatory? that they virtually annul the powers reserved to the State Governments? break down all the constitutional guards designed to protect the rights of the States, and of the people, and make the constitution itself, in the hands of Congress, what clay would be in the hands of the potter? And, lastly, have they considered that this doctrine is flatly contradicted by the tenth amendment to the constitution, which expressly declares that "the powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people?" General Hamilton, latitudinarian as he was on the subject of construction, had too much regard for his reputation to give to the words, "to provide for the common defence and general welfare," a construction that would confer on Congress powers not enumerated in the constitution. By reference to his report on manufactures, it will be found that he confines, in every instance, the application of these words to the power given by the first sentence of the clause; and in this particular Mr. Jefferson agrees with him. The latter, in adverting to this subject, calls it "a grammatical quibble, which has countenanced the General Government in a claim of universal power. For, continues he, in the phrase to lay taxes, *to pay the debts, and provide for the general welfare*, it is a mere question of syntax, whether the two last infinitives are governed by the first, or are distinct and co-ordinate powers; a question unequivocally decided by the exact definition of powers immediately following." Sir, I conceive that the clause of the constitution under consideration admits of but two constructions; the one, limiting the powers of Congress, as contended by General Hamilton and Mr. Jefferson; the other, conferring on Congress powers incompatible with the spirit, and utterly subversive of all the express powers of the constitution—powers independent of, and paramount to, the constitution itself—powers indefinite, boundless, omnipotent. If the latter construction be admitted, the *will* of *Congress*, and *not* the *constitution*, is the law of the land. Or, if, peradventure, Congress should think it *expedient* to revert to the constitution at all, it would only be necessary to refer to that part of it containing the cabalistic words "common defence and general welfare." And as these

words, according to certain commentators, convey a plenary power on all subjects, and are applicable to all cases that come within the jurisdiction of the national legislature, it would be quite unnecessary to look further. This would be economical, withal—saving much precious time to the people's representatives, which otherwise might be squandered in wandering about the constitutional kingdom in search (as well search for the lost pleiad) of the enumerated powers, which, unfortunately, have been swallowed up by the implied powers discovered in the words "common defence and general welfare." Let us suppose the doctrine here combatted to be established and carried out into practical legislation. Congress is applied to by a number of influential individuals for an act of incorporation, granting to them and to their successors and assigns for ever, the sole and exclusive right, extending to all the States in the Union, of smelting iron ore with anthracite coal, and of manufacturing the same. The memorialists set forth in their petition the immense benefits that would result to the nation from their contemplated enterprise. They dwell upon the advantages incident to associated capital, and concentrated wisdom and industry. They represent, that the mining interest of the country would be benefitted in proportion to the extent of the monopoly—inasmuch as the products of the iron and coal mines would ever find a ready market at the company's works; that the public in general would be enabled to obtain the manufactured articles at a much cheaper rate and of a better quality; and that, in time of war, arms and ordnance could be furnished with greater facility, and of superior temper and calibre. The States, notwithstanding all these plausible representations, remonstrate—individuals remonstrate. The States urge that the grant would be a violation of their reserved rights, and the principle upon which the Union was founded; and demand of Congress the source whence the power is derived to grant such charter of incorporation? Congress very complacently point them to the potent words "common defence and general welfare," and the thing is settled. Individuals represent, that an equality of civil and political rights constitute the basis of purely democratical governments; that none but equal laws can legitimately flow from the principle of equal rights; and that all laws, which invade that principle, conflict with the spirit of our institutions, and are, to all intents and purposes, legislative frauds upon the rights of the people; and, consequently, utterly destitute of constitutional sanction. They further show, that an exercise of power, such as asked for by the petitioners, would confer exclusive privileges and legislative favors—infringe on their natural and political rights—violate the sacred principles of justice and political equality, and, for this reason, be clearly unconstitutional. But Congress, regardless of the truth and propriety of these representations, grant the charter of incorporation, and when called upon to show their constitutional right to do so, triumphantly refer to the magical words "common defence and general welfare," and there the matter ends. I have put this case for the purpose of illustrating the evils consequent upon an assumption of power, such as contended for by those who maintain that the clause we have been examining authorizes Congress to establish a federal bank. And, as legislators are as much subject to infirmities as other men, and the world not having, as yet, approached that desirable state of which Plato dreamed—"the perfectibility of man"—it is not only possible, but very probable, that cases of this kind might frequently happen. Nor can those who contend for the principle which merges all power in the words "com-

mon defence and general welfare," or, what amounts to the same thing—in the will of Congress,—object to any case coming within that principle, however dangerous and pernicious in its consequences. As this clause of the constitution has been, and is still much relied on by the advocates of a United States Bank, I will take the liberty of introducing such authority in opposition to their views, as will, I trust, have weight, both with this house and the nation. The fourth resolution passed by the General Assembly of Virginia, in December, 1798, reads as follows:

"That the General Assembly doth also express its deep regret, that a spirit has in sundry instances been manifested by the Federal Government, to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which having been copied from the very limited grant of powers in the former articles of confederation, were the less liable to be misconstrued,) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases; and so as to consolidate the States, by degress, into one sovereignty; the obvious tendency, and inevitable result of which would be to transform the present republican system of the United States into an absolute, or at best a mixed monarchy."

Mr. Madison, in his report commenting on this resolution, observes:

"The *first* question here to be considered is, whether a spirit has in sundry instances been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter.

"The general assembly having declared their opinion merely, by regretting in general terms, that forced constructions for enlarging the federal powers have taken place, it does not appear to the committee necessary to go into a specification of every instance to which the resolution may allude. The alien and sedition acts, being particularly named in a succeeding resolution, are of course to be understood as included in the allusion. Omitting others which have less occupied public attention, or been less extensively regarded as unconstitutional, the resolution may be presumed to refer particularly to the bank law, which, from the circumstances of its passage, as well as the latitude of construction on which it is founded, strikes the attention with singular force; and the carriage tax, distinguished also by circumstances in its history having a similar tendency."

* * * * * * * *

"1. The general phrases here meant must be those "of providing for the common defence and general welfare."

"In the 'Article of Confederation,' the phrases are used as follows, in Art. VIII: 'All charges of war, and all other expenses that shall be incurred for the common defence and general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.'

"In the existing constitution, they make the following part of sec. 8: 'The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States.'

"This similarity in the use of these phrases in the two great federal charters, might well be considered as rendering their meaning less liable to be misconstrued in the latter; because it will scarcely be said, that in the former, they were ever understood to be either a general grant of power, or to authorize the requisition or application of money by the old Congress to the common defence and general welfare, except in cases afterwards enumerated, which explained and limited their meaning, and if such was the limited meaning attached to these phrases in the very instrument revised and remodelled by the present constitution, it can never be supposed that when copied into this constitution, a different meaning ought to be attached to them.

"That, notwithstanding this remarkable security against misconstruction, a design has been indicated to expound these phrases in the constitution, so as to destroy the effect of the particular enumeration of powers by which it explains and limits them, must have fallen under the observation of those who have attended to the course of public transactions. Not to multiply proofs on this subject, it will suffice to refer to the debates of the federal legislature, in which arguments have on different occasions been drawn, with apparent effect, from these phrases, in their indefinite meaning.—*Elliot's Debates, vol.* 4. *p.* 577—8.

Again: the same distinguished personage, in a letter to Mr. Stevenson, dated November 27, 1830, in which he examines the origin and progress of the clause under consideration, remarks that:

"A special provision, says Mr. Madison, could not have been necessary for the *debts* of the new Congress; for a power to provide money, and a power to perform certain acts, of which money is the ordinary and appropriate means, must, of course, carry with them a power to pay the expense of performing the acts. Nor was any special provision for debts proposed, till the case of the revolutionary debts was brought into view; and it is a fair presumption, from the course of the varied propositions which have been noticed, that but for the old debts, and their association with the terms, 'common defence and general welfare,' the clause would have remained, as reported in the first draught of a constitution, expressing generally 'a power in Congress to lay and collect taxes, duties, imposts, and excises,' without any addition of the phrase 'to provide for the common defence and general welfare.' With this addition, indeed, the language of the clause being in conformity with that of the clause in the articles of confederation, it would be qualified, as in those articles, by the specification of powers subjoined to it. But there is sufficient reason to suppose, that the terms in question would not have been introduced, but for the introduction of the old debts, with which they happened to stand in a familiar, though inoperative relation. Thus introduced, however, they pass undisturbed through the subsequent stages of the constitution.

"If it be asked, why the terms 'common defence and general welfare,' if not meant to convey the comprehensive power, which, taken literally, they express, were not qualified and explained by some reference to the particular power subjoined, the answer is at hand, that although it might easily have been done, and experience shows it might be well if it had been done, yet the omission is accounted for by an inattention to the phraseology, occasioned, doubtless, by the identity with the harmless character attached to it in the instrument, from which it was borrowed.

"But may it not be asked with infinitely more propriety, and without the possibility of a satisfactory answer, why, if the terms were meant to embrace, not only all the powers particularly expressed, but the indefinite power which has been claimed under them, the intention was not so declared; why, on that supposition, so much critical labor was employed in enumerating the particular powers, and in defining and limiting their extent?

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"The obvious conclusion, to which we are brought, is, that these terms, copied from the articles of confederation, were regarded in the new, as in the old instrument, merely as general terms, explained and limited by the subjoined specifications, and therefore requiring no critical attention or studied precaution.

* * * * * * * *

"Mr. Wilson, justly distinguished for his intellectual powers, being deeply impressed with the importance of a bank at such a crisis, published a small pamphlet, entitled 'Considerations on the Bank of North America,' in which he endeavored to derive the power from the nature of the Union in which the colonies were declared and became independent States; and also from the tenor of the 'articles of confederation' themselves. But what is particularly worthy of notice is, that with all his anxious search in those articles for such a power, he never glanced at the terms 'common defence and general welfare,' as a source of it."'—*Elliot's Debates, vol. 4, pp.* 646—7.

And here, sir, I think I may safely rest this part of the subject.

The second paragraph of the 8th section of the constitution, which vests in Congress the power "to borrow money on the credit of the United States," has also been appealed to by the friends of a national bank. But as nothing like an argument has ever been adduced in support of this position, as it rests upon mere conjecture, without the shadow of authority to support it, and as a bill to charter a bank is not a bill to borrow money, I will not trouble the committee with any further remarks on this point, but proceed to examine the third paragraph of the 8th section of the constitution, which gives Congress the power "To regulate commerce with foreign nations, among the several States, and with the Indian tribes." This clause has been appealed to by the advocates of internal improvements, as authorizing Congress to construct roads and canals, &c; it has also been appealed to by the friends of the tariff system, as vesting in Congress an implied power to protect our domestic manufactures; and lastly, it has been appealed to, as authorizing Congress to establish a United States

Bank. Now, sir, in my humble opinion, the power to *regulate commerce*, does not include the power to make internal improvements of the character just noticed—to protect manufactures, by imposing a tariff—nor to establish a national bank. Neither the clause immediately under consideration, nor any other found in the constitution, authorizes Congress, in my judgment, to do either of those three things. Sir, is it meant to be affirmed, that the power to "regulate commerce," includes the power to regulate the currency of the several States? If so, then is Congress authorized, under the power to "regulate commerce," to regulate the issues of all the State banks—for these constitute the principal currency of the country; on the other hand, if it be meant that Congress have *not* the power, under this clause of the constitution, to regulate the currency, how can it be said that Congress are thereby authorized to charter a bank for the purpose of regulating *commerce*, when the only object of a national bank, as we are told, is to regulate and equalize the exchanges and *currency* of the country? Again: If the power "to regulate commerce" includes the power to incorporate a bank, why may it not also include the power to grant charters of incorporation for other purposes? Why not authorize Congress to incorporate companies for objects of internal improvements—for manufactures—or, what would appear to be rather more congenial, for ordinary commercial purposes? If Congress can, by this clause of the constitution, authorize one set of men, under an act of incorporation, to deal in bank paper, they possess equally the power to authorize another set to deal in silks and satins, calicoes and ginghams. Nor can this position be controverted. The stockholders and agents of a bank are as much traffickers and dealers in paper money, which is a species of commercial commodity, as merchants are in broadcloths and cassimeres. If an act of incorporation, therefore, can be claimed in the one case, as a proper and necessary means to "regulate commerce," it unquestionably can in the other. But the clause in question confers no such power. The power to "regulate commerce," and the power to grant charters of incorporation are separate and distinct. The former is conferred by the constitution, the latter is not. Sir, what was the nature of the power which the framers of the constitution intended to confer on Congress by this clause? Evidently, to authorize Congress to prescribe or establish certain rules by which commerce should be governed. But will it be pretended that the authors of the constitution meant that this power, which they vested in Congress alone, should be transferred by Congress to an incorporated company? That a chartered company should possess the exclusive power of regulating the commercial interests of the nation? of prescribing rules for its government? of determining the principles on which it should be conducted? and thus place one of the great interests of the country beyond legislative and constitutional control? No one, I presume, will say, in direct terms, that such was the intention of the framers of the constitution; and yet such is the inevitable result to which the doctrine of construction, here combatted, leads. If such rules of construction prevail, it will be impossible to define the limits of the power of the federal government under the clause, "Congress shall have power to regulate commerce," &c. I will conclude my remarks on this clause, by reading from Mr. Jefferson's official opinion on the constitutionality of a United States Bank, the following extract:

"To erect a bank, and to regulate commerce, are very different acts. He who erects a bank

creates a subject of commerce in its bills: so does he who makes a bushel of wheat, or digs a dollar out of the mines. Yet neither of these persons regulate commerce thereby. To make a thing which may be bought and sold, is not to prescribe regulations for buying and selling. Besides, if this were an exercise of the power of regulating commerce, it would be void, as extending as much to the internal commerce of every State, as to its external. For the power given to Congress by the constitution, does not extend to the internal regulation of the commerce of a State, (that is to say, of the commerce between citizen and citizen,) which remains exclusively with its own legislature; but to its external commerce only, that is to say, its commerce with another State, or with foreign nations, or with the Indian tribes. Accordingly, the bill does not propose the measure as a 'regulation of trade,' but as 'productive of considerable advantage to trade.'"

Some have attempted to locate the power to incorporate a national bank—Mr. McDuffie, for example, in his report of 1830, as chairman of the Committee of Ways and Means—on the fifth article of the eight section of the constitution, which gives Congress the power "to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:"

"The power to 'coin money and fix the value thereof,' is expressly and exclusively vested in Congress. This grant was evidently intended to invest Congress with the power of regulating the circulating medium. 'Coin' was regarded, at the period of framing the constitution, as synonymous with 'currency,' as it was then generally believed that bank notes could only be maintained in circulation by being the true representative of the precious metals. The word 'coin,' therefore, must be regarded as a particular term, standing as the representative of a general idea."—*Rep. H. R. 1st Sess: 21st Cong. No. 358, Vol. 3, p. 6.*

Now, sir, if "coin and currency are synonymous," signifying the same thing, if coin be currency and currency coin, Congress is vested with the power "to coin money, regulate the value thereof, and of foreign *currency*." According to this reading, Congress is authorized, not only to regulate the currency of *this* country, which consists principally of bank notes, but also the *currency* of other nations, whatever symbols of industry they may select as mediums of exchange. The chairman of the Committee of Ways and Means appears to have been as much at fault in his knowledge of the currency, properly considered, as of the character and powers of the constitution; otherwise he would not have confounded bank notes with coin—the pretended *representative* with the thing *represented*. I say the *pretended* representative, because the amount of paper money afloat, exceeds, at least, five times the amount of specie wherewith to redeem it. It is not, therefore, strictly speaking, a representative of coin, or real money. It has become rather an instrument of speculation, than a measure or representative of value. The currency of a country in order to be sound, as every political economist knows, ought to be equal to the precious metals, or to consist of the metals themselves. But the paper currency of this country is, and was even during the existence of the late United States Bank, but the mere *suppositious* representative of property. That paper money can never become a proper standard of value, is evident from the fact that it is constantly liable to fluctuation, depreciation, expansion, and contraction. And would it be doing justice to the framers of the constitution—to their sagacity and integrity—so to construe that instrument, or any part thereof, as to authorize Congress to make paper credit, of whatever kind or description, a standard of value? The only standard or measure of value known to the constitution is gold and silver; a standard, by the way, which has been recognised and adopted from the earliest ages, by all civilized nations throughout the world. If Congress are authorized to incorporate a com-

pany, which shall possess the independent and sovereign right to coin or manufacture money, and regulate the value thereof, why may they not also invest such corporations with power to control the commerce of the country in all such exchangeable articles or commodities that may properly come under the standard of weights and measures? Why not go still farther—for if Congress can delegate to a corporation this prime attribute of sovereignty, the establishment of a standard of value—why not, I say, extend it to every other specified power of the constitution? For, I repeat it, if Congress have the power, under this or any other clause of the constitution, to delegate to a corporation of its own creating any one of the enumerated powers, they may, with equal propriety, delegate to it every other power. Let Congress recognise this construction, and what would be the consequence? Sir, we should no longer be a nation of freemen, living under a free constitution; but the slaves of soulless corporations. An independent and irresponsible power would be established in the land; the restraints and limitations imposed upon Congress, by the constitution, would be overthrown; and the foundations of your Government not only rocked, but riven.

Sir, let us examine a little farther the extraordinary argument urged by Mr. McDuffie in support of his most extraordinary position. "Coin," says he, "was regarded, at the period of framing the constitution, as synonymous with currency, as it was then generally believed that bank notes could only be maintained in circulation by being the true representatives of the precious metals." What! sir, coin and currency—coin and paper money—coin and bank notes regarded as one and the same thing, as synonymous, at the time of framing the constitution? What! "generally believed at that period," that paper money was "the true representative of the precious metals?" Sir, does not the whole history of "that period" contradict these reckless and unfounded assertions? I appeal to the historical recollections of every gentleman on this floor, if it does not. Is it not notorious that the framers of the constitution were emphatically hard money men? Is it not notorious that gold and silver are the only currency recogniesd by the constitution? Is it not known to all, that Congress have no power, under the constitution, to authorize any individual, company, or corporation, to issue federal paper money? Every part of the constitution which relates to the subject of money is clear, explicit, and unequivocal. The intention of the framers of the constitution, on this subject, is not only made manifest by the letter of the constitution itself, but also by a law passed immediately after the meeting of the first Congress under the constitution, which defines the kind of money to be received by the federal Treasury. This law provides "that the fees and duties payable to the Government, shall be received in gold and silver coin ONLY." This statute, be it remembered, was passed within one month after Congress had assembled. And again, the law in reference to that part of the revenue accruing from the sale of the public lands, passed in 1800, declares that specie and evidences of the public debt, shall alone be received in payment of such lands. These two acts relating to the subject of the federal revenue, passed immediately after the adoption of the constitution, ought and must be regarded as unerring interpreters of that instrument, so far as the point immediately under consideration is concerned. If the members of the first Congress regarded paper money and "coin" as synonymous, why did they enact that gold and silver coin *only* should be received in payment of the

federal revenue? If they even considered paper money, or bank notes, as synonymous with coin, as contended by Mr. McDuffie, they appeared, at all events, to discriminate between *paper coin* and gold and silver coin, by making the latter *only* receivable in payment of the public dues. So that "gold and silver coin," and not *paper coin*, appear to be the only currency known to the constitution; or to the laws of Congress which define the kind of currency to be received in payment of the federal revenues.

I would now call the attention of the committee, for a few moments, to the last paragraph of the 8th section of the constitution: "To make all laws which shall be necessary and proper to carry into effect the foregoing powers." It will not be pretended, I apprehend, that this clause vests in Congress any new substantive power; or that it in any wise supersedes or invalidates any one of the enumerated powers. This position would be too extravagant—too monstrous, for even modern sophists to take. It will, I trust, be conceded, that the powers comprehended in this clause are subordinate and incidental in their nature, merely conferring on Congress the right to exercise such means as shall be strictly *necessary* and *proper* to execute the *express powers*; or, without which, the powers expressly granted cannot be carried into effect. This point yielded, as yielded it must be, the question arises, whether a national bank be a *necessary* and *proper* mean to carry into effect any of the specified powers? In order to show that it is *necessary, essential, indispensable*, it must be made to appear that the enumerated powers cannot be carried into effect independent of a national bank. Experience has demonstrated that they can, one and all. And, in the second place, in order to prove that a national bank is a *proper means*, it must be shown that the power to create it is an *incidental* and *not* a *substantive* power; which, I apprehend, cannot be done. No, sir, it cannot be shown that the power to grant charters of incorporation, is merely an incidental or subsidiary power. Among all the powers enumerated in the constitution, I defy gentlemen to designate a solitary one that is capable of being wielded with more potent effect; not for good, but for evil. If Congress possess the power to grant a charter of incorporation, in their national capacity, in one case, they do in another. If they possess it at all, they possess it without limit, and can extend it, whenever they think proper, to any and every object whatever; whether it be in derogation of State and individual rights, to a Mississippi land monopoly, to a monopoly of the trade of the Indies, or to the cod and whale fisheries. Sir, what is the distinguishing characteristics of incorporations? They are essentially aristocratic in their nature; being invested with exclusive privileges—privileges withheld from the rest of society. They are allowed to purchase and hold real estate; which the United States themselves cannot do without obtaining the consent of the States. They are allowed to hold property in *mortmain*, and are capable of being so organized or constituted as to change the course of descent in the several States; I mean where their corporate character is concerned. Nor is this all: so sacred are their rights held, and so carefully guarded are they by the legislature and judiciary, that they cannot be reached by law without permission on their parts: nay, more, they are even placed beyond the control of future legislatures—at least, such is the opinion of some. And yet we are told that a power to incorporate—a power of such great and fearful magnitude, and capable of producing so much mischief—is, after all, a mere incident of a power! Think you, sir, that if the members of the convention, who framed the constitution,

had considered a national bank either a *proper* or *necessary* means to carry into effect any of the enumerated powers of the constitution, that they would have rejected a direct proposition to establish a bank, or refused to invest Congress with power to grant charters of incorporation, of whatever description? Is it probable that wise and patriotic men would have acted so inconsistently—so absurdly? "It is known," says Mr. Jefferson, "that the very power now proposed *as a means*, was rejected *as an end, by the convention which framed the constitution.*" "A proposition," he adds, "was made to them to authorize Congress to open canals, and an amendatory one to empower them to incorporate. But the whole was rejected; and one of the reasons of rejection urged in debate was, that they then would have power to erect a bank." Here then, sir, is authority not to be questioned, not to be controverted, that the power to erect a bank, "proposed as a means, was rejected as an end," by the very authors of the constitution itself. The fact, therefore, that the framers of the constitution deliberately and designedly withheld from Congress the power to incorporate a bank, utterly excludes the idea that such power was intended to be granted, either expressly or incidently, specifically or impliedly. To contend that a power, *intentionally withheld* from Congress by the framers of the constitution, can be *rightfully exercised* by Congress, is to outrage common sense, and all approved rules of construction. Let the principle be once established, that neither the express letter of an instrument, nor the evident intention of its author or authors, is to be taken as evidence of its meaning, and all written constitutions, contracts, laws, and charters, become a dead letter. I would entreat gentlemen to consider well before they give further countenance to such doctrines. I would respectfully remind them, that by disregarding the express provisions of the constitution, and the evident intention of its framers, and resorting to construction and implication alone for authority, they will eventually raise up a monument of folly, which, if not as impious, will create as much confusion as that which towered on Shinar's plain. Let it not be supposed, however, that I would deny the existence of all implied powers. I am aware, sir, that the convention, in framing the constitution, marked out and enumerated the principal ends of Government, without particularizing *all* the means by which these ends were to be secured. A discretionary power, to a certain extent, must necessarily be left with Congress. The constitution, for example, has vested in Congress the power to raise and support armies. But at what time armies are to be raised, to what extent, and for what cause this power is to be exercised, it has necessarily left to be determined by the national legislature. Many other cases might be cited, where the means necessary to carry into effect the enumerated powers are left to the selection of Congress. But the mean, or incidental power, ought, in all cases, to bear a due relationship to the specified power. It was well remarked by a distinguished Senator (Mr. Clay) in debate, that:

"In all cases where incidental powers are acted upon, the principal and incidental ought to be congenial with each other, and partake of a common nature. The incidental power ought to be strictly subordinate, and limited to the end proposed to be attained by the specified power. In other words, under the name of accomplishing one object which is specified, the power implied ought not to be made to embrace other objects, which are not specified in the constitution. If, then, you could establish a bank to collect and distribute the revenue, it ought to be expressly restricted to the purpose of such collection and distribution.

"I contend that the States have the exclusive power to regulate contracts, to declare the capacities and incapacities to contract, and to provide as to the extent of responsibility of

debtors to their creditors. If Congress have the power to erect an artificial body, and say it shall be endowed with the attributes of an individual—if you can bestow on this object of your own creation the ability to contract, may you not, in contravention of State rights, confer upon slaves, infants, and femes covert, the ability to contract? And if you have the power to say that an association of individuals shall be responsible for their debts only in a certain limited degree, what is to prevent an extension of a similar exemption to individuals? Where is the limitation upon this power to set up corporations? You establish one in the heart of a State, the basis of whose capital is money. You may erect others, whose capital shall consist of land, slaves, and personal estates, and thus the whole property within the jurisdiction of a State might be absorbed by these political bodies. The existing bank contends, that it is beyond the power of a State to tax it; and, if this pretension be well founded, it is in the power of Congress, by chartering companies, to dry up all the sources of State revenue."

Yes, sir, the honorable Senator was right, when he said that the incidental power ought to be strictly subordinate, and limited to the end proposed to be attained by the specified power. He was right in saying, that in all cases where incidental powers are acted upon, the principal and incidental ought to be congenial with each other, and partake of a common nature. And he would have been equally right, had he added, that no means can be proper that are not compatible with the spirit of the constitution and the genius of our government. But I will no longer detain the committee on this branch of the subject, having already shown, as I believe, beyond all cavil, that the clause which has been last examined does not confer on Congress power to incorporate a moneyed institution of any description.

I will now proceed to examine arguments—not of a constitutional character, nor strictly applicable—but nevertheless frequently appealed to by the advocates of a national bank. I allude to that class of arguments which rest on precedent alone for support. The friends and champions of a United States bank, when no longer able to find legitimate support, when forced to abandon every constitutional position, seek refuge in the misty regions of precedent. The acts of former legislatures, and the opinions of the Supreme Court, and *not* the *constitution*, are appealed to for authority: and lo! King Precedent is anointed with the unction of infallibility; becomes the keeper of their consciences, and the object of their idolatry; his behests the laws, his standard the missletoe, which these political Druids venerate. But to vary the figure—what is there in the character or nature of precedent so sanative and holy that can heal all moral maladies, and justify all political transgressions? Or, wherefore is it, that precedent should fetter the intellect, destroy moral agency, and bear sway where reason and conscience should alone preside? Sir, would it not be well for those who have sworn to support the constitution, to pause and reflect before they subscribe to a doctrine so fraught with mischief, and so inimical to reason?

It is alleged, by some of the servile brain-bound slaves of precedent, that Congress would be justified in chartering a bank, (at the present time,) whether authorized by the constitution or not, because similar institutions have hitherto existed. They contend, that inasmuch as those institutions were established by Congress, submitted to by the people, acquiesced in by the States, and sanctioned by the Supreme Court, that they were recognised by all the acts which imply the sanction of organic law. Sir, I cannot, for one, yield assent to doctrines so false, so loose, so licentious. I deny that the great body of the American people, the democracy, are, or ever were, in favor of a chartered money monopoly, *whether State or national.* The insinuation is a rank and insolent libel on their patriotism, their intelligence, and their integrity. No, sir, the frank and honest hearted demo-

crats of this country utterly reject and abhor the doctrine, that time or precedent can sanctify iniquity, or justify any *infraction* of the *social compact.*

It is contended by another, but similar class of moralists, that the constitution ought to be so construed, as to expand with the growth of the country, and conform to its diversified and mutable relations. Against this doctrine, also, I enter my protest. It is too ductile to be either safe or sound; too liable to be drawn out to dangerous lengths, and bent to mischievous purposes. Sir, what is the nature of the obligation under which we act? What is required of us before entering upon our duties as representatives? It is required, by the constitution, that "the Senators and Representatives, and the members of the several State Legislatures, and all Executive and Judicial officers, both of the United States, and of the several States, shall be bound, by oath or affirmation, to support this constitution." Sir, the requisition is emphatic and positive—couched in language not to be misunderstood. Our duty is palpable—we cannot err *ignorantly.* We are bound, by all the obligations which an oath imposes, to "support THIS constitution." We are not required to "support" the forced constructions that may be given by a pliant court, or by a careless or venal legislature. We are not called upon to "support" a constitution corrupted by congressional interpolations, or distorted and sophisticated by the legal mummeries of the bar or the bench. Nor are we obligated to support a constitution that may be construed to change with times and circumstances; that may grow with the growth, and decay with the decline of the country: but we are bound by our solemn oaths or affirmations to "support *this* constitution" in its purity and integrity, unsophisticated and uncontaminated. Sir, there are two classes of men in this world, who rely upon precedent, and who seem to believe in its infallibility, with a great deal of spirit and perseverance. The one, the morally lax, who have no objection to transgress, provided they can find a pretext in precedent; the other, the mentally indolent, who find less labor in adopting the opinions of others, than in analyzing and investigating for themselves; while the rigidly honest and intellectually industrious, spurn all mental tyranny, refusing, in all cases, to yield their assent but as the result of their conviction. Sir, let me not be misunderstood when I say that precedent is dangerous and pernicious; I mean that it is so when regarded as an obligatory rule in matters of legislation, and in the common affairs of life. In courts of justice, in the dispensation of civil and criminal law, it may, to a certain extent, be advantageously referred to as a guide. For so diversified and complicated are the subjects of litigation, that it is impossible for the legislator to anticipate and provide for every case that may occur. It becomes the duty, therefore, of the judge, the organ of the law, not only to proclaim the written law of the land, but also to decide in cases where no statutory provision has been made, as reason and justice may dictate. Nor, as a general rule, ought decisions thus made be lightly regarded by succeeding judges, especially in cases where the points in litigation are analogous. But, sir, while I willingly admit that precedent may be properly referred to as authority in the *administration* of the law, I utterly deny that it is necessarily obligatory upon *legislative bodies.* It matters not, therefore, whether a precedent in favor of a United States bank be found in the acts of former legislatures, or in the decisions of the Supreme Court; it is, in either case, incompetent to control the acts of this body. Congress, I trust, will never be willing to acknowledge the

binding force of precedent, in the decision of constitutional questions. But sir, admitting, for the sake of argument, precedent to be good authority, what does it prove in this case? I apprehend that it would rather make against than in favor of a bank. We find, in 1811, when a renewal of the charter granted in 1791 was applied for, that its constitutionality was discussed, and that the application was rejected. And further, when the bank petitioned Congress for time to wind up its affairs, the petition was referred to a committee who reported against the application, urging that it was unconstitutional, and the report was concurred in. In 1813, when the subject of a bank was again before Congress, and while under discussion in the House of Representatives, a distinguished gentleman from Massachusetts, (Mr. Webster,) then a member of the House, declared in his place, while opposing the bank, that the renewal of the bank charter had been refused, *because* it was unconstitutional; and Congress again decided against a bank. In 1832, the bill to renew the charter granted in 1816 was vetoed by the late President, and subsequently rejected by Congress, both alleging that it was unconstitutional: So that the precedents, so far as the action of Congress is concerned, are equal. If reference be had to the States, we shall find that a large majority of them have been opposed, on constitutional ground, to a United States bank. Whatever authority, therefore, may attach to precedent, makes against a bank. But the Supreme Court has decided that Congress have power to incorporate a bank; and these decisions are appealed to with as much apparent triumph, by the advocates of a national bank, as if the decrees of that court were binding on Congress, and settled the constitutional question forever. Sir, what are we to understand from this? Is it meant to be insinuated that the three departments of Government are not co-ordinate, and that the judiciary is clothed with the exclusive attributes of supremacy? that neither the Executive nor the Legislative Departments are allowed to judge of their own powers, when acting within their appropriate spheres, and in the discharge of their official duties? Is it intended that the understandings, the oaths, and the consciences of the other two departments, are to be silenced and overawed by the despotic fiat of the bench? This heretical, servile, and detestable doctrine is industriously propagated, I am aware; not boldly and openly, but clandestinely and insidiously, by hints, inuendoes, and mysterious givings out. God forbid, patriotism forbid, that it should ever be acknowledged by the Executive or Legislative Departments, or received by the American people. For one, I reject it with disdain. I deny, and defy mortal man to prove, that the decision of the Supreme Court can settle a constitutional question in any other than in a judicial sense. It cannot affect legislation—cannot control the decisions of Congress, or of the Executive—cannot control the sovereign and absolute power of the people, nor of their representatives. It is just as much the province of Congress, or of the Executive, to decide upon the constitutionality of any matter that may properly come before them for their action, as it is for the judiciary when it comes before them for decision. Congress is no more bound by the opinions of the Supreme Judges than are the judges by the opinions of Congress. The constitution vests "the judicial power in a Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish." In all instances, therefore, where suits are prosecuted in the courts of the United States, of which the courts have jurisdiction, and decided by the Supreme Court, all such

decisions are final. That being the court of the last resort, the parties cannot appeal, but in all cases are bound to abide by such decision. But, as has been before remarked, no decision of the Supreme Court can be obligatory upon either of the other co-ordinate departments. When either is called to the discharge of its appropriate duties, that branch, and not the Supreme Court, is the judge, under the constitution, of its own acts. Nor are the decisions of the Executive or Legislative Departments binding upon the judges of the Supreme Court, when acting within *their* appropriate spheres. So long as each of the several departments acts as a check upon the other, there is less danger of the abuse of power—whether springing from ignorance or unlawful ambition. But, it may be asked, how constitutional questions are to be settled in the event of a non-concurrence of opinion in the co-ordinate departments? I answer—by the people through the ballot boxes. For let it be borne in mind, that this Government is emphatically a Government of the people: it emanates from the people—its powers are granted by the people, and are to be exercised for their benefit; and, so far at least as the representative department is concerned, in pursuance of their instructions, whenever they may think proper to exercise the right. All the departments of Government, the Executive, the Legislative, and the Judiciary, were established by the people to transact their business, agreeably to the powers bestowed. Consequently, when contradictory opinions are entertained by the several departments, with regard to the extent of their constitutional powers, the people are the only tribunal to which the matter in dispute can be properly referred; and their decision, proclaimed through the ballot box, must be final and conclusive. I am aware, sir, that this doctrine will not be very popular in certain quarters; but I conceive it, nevertheless, to be in accordance with the genius and spirit of our institutions, and maintainable upon strict democratic principles.

It being admitted, then, that the several departments are co-ordinate, and their opinions, therefore, not binding upon each other, it remains to be considered what weight is due to the decisions of the judiciary in favor of the constitutionality of a United States bank? Sir, whatever importance I might be willing to attach to the opinions of such an enlightened tribunal on doubtful and intricate subjects, I am unwilling to concede to them a controlling influence in the decision of a question like the one under discussion, when I am furnished with a *written* constitution for my guide, and in which every delegated power is distinctly and accurately delineated, both to the natural and the mental eye.

Sir, I have examined this instrument intently, anxiously, and, I trust, honestly; but no where do I find in it a power to grant charters of incorporation. Sir, I affirm, and hold that I am able to maintain, in defiance of all the arts of sophistry and mystification, that the convention which framed the constitution did neither grant any express power authorizing Congress to charter a national bank, nor *intend* that any power whatever, whether incidental or otherwise, should be exercised for such purpose. And, further, that the convention positively rejected a *direct* proposition to empower Congress to incorporate a national bank, and repeatedly rejected written propositions to grant charters of incorporation. But let us first examine for a moment the ground assumed by the judiciary, in arguing the constitutionality of a national bank. By reference to a decision had in the case of McCulloch against the State of Maryland, it will be found that the

principles upon which the judiciary rely, are substantially the same which prevailed in 1791, and ushered into being the first United States bank. The main point of the argument of Gen. Hamilton, as well as that of the Supreme Court, in support of the constitutionality of a bank, turns upon the *alleged necessity* of the measure. The judges, as I understand them, acknowledge the absence of all express constitutional authority, admit that the power can only be derived by implication, and only exercised on the ground of a just necessity. That is, a bank is constitutional, if it be necessary to carry into execution any of the express powers; but, if not necessary to that end, or if that end can be attained by other *appropriate* means, then it is not constitutional, the power to incorporate not being expressly granted to Congress. Upon this hypothesis Congress have no constitutional power to charter a national bank, if such bank be not absolutely and indispensably necessary to the execution of a specified power. Query: Would even the *necessity* of the measure justify its adoption, without an amendment to the constitution? But, sir, it yet remains to be shown, that a national bank is an essential mean of executing any of the enumerated powers; and, until this be done, the opinions of the judiciary avail nothing. Whatever may be the general principle affirmed by them, their arguments neither make for, nor against, the constitutionality of a national bank. It is affirmed by the Supreme Court, in the case already alluded to, that "the government which has a right to do an act, and has imposed on it the duty of performing that act, must be allowed to select the means." Sir, I am constrained to doubt the validity of this doctrine when carried to its full extent. Suppose we put it to the test. It is not only the right, but the duty of Congress, to "regulate commerce." Does it follow, that they have the right to make use of what means they please, in order to accomplish that end? If so, they may incorporate a company for that purpose, alleging that an act of incorporation is a necessary mean for the attainment of the end proposed. In other words, that the regulation of commerce could not be so well effected in any other way. And why not? There is no constitutional difficulty in the way that may not be surmounted with the ladder of construction. And if Congress should only happen to *think* that a chartered company would be the best mean to "regulate commerce," what would there be to prevent such incorporation? According to the position assumed by the Supreme Court, you can first raise this power from an *incident*, and then consider it a *principal*—confer on it the power of legislative procreation, and authorize the mother institution to propagate her bastard progeny in every State and Territory in the Union. And why not, I say? You have all the authority in favor of it, which precedent can furnish, in the charter of the late United States bank. That institution had the power conferred upon it by Congress of multiplying its progeny at pleasure. It had the power, by virtue of its charter, to establish branch banks, without the consent of the States, whenever and wheresoever it pleased. It had the legislative power delegated to it by Congress, in defiance of the checks and restraints which the American constitutions interpose, of creating, at its option, other banks and other directors; and this power received the sanction of the judiciary. If Congress possessed the constitutional power to incorporate a moneyed institution, such as the late United States bank, it may also possess the power to charter a company, and endow it with the faculty of legislative fecundity, to regulate the commerce of the country. Only let Congress adopt the princi-

ple, that they have the power to select what means they please, in order to carry into execution a specific power, and all the limitations—all the restraints which the grant of delegated powers impose, are broken down and subverted forever. Sir, I must be permitted to say, that I consider this doctrine not only false, but dangerous to liberty. The exercise of a discretionary power, in the selection of means, must necessarily be *limited* to such means as are strictly *proper;* and no means that are incompatible with the principles upon which our Government is founded, can be *proper*, however convenient they may be. A chartered monopoly is not—cannot be a *proper* mean to carry into effect any of the ends of a government based on the principles of political equality. Would you consider the exercise of *exclusive political privileges* as an *appropriate* means to promote the *principle* of *equal political rights?* The idea is absurd upon the very face of it.

Mr. Chairman, I would not wantonly assail the reputation of the judiciary. I trust that I am capable of fairly and honestly appreciating the character of that enlightened and honorable tribunal. But however highly I may esteem them for purity of purpose and integrity of character, I cannot, with the evidence before me, regard them as unerring in *judgment;* and I trust that the day is far distant when they will be recognised by Congress, or the American people, as a body of *infallibles*. Sir, I believe that I am justified in saying, that the circumstances which surround and necessarily operate upon the American judiciary, are unpropitious to liberty; the nature of their office, the tenure by which it is held, and the fact of their non-accountability to the people, must—on the known principles of human nature—have a tendency to render them covetous of power, arbitrary and despotic. Nor is this all. Indoctrinated from their youth, in the principles and prejudices of English jurists; educated in English books; ever consulting English authorities; constantly familiar with monarchical doctrines; in a word, all the laws of mental association, under which their intellects are reared and fashioned, are inimical to that broad based and high toned freedom which the American people delight to cherish. Nor will the truth of this position be doubted or denied, by those who are familiar with the history of the past; who have studied the springs of human action; reflected upon the nature of human power; and observed its constant proneness to enlarge, or overleap its boundaries. But why appeal to hypotheses, when I can so readily summon facts to my aid? The history of the Supreme Court is rife with testimony directly to the point. By a careful examination and analysis of its decisions, it will be found, that they have, in most instances, leaned to the side of federal power; overlooked the rights of the citizen and of the States; and evinced a strong and uniform bias for a consolidated Government. The alien and sedition laws—notoriously unconstitutional, and so pronounced by Mr. Jefferson and the American people—received the sanction of that court. The sedition, or "gag law," made it an offence, punishable by indictment, to publish any thing which even had a tendency to bring into disrepute the officers of the Government; and many worthy and patriotic citizens, were, in pursuance of that nefarious law, incarcerated for daring to complain of the oppressions of their rulers. And this law, unconstitutional as it was, and subversive of the rights of the citizens and of the principles of our Government as it was, received the judicial sanction of the Supreme Court. Sir, I will hazard the declaration, and without the fear of contradiction, that, if all the principles which have received the sanction of the judiciary, were now in full force and operation,

the American people—bereft of all the blessings of a free constitution—would, at this moment, be writhing under the unmitigated oppressions of a heartless, ruthless despotism. And yet, sir, strange as it may appear, there are those among us, notwithstanding their knowledge of this truth, and notwithstanding all the judicial libels upon the constitution, which are plain to their eyes and to their understandings, who still cleave to that tribunal with all the zeal and enthusiasm of infatuation—regard it as the exclusive depository of wisdom, of freedom, of patriotism—and its decrees as infallible, fixed, and immutable, as the fiat of fate.

But, sir, I will bring the decisions of the judiciary to a *decisive test*, viz: the *intentions* of the framers of the constitution with regard to such institution. And here, then, I wish it to be borne in mind, that the judiciary have uniformly admitted that the power to incorporate a national bank was not among the enumerated powers of the constitution, and that it could only be derived by implication. In admitting that the power in question was an *implied*, and *not* an *express* power, they necessarily assume that the framers of the constitution *intended* to vest in Congress a power which they *omitted* to *specify;* for surely it could not be pretended by an intelligent body of men, such as compose our judiciary, that Congress possessed the constitutional power to do an act which the constitution no where expressly authorizes, and which the framers of that instrument evidently intended to *interdict*. This doctrine of construction, therefore, rests entirely upon the *known* or *supposed intentions* of the convention which framed the constitution. It is incumbent, therefore, on those who allege, in the absence of all direct authority, that Congress possess an implied power to incorporate a national bank, to show, *at least*, that the convention did *not intentionally withhold* the said power from Congress. Now, sir, if this cannot be done, but, on the contrary, if it can be proved that the subject in question was agitated in the convention which framed the constitution, that propositions were there made to invest Congress with power to charter a bank, and that all propositions having that object in view were rejected by the convention, it necessarily follows, that Congress possess no such power, whether express or implied—the decision of the Supreme Court to the contrary notwithstanding. I then take this ground; that inasmuch as there is no express constitutional authority given to Congress to charter a bank, and as the framers of the constitution repeatedly and deliberately rejected all propositions to vest in Congress power to grant acts of incorporation of whatever description, that Congress, therefore, are as virtually and morally *prohibited* from granting a bank charter (in its national capacity) as if the constitution contained an *express prohibitory clause* with regard to it. I repeat, that this is my ground; and if I can show that the framers of the constitution did not intend to vest in Congress power to grant acts of incorporation of any kind, but *designedly withheld* such power, then the constitutional right to charter a bank, does not, and cannot, belong to Congress. In order to show what were the views entertained on the subject of a national bank, as well as of every other species of incorporation, by the framers of the constitution, it will be necessary to consult the journal of the convention, as well as the statements of several of the delegates after the convention rose. But previous to introducing these authorities, I will state—what is already known to the committee—that there were two parties in the convention who held opposing views relative to the form and character of the government proposed to be established. The one, ad-

vocated a supreme national or consolidated, the other, a federal form of government. The latter eventually triumphed. The friends of a supreme government, after being defeated in all their *direct* efforts, endeavored to accomplish their purpose by *indirect means*, as fully appears by the following extract from "Taylor's New Views of the Constitution:"

August 18. It was proposed to empower the legislature of the United States, (the word national is now dropt,) 'to grant charters of incorporation in cases where the public good 'may require them, and the authority of a single State may be incompetent; to establish a 'university; to encourage, by proper premiums and provisions, the advancement of useful 'knowledge and discoveries; to establish seminaries for the promotion of literature and the 'arts and sciences; to grant charters of incorporation; to establish institutions, rewards, and 'immunities, for the promotion of agriculture, commerce, and manufactures; and to regulate 'stages on the post-roads,' which, with other propositions, were referred to the committee of July 23d.

September 14. 'Question. To grant letters of incorporation for canals, et cetera; nega-'tived. To establish a university; negatived!'

Their rejection was a necessary consequence of substituting a federal for the national Government, zealously contended for, from the 29th of May to the 14th of September. It was obvious that powers to establish corporations, prescribe the mode of education, patronise local improvements, and bestow rewards and immunities for the promotion of agriculture, commerce, and manufactures, would certainly swallow up a federal, and introduce a national Government. When, therefore, a federal system obtained the preference, it would have been inconsistent with the high degree of intelligence possessed by the members of the convention, to have permitted their determination to be defeated by these indirect attempts. This intelligence was assailed by the soothing but insidious restriction, that the powers to incorporate, grant exclusive privileges, and exercise every species of patronage, were only to be exercised "in cases where the *public good* may require it." The same soothing but insidious argument is now addressed to the intelligence of the public, to justify an exercise of the very powers which the intelligence of the convention withheld from a federal Government; and whether the promise of public good, has been fallacious or fulfilled by the monopolies of currency, of manufactures, and the extension of federal patronage, the public can decide. Yet, whatever may have been their temporary effect, it is obvious that the enlightened framers of the constitution considered the condition of public good, as an enlargement and not a restriction of power; and that it would defeat all the limitations of the constitution, by which a federal Government could be formed or sustained. It was a pretext which would fit every encroachment or usurpation; and no powers could be more indefinite and sovereign than those of granting exclusive privileges, bestowing rewards and immunities upon the three comprehensive interests of society, agriculture, commerce, and manufactures, and patronising capitalists, paupers, knowledge, and ignorance. Such a nest of powers, though exhibited as sleeping in the *bed of public good*, bore so strong a resemblance to the old *bed of justice* in France, which was the repository of evil as well as good, that they were all rejected. It was evident that they would be sufficient to re-hatch the strangled *national* form of government; and the convention having finally preferred the federal form, thought that no good to the public could result from such powers, which would recompense it for the evils it would sustain from the subversion of that form. The convention saw, that if Congress could exercise such powers, *for the public good*, it might, upon the same ground, usurp any powers whatsoever, and in rejecting the propositions, decided between investing that body with a general or limited federal authority. Hence the power to regulate commerce was not intended to revive the rejected propositions to empower Congress to bestow rewards upon agriculture, commerce, and manufactures. Hence the rejected proposition, to empower Congress to direct the exercise of the judicial power, cannot enable it to extend the jurisdiction of the supreme court. And for the same reason, a power to make war, cannot revive the rejected power to make canals, or to perform any of those et ceteras, whatever they were, referred to by the journal. If these sweeping and indefinite sovereign powers, or all powers thought by those who exercise them to be necessary for the public good, with an et cetera besides, though proposed and rejected, do yet pass to Congress under the constitution; then the battle between the national and federal parties in the convention, terminated quite contrary to the usual course of things; the vanquished were victorious, and the victorious were vanquished: and if they were now alive, one party would be as much surprised to discover, that it had carried the consolidating propositions which it had lost, as the other, that it had lost the federal principles which it carried. The spectacle of the slain rising up alive, and the living falling down dead, could not have been expected by either.

No powers can be more sovereign and arbitrary, than those of deciding and doing whatever may administer to the public good, and of pilfering private property by privileges, partialities, premiums, monopolies, rewards, and immunities; nor more capable of reaching any end. Had the rejection of such powers been unnecessary for the security of a federal form of Government, the convention might have still been justifiable for the act, as deeming them tyrannical, fraudulent, and oppressive. Did the convention reject them in fact, and replant

them in masquerade? I discern no evidence in the journal to excite such a suspicion. Colonel Hamilton far from discerning the supposed ingenuity of sinking a national form of Government in a lake of obscurity, to be fished up by a long line of constructions, when it might be safer to avow the intentions, seems to have quitted the convention in despair, soon after the failure of his project. Mr. Randolph, undoubtedly influenced by having lost his plan also, refused to sign the constitution. And though Mr. Madison and Colonel Hamilton both signed it, and Mr. Randolph supported it in the Virginia convention, they must have been influenced by the patriotic motive of effecting some good, though they could not accomplish all which they attempted. These are strong reasons to prove, that the gentlemen who had contended for a supreme national Government, and of whose propositions for that purpose, not one was adopted by the constitution, did not imagine they had succeeded."

It appears that the indirect and insidious means (which were intended to be exercised through the medium of incorporations and exclusive privileges,) of the consolidationists, to establish a supreme national government, shared the same fate in the convention, as did their more open and direct efforts. But, sir, let us proceed to examine the evidence, on the point in question, in the order in which it stands on the journal of the convention: On the 29th of May, the third day after the convention had formed a quorum, Mr. Pinckney, delegate from South Carolina, submitted the plan of a constitution, in which he proposed to bestow on Congress the power, "to borrow money," &c., &c. After various propositions, plans and resolutions, had been sufficiently debated:

"It was moved and seconded that the proceedings of the convention for the establishment of a national government, except what respects the supreme executive, be referred to a committee for the purpose of reporting a constitution, conformably to the proceedings aforesaid—which passed unanimously in the affirmative."

On the 24th of July, the committee, consisting of five, were chosen, and on the 6th of August, the committee reported the "draft of a constitution," and among other powers proposed to be given to Congress, were the following: "To lay and collect taxes, to borrow money, and emit bills on the credit of the United States."

On the 16th of August, when this "draft of a constitution" was under discussion, and particularly the power last above mentioned:

"It was moved and seconded to strike out the words 'and emit bills' out of the eighth clause of the first section of the seventh article—which passed in the affirmative.

"Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 9. Nays, New Jersey, Maryland, 2.

The convention, after having denied to Congress the power to emit bills of credit—which power had been possessed by the confederation—deemed proper to extend a like prohibition to the State governments; this subject was decided on the 28th day of August, when the 12th article was under consideration:

"It was moved and seconded to insert the words "nor emit bills of credit," after the word "money," which passed in the affirmative."

On the 18th of August, as has already been shown, two different propositions were made to authorize Congress to grant acts of incorporation, and were both rejected. On the 14th of September, the power to create corporations was again proposed to be vested in Congress, but was again, and for the third and last time, rejected, (see journal.) Thus for the journal of the convention. I would now ask the attention of the committee to the statements made by the members of the convention.

Luther Martin, a delegate from the State of Maryland, in his disclosures to the legislature of that State, makes the following remarks:

"By our original articles of confederation, the Congress have power to borrow money and emit bills of credit on the credit of the United States; agreeable to which was the report on this system as made by the committee of detail. When we came to this part of the report, a motion was made to strike out the words 'to emit *bills of credit*;' against the motion we urged, that it would be improper to deprive the Congress of that power; that it would be a novelty unprecedented to establish a government which should not have such authority. That it was impossible to look forward into futurity so far as to decide, that events might not happen that should render the exercise of such a power absolutely necessary; and that we doubted, whether if a war should take place it would be possible for this country to defend itself, without having recourse to paper credit, in which case there would be a necessity of becoming a prey to our enemies, or violating the constitution of our government; and that, considering the administration of the government would be principally in the hands of the wealthy, there could be little reason to fear an abuse of the power by an unnecessary or injurious exercise of it. But, sir, a majority of the convention, being wise beyond every event, and being willing to risk any political evil rather than admit the idea of a paper emission, in any possible case, refused to trust this authority to a government, to which they were lavishing the most unlimited powers of taxation, and to the mercy of which they were willing blindly to trust the liberty and property of the citizens of every State in the Union; and they erased that clause from the system."—*Elliot's Debates, vol. 1, p. 413.*

"By the tenth section, every State is prohibited from emitting bills of credit. As it was reported by the committee of detail, the States were only prohibited from emitting them without the consent of Congress: but the convention was so smitten with the paper money dread, that they insisted the prohibition should be absolute. It was my opinion, sir, that the States ought not to be totally deprived of the right to emit bills of credit, and that as we had not given an authority to the General Government for that purpose, it was the more necessary to retain it in the States. I considered that this State, and some others, have formerly received great benefit from paper emissions, and that if public and private credit should once more be restored, such emissions may hereafter be equally advantageous; and further, that it is impossible to foresee that events may not take place which shall render paper money of absolute necessity; and it was my opinion if this power was not to be exercised by a State without the permission of the *General Government* it ought to be satisfactory even to those who were the most haunted by the apprehensions of paper money; I therefore thought it my duty to vote against this part of the system.

"The same section, also, puts it out of the power of the States to make any thing but gold and silver coin a tender in payment of debts, or to pass any law impairing the *obligation of contracts.*"—*Ib. p. 422.*

"*March the 11th*, 1798.—When the bank bill was under discussion in the House of Representatives, Judge Wilson came in, and was standing by Baldwin. Baldwin reminded him of the following fact which passed in "*the grand convention.*" Among the enumerated powers given to Congress, was one to erect corporations. It was on debate struck out. Several particular powers were then proposed. Among others, *Robert Morris* proposed to give Congress a power to establish a national bank. *Gouverneur Morris* opposed it, observing that it was extremely doubtful whether the constitution they were framing could ever be passed at all by the people of America; that to give it its best chance, however, they should make it as palatable as possible, and put nothing into it not very essential, which might raise up enemies; that his colleague (Robert Morris) well knew that 'a bank' was in their State (Pennsylvania) the very watch word of party; that *a bank* had been the great bone of contention between the two parties of the State, from the establishment of their constitution, having been erected, put down, erected again, as either party preponderated; that, therefore, to insert this power, would instantly enlist against the whole instrument, the whole of the anti-bank party in Pennsylvania. Whereupon it was rejected, as was every other special power, except that of giving copy-rights to authors, and patents to inventors; the general power of incorporating being whittled down to this shred. Wilson agreed to the fact.—*Jefferson's Memoirs.*"

Now, sir, let us consider, for a moment, the several statements made by the delegates to the convention, and of Mr. Jefferson, in connexion with the evidence contained in the journal, and see if an array of testimony be not presented in opposition to the unfounded and impudent assumption—that it was the intention of the convention to authorize Congress to "emit bills of credit"—that is decisive and overwhelming. It appears by the disclosures of Luther Martin, as well as by the original journal, that propositions were repeatedly made, in the convention, to authorize Congress to emit "bills of credit," and that all propositions to that effect, were most signally

rejected! It is expressly stated by the Attorney General of Maryland, that a majority of the convention "were willing to risk any political evil, rather than admit the idea of a *paper emission in any possible case*;" and that they (the convention) "erased that clause from the system." And again, when speaking of the extension of the prohibition to the States, he remarks: that "the convention were so *smitten with the paper money dread*, that they insisted the prohibition should be absolute!" So that both Congress and the States, as we have already seen, are prohibited by the constitution from "emitting bills of credit;" or from issuing paper money, "in any possible case." It is contended by Mr. Gallatin, in his "Considerations on the Currency," &c. that bank bills and bills of credit are one and the same thing. He remarks: "the constitution of the United States prohibits every State from issuing bills of credit; now, the bills emitted by a bank," he adds, "are to all intents and purposes bills of credit." And hence he concludes, that the State which creates such bank, violates the constitution. If the bills issued by State banks, are to all intents and purposes "bills of credit," in the constitutional sense, as Mr. Gallatin contends—and I am not disposed to dispute the point with him at present—then would bills issued by a United States bank, also be bills of credit. If a State, therefore, by issuing bills of credit, or by incorporating a bank for that purpose, violates the constitution, Congress by doing the same thing, equally violates that instrument; because, as has already been shown, the power to "emit bills of credit" was withheld from Congress as well as from the States. The reason why a prohibitory clause was not incorporated into the constitution in relation to the United States, as well as to the State Governments, is obvious. By the articles of confederation, Congress were expressly authorized to "emit bills of credit." This power had been exercised by Congress, and the evil effects resulting from it, in the shape of continental money, were in evidence before the members of the convention at the time of framing the constitution. The framers of the constitution, admonished by the history of the past, wisely and patriotically endeavored to guard their country from a similar evil in future, by excluding from the new constitution, the power which had been conferred on Congress by the articles of confederation, as well as by prohibiting the exercise of that power to the State Governments.

Congress are, by the constitution, not only deprived of the power of "emitting bills of credit," or of "issuing paper money in any possible case," but expressly limited in the exercise of their power, with regard to the currency, to the coining of gold and silver, and to the regulation of the value of foreign coin. And when Congress have done this, they have done *all* that the constitution *requires*, or *permits* them to do on the subject of the currency.

Having shown that the power to "emit bills of credit" is not delegated to Congress, and that such was the "dread of paper money" entertained by the convention, that they withheld from Congress the power to issue, or cause to be issued, such money "in any possible case." I might dismiss this part of the subject without further remark; but as it is my wish to put an end to all doubt and cavil, I will, even at the hazard of using tedious repetitions, again refer to the important fact, that it was repeatedly proposed in convention to vest Congress with power to grant charters of incorporation, and that all such propositions were rejected in every instance, and under every modification. This position has been fully esta lis

by the journal of the convention, as has been already shown, as well as by the statements of able and honorable members of that body. Mr. Madison, in his reply to General Hamilton's arguments in favor of a national bank, informs us that "a power to grant charters of incorporation had been proposed in the convention, and rejected." Messrs. Baldwin and Wilson, both distinguished members of the federal convention, have informed us, through Mr. Jefferson, that among the enumerated powers ("*proposed to be*) given to Congress was one to erect corporations," and that "it was, on deliberation, struck out." And further, that "Robert Morris *proposed* to give Congress power to *establish a national bank*," and that the proposition was opposed by Gouverneur Morris, on the ground that it would be unpopular with the people. This proposition was also rejected by the convention. Well, sir, we are at length enabled satisfactorily to determine whether a power to grant charters of incorporation be a *substantive* or *incidental* power. That it was not regarded as an incidental power by those members of the convention who were the advocates of incorporations, is evident from the fact, that they *proposed* to *class it* with the *enumerated* and *substantive* powers. And that it was not considered as *incidental* by those members who opposed it, is equally manifest from the reasons urged by them in debate against it. They opposed it, not on the ground that it could be *derived* by *implication*, but on the broad democratic principle, that it was incompatible with the character of the government which they had been delegated to establish, and because its exercise would be dangerous to the liberties of the people. The position assumed by the judiciary, therefore, that the power to charter a national bank is an *incidental power*, is condemned and contradicted by the unanimous sense of the convention. The convention, by deliberately withholding from Congress the power to grant charters of incorporation, for both *general* and *special* purposes, thereby clearly and indisputably discountenanced and condemned the *principle*. Yes, sir, it was the *principle* of exclusive privileges and of chartered monopolies to which they were *opposed*, and which they promptly, sternly *rejected*, as often as introduced, and in whatsoever *shape presented*. And will it be pretended that the authors of the constitution, after having thus repeatedly and unqualifiedly disapproved and repudiated the *principle*, still recognised and approved it in the shape of a *bank charter*—in its most dangerous, revolting, and malignant aspect? Who is prepared to accuse the authors of the constitution with such palpable inconsistency, or culpable duplicity? Sir, I am compelled to believe that the man who affirms that the framers of the constitution, after having rejected *all* propositions to grant charters of incorporation, whether for *general* or *special* purposes, intended, at the same time, to authorize Congress to charter a national bank, holds in light estimation, either the character of that body, or his own honor.

Mr. Chairman, I will, in a few words, conclude my remarks on this branch of the subject. It is admitted, on all hands, that ours is a government of specific and limited powers. In the language of the constitution:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The power to grant charters of incorporation was not delegated to Congress, nor *intended to be so*, by the convention which formed the constitu-

tion, and, consequently, cannot be exercised without violating that instrument. And, with a perfect knowledge of this fact, with a full and perfect understanding, that the convention purposely withheld from Congress the power to "emit bills of credit," or paper money, "in any possible case;" that they also prohibited the granting of charters of incorporation of every kind and description; I cannot, I say, with all that information before me, consent to vote in favor of any incorporation, and especially a bank charter, which stands *doubly condemned* by the framers of the constitution. No, sir: were I to do so, with the evidence before me, I should consider that I had sinned against light and knowledge—sinned past recovering and past forgiveness, and should ever regard myself as a perjured man—perjured both in the eyes of God and of my country.

But, sir, the American people are opposed to a national bank. The knowledge of this fact—and no man can plead ignorance with regard to it—I should suppose would be a sufficient reason why the peoples' representatives should oppose it. For my own part, sir, were I to support any measure which has been so generally and emphatically condemned by the people, I should consider that I had grossly outraged public opinion, insulted the majesty of the people, disregarded their express wishes, and betrayed their best interests. And, sir, I cannot conceive how any honorable gentleman, who claims to be a republican—who professes to entertain a due regard for public opinion, and a willingness to act in obedience to the expressed will of the majority—can possibly yield his support to a measure that has been so recently, so repeatedly, and so signally condemned by that majority. Shall I be told that the people would take this new institution into favor, provided it were established, and that they would cherish and sustain it hereafter? Let not gentlemen lay the "flattering unction to their souls." No, sir, the history of the late bank is too fresh in their recollections. The people of this country are too prudent and too wise, not to be admonished and profitted by the teachings of the past. They are too jealous of their rights—too much enamored of liberty, to regard, with favor, a monster that might, at its pleasure, violate those rights and crush that liberty. And gentlemen who act upon the supposition, that the American people will ever become the friends and willing supporters of an institution so hostile to the spirit of freedom, err as widely as would have erred the friends of the infant Bacchus, had they commended him to the arms of *Juno* for *succor* and *protection*.

But, sir, we are told by the board of trade, and others friendly to a national bank, that the general welfare of the country, requires at our hands the establishment of such an institution. For one, sir, I am disposed to doubt the correctness of this proposition. I am strongly inclined to the opinion that these *modest patriots* are not quite so well qualified as they imagine, to decide what would, or what would not, promote the public good. I have yet to learn, that those gentlemen are more deeply skilled in the science of government and of political economy, and that they cherish a warmer regard for the public weal, than those of other pursuits and of a different political faith. I have yet to learn that they are benevolent and patriotic beyond their generation, or that they have been anointed with the oil of wisdom above their fellows. Sir, whence comes their authority to decide what measures shall, or shall not, be adopted in reference to the general welfare? When, and how were they constituted and appointed conservators and guardians of the public interests, that they thus ape the

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language of supremacy, and assume the tone of [illegible]

not the great mass of the people had sufficient experience, with regard to a national bank? have they not felt its benefits and its evils, its advantages and disadvantages; and have they not condemned it—I had almost said, with the voice of unanimity? And shall they be deemed incompetent to judge of the utility, character, and tendency of such an institution? Sir, by what other criterion than that of public sentiment, clearly expressed and fairly ascertained, shall we judge of a public measure? Shall we adopt the views and opinions of the few, to the exclusion of the many? Shall we not allow the great majority to determine what is, as well as what is not for their welfare? And have not that majority solemnly decreed, in a voice that is still ringing in our ears, that a national bank is not a national benefit, but a national evil; that it is not a public blessing, but a public curse? If we regard public sentiment, therefore, as a proper test of this measure, we must necessarily decide against it. We are bound to believe that it would not be productive of public good, as represented by the petitioners—but of public mischief, as declared by a majority of the people. It will not be disputed, but that any class of citizens have a right to ask, at the hands of Government, the adoption of such measures, or the enactment of such laws, as may, in their opinion, subserve their interests: provided always, that such measures, or laws, do not conflict with other interests of the State, or revolt the "stomach of the public sense." A national bank does both; and has, consequently, no claims to the favorable regard of Congress.

Sir, let us consider, for a moment, whether we can look with safety or propriety, for wise, patriotic, disinterested or salutary council from the source whence the petitions and demands for a national bank proceed. Do we find the patriotic, the clear-headed and honest-hearted yeomanry and mechanics of the country clamoring for a national bank? No sir. No—the productive and laboring classes appreciate their political welfare too highly, to desire such an institution. The great majority of bank advocates are to be found among the non-producers—the traffickers and speculators of the country—"children of lofty hopes and low desires," most of whom are peculiarly affected by the present pressure of the times. And would it be the part of wisdom to give heed to counsel emanating from such sources? Can it be reasonably expected, that men relying solely upon bank facilities—men suddenly disappointed in their high expectations of immediate wealth and consequent influence, would be the most competent to direct the action of Government and control the destinies of the nation, at such a conjuncture? No, sir—their habits of life—of thinking—their peculiar situation—the circumstances which influence their judgments and impel them to action—all—all conspire to disqualify them for the task. We know, sir, that it is more natural for men in affliction—whether physical or political—to have recourse to *palliatives*—to *immediate* and temporary expedients, than to deliberate on the means necessary to secure *permanent relief.*