Volume III: Issue 8

The BEACON OF LIBERTY

A Structured Curriculum of Constitutional Study

Clause Discussed:
- Article I, Section 8, Clause 2

Concepts Discussed:
- To borrow Money
- Treasury Notes

Like all wars before and after, the War of 1812 brought with it an expanded need of government funding.

For general government purposes and in anticipation of war, on March 14th, 1812, Congress authorized the President to borrow $11 million on the credit of the United States.[1] Certificates of stock, redeemable at any time after 12 years, bearing interest at 6% in the interim and transferable on the books of the Treasury, were issued as evidence of that debt.

As discussed earlier (*Beacon* III:2), it was more than a year following the declaration of war before new Duties and Taxes were laid (and another six months before they became collectable).[2] Since the government vaults were then hardly full, the immediate and pressing needs of war were necessarily met through the power To borrow Money.

Treasury Notes and the Banks of the United States

Twelve days following the declaration of war, on June 30, 1812, Congress authorized the first issuance (of $5 million worth) of Treasury notes.[3]

Treasury notes had not been issued before this — the primary reason being that the Bank of the United States issued its own bank notes and thus adequately provided much of the purpose which Treasury notes would provide as negotiable debt instruments.

1. II Stat. 694.
2. Congress declared war on the United Kingdom of Great Britain (England, Scotland and Wales) and Ireland on June 18, 1812 (II Stat. 755)
3. II Stat. 766.

The first Bank of the United States was incorporated in 1791; its duration ended in 1811 when its original 20-year charter failed to garner enough congressional support for extension. In 1812, the first Treasury notes were issued.

The second Bank of the United States was chartered by Congress in 1816. In 1817, Congress repealed earlier Acts authorizing the issuance of Treasury notes. No Treasury notes were issued again until 1837, one year following the demise of the 20-year duration of the second Bank of the United States which also failed to extend its charter.

Thus, the early history of Treasury notes coincides with (the absence of) the first and second Banks of the United States. Due to such opposing relations, it is thus proper to look in a chronological fashion at both.

The first Bank of the United States

Not long after Congress first convened, heated discussions occurred regarding the proposed charter of a national bank. Nevertheless, both Houses of Congress overcame such internal friction and passed a Senate bill to establish a national bank.

In accordance with Article I, Section 7, Clause 2 of the Constitution, this bill was sent to President Washington for his signature to properly enact it as law. Before signing this bill, however, President Washington first asked for opinions from three of his principal officers.

Attorney General Edmund Randolph, Secretary of State Thomas Jefferson and Secretary of the Treasury Alexander Hamilton responded to the President's command authorized by Article II, Section 2, Clause 1.

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The responses of these officials provided posterity with important views, not only in regards to the pertinent question at hand, but also indirect views on the very Constitution itself.

Virginians Randolph and Jefferson squarely denied Congress' ability to incorporate (a national bank). Responding with eight primary objection points and a brief narrative, **Secretary of State Jefferson** writes:

> "The bill for establishing a National Bank undertakes, among other things, —
>
> "1. To form the subscribers into a Corporation.
>
> "2. To enable them, in their corporate capacities to receive grants of lands; and so far is against the laws of *Mortmain*.
>
> "3. To make *alien* subscribers capable of holding lands; and so far is against the laws of *Alienage*.
>
> "4. To transmit these lands, on the death of a proprietor, to a certain line of successors; and so far changes the course of *Descents*.
>
> "5. To put the lands out of the reach of forfeiture, or escheat; and so far is against the laws of *Forfeiture* and *Escheat*.
>
> "6. To transmit personal chattels to successors in a certain line; and so far is against the laws of *Distribution*.
>
> "7. To give them sole and exclusive right of banking, under the national authority; and so far is against the laws of *Monopoly*.
>
> "8. To communicate to them a power to make laws paramount to the laws of the states; for so they must be construed, to protect the institution from the controul of the state legislatures; and so, probably, they will be construed." [4]

Giving an indication as to the importance of the broad fields of law which Jefferson notes as being transgressed, he writes rhetorically:

> "Can it be thought that the Constitution intended that, for a shade or two of convenience, more or less, Congress should be authorized to break down the most ancient and fundamental laws of the several states?" [5]

Answering his own question, Jefferson comments:

> "Nothing but a necessity invincible by any other means, can justify such a prostration of laws which constitute the pillars of our whole system of jurisprudence." [6]

4. *The Papers of Thomas Jefferson*, Library of Congress Edition, Series 1: General Correspondence, February 15, 1791, Pg. 984. www.memory.loc.gov/ammem/mtjhtml.

5. Ibid, Pp. 989 - 990.

6. Ibid, Pg. 990.

In summation, Jefferson writes unequivocally:

> "The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States, by the Constitution." [7]

"*The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States, by the Constitution.*"

Secretary of State Thomas Jefferson

Jefferson also notes, almost in passing, that:

> "the very power now proposed *as a means*, was rejected *as an end* by the Convention which formed the Constitution." [8]

Jefferson's comments on *means* and *end* refer to discussion at the Constitutional Convention on Friday, September 14th, 1787. The Committee of Stile and Arrangement had a few days earlier given their report of the nearly-complete Constitution (as approved to date).

The pertinent discussion began after Benjamin Franklin motioned (as noted by James Madison in his Notes of the Convention), to add the words "a power to provide for cutting canals where deemed necessary" after the words "post roads" in Article I, Section 8 (Clause 7). The motion, seconded by James Wilson of Pennsylvania, was objected to by Roger Sherman of Connecticut.

Discussion of the subject ensued, at which point Madison proposed to enlarge Franklin's more-limited proposal to include the specific authority:

> "to grant charters of incorporation where the interest of the U. S. might require & the legislative provisions of individual States may be incompetent." [9]

Edmund Randolph, also of Virginia, seconded Madison's proposition.

James Wilson commented that he thought such a power was necessary "to prevent a State from obstructing the general welfare".

Rufus King, of Massachusetts, pointedly and in a prognostic fashion, stated in opposition to such a grant of power:

> "The States will be prejudiced and divided into parties by it. In Philadelphia & New York, It will be referred to the establishment of a Bank, which has been a subject of contention in those Cities. In other places it will be referred to mercantile monopolies." [10]

7. Ibid, Pg. 985.

8. Ibid, Pg. 987.

9. *Farrand's Records of the Federal Convention*, Volume II, Pg. 610 @ 615.

10. Ibid., Pg. 616.

On the motion "so modified as to admit a distinct question specifying & limited to the case of canals", only Pennsylvania, Virginia and Georgia voted in support.

The question had been divided so the delegates could vote separately on whether to allow this power in a general fashion (to grant charters for any national concerns) or only for the purpose of constructing canals. The specific authority of Congress "to grant charter of incorporation" was pointedly discussed at the Constitutional Convention and summarily rejected.

The specific authority of Congress "to grant charters of incorporation" was pointedly discussed at the Convention and summarily rejected.

Madison made entry in his Notes of the resounding defeat of the proposal by writing "the other part fell of course, as including the power rejected".[11]

Jefferson (though in France during the convention) later commented "the whole was rejected" — that both powers proposed at the convention (to grant charters of incorporation for general purposes or only for the purpose of cutting canals) were denied.[12]

James McHenry, a delegate from Maryland, also took notes at the Convention. His notations of September 14th are as follows:

> "Moved by Dr. Franklin seconded by Mr. Willson, to empowed(r) Congress to open and establish canals.
>
> "This being objected to — moved by Virginia To empower Congress to grant charters of incorporation in cases where the U. S. may require them and where the objects of them cannot be obtained by a State.
>
> "Negatived." [13]

The Secretary of the Convention (Major William Jackson), in his formal notes, provided a "Detail of Ayes and Noes" for the questions discussed on September 14th. With regard to the proposal "To grant letters of incorporation for Canals &ca" [14], he lists New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina and South Carolina with a "no" vote, and Pennsylvania, Virginia and Georgia with an "aye" vote (Rhode Island and New York absent).

The convention delegates openly rejected the proposal to allow Congress the specific authority to grant charters of incorporation due to their likely-accurate belief that if such a power remained in the proposed Constitution, that this proposal alone would have prevented ratification of the Constitution in the State ratifying conventions.

The operation of such a power would inevitably conflict with State authority. As of 1787, powerful opposition resisted granting such an authority (the proposal to establish a powerful central government was then the radical movement, with many Citizens and leaders supporting strong State governments).

With the proposal to establish a stronger central government, extreme care had to be exercised to keep the whole from being rejected. Keeping the tentative Constitution within passable limits was a necessary precondition to establishing the Constitution.

With the topic of granting charters of incorporation having been pointedly discussed during the Constitutional Convention and clearly and unequivocally denied, it would be difficult to later ignore this history and claim that government now had this inherent and necessary power (in any routine sense).

As could be expected from the position, the Attorney General was (first) requested by President Washington to give his official opinion on the constitutionality of Congress incorporating a bank.

Attorney General Edmund Randolph, the individual at the Constitutional Convention who seconded the very proposal to empower Congress with the specific authority to grant charters of incorporation, denied the ability of Congress to enact such legislation, concluding:

> "In every aspect therefore under which the attorney general can view the act, so far as it incorporates the bank, he is bound to declare his opinion to be against its constitutionality." [15]

"*In every aspect therefore under which the attorney general can view the act, so far as it incorporates the bank, he is bound to declare his opinion to be against its constitutionality.*"

11. Ibid.

12. *The Papers of Thomas Jefferson*, Series 1, Pg. 987.

13. *Farrand's Records*, Volume II, Pg. 620.

14. Ibid, Pg. 611., "&ca" meaning "etc."; i.e., to grant letters of incorporation for other purposes.

15. *The Papers of George Washington*, Presidential Series, University Press of Virginia, Vol. 7, Pg. 330 @ 337. Opinion dated February 12, 1791.

Besides Randolph and Jefferson, James "Father of the Constitution" Madison also believed such authority beyond the realm of Congress. Speaking before the House of Representatives on February 2, 1791, Madison gave extended attention to the pending legislation to incorporate a bank. During his speech, he commented that he:

> "well recollected that a power to grant charters of incorporation had been proposed in the General Convention and rejected." [16]

Not only did the convention delegate (Randolph) who seconded the proposal to extend the power to Congress to incorporate now deny Congress had this authority, but so too did the delegate who made that motion initially (Madison).

Madison and Randolph were two of six [17] voting delegates of one of only three States who voted at the Convention *in favor* of granting Congress the authority to grant charters of incorporation; that both men later unequivocally denied that Congress were given the authority to grant charters of incorporation should provide strong and even convincing evidence that, absent later Amendment, Congress did not have such a (routine) power.

Even though Madison and Randolph desired for Congress to be given the power to grant charters of incorporation, their intentions did not grant Congress this authority. They knew that their requests were summarily dismissed at the convention. When the discussion came up again years later, they acknowledged history and the fundamental nature of the Constitution.

Regarding this fundamental nature and the overall delegation of authority to Congress, Madison remarked:

> "It is not a general grant, out of which particular powers are excepted; it is a grant of particular powers only, leaving the general mass in other hands." [18]

"*The Federal Government is limited. It is not (given) a general grant, out of which particular powers are excepted; it is… grant(ed)… particular powers only, leaving the general mass in other hands.*"

James Madison, Jr.

16. Annals of Congress, House of Representatives, 1st Congress, 3rd Session, Vol. II, Pg. 1944 @ 1945.

17. The *seventh* Virginia delegate, George Washington, as President of the Convention, did not vote (under normal circumstances).

18. Annals of Congress, Vol. II, Pg. 1945.

From this primary and accurate statement, all American government follows. This principle is the basic operation of a "Republican Form of Government" to which the United States "guarantee to every State in this Union" (in Article IV, Section 4 of the Constitution).

A *Republican* Form of Government is government by Representation. The fundamental principle involved with *Representation* is that Citizens elect Representatives who operate within a defined set of parameters (delegated authority) to protect Citizen's lives, liberty and property.

Out of this precise principle, government by delegation of authority builds into an understandable and predictable system of law.

As economies of scale prove, it is more efficient to have an activity performed by someone concentrating on that effort. This person can become more skilled, better prepared, with more specialized tools and knowledge to perform this activity than a person who does it only occasionally.

Having government establish a framework to handle transgressions against person and property frees productive individuals to spend their time pursuing life, liberty and happiness.

Actions unsupported by a delegation of authority are unwarranted and unwarrantable — a system of government which relies upon the *discretion* of officials is an *arbitrary* and *despotic* government.

Where power is delegated, government may act. If a government official acts without proper delegation of authority, then it is not, by definition, an "official" act. The individual is not then clothed with governmental authority, nor is he necessarily afforded any protection (however, a limited amount of presumptive immunity may be properly extended where there is no malice or intentional disregard for the law). These principles are the inevitable consequences of the guarantee of a *Republican form* of government.

Article IV is but a restatement of **Article I, Section 1** of the Constitution, which pointedly states:

> "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

This section organizes American government as a government of *delegated* powers — that powers therein specified are *granted* (and no more). The only logical conclusion to this delegation of authority is that all other powers (not granted) are retained by the authority delegating them. It would also necessarily follow that the burden of proof in such a system would be on the person claiming (questionable) authority.

The **Tenth Article in Amendment** was ratified in verification of this principle of residual powers remaining with the person or entity delegating authority, reading:

> "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 first 10 Amendments were ratified, according to the Preamble to these Bill of Rights, as "declaratory and restrictive clauses" added "to prevent misconstruction or abuse of its powers". The Tenth Amendment was added to clarify that government has no power other than that granted therein. Though many persons attempt to deny its truth (and its power), the 10th Amendment is (part of) the supreme Law of the Land!

The opinions of Jefferson, Randolph and Madison all follow from principles of a delegation of authority. Since there was no specific grant authorizing such a power, it was not given in any routine sense (allowing for the possibility that it could be authorized in some special or unique sense in a limited instance).

The only words which weakened their position were given by **Jefferson** in the conclusion of his opinion:

> "It must be added, however, that, unless the President's mind…is tolerably clear that it is unauthorized by the Constitution…a just respect for the wisdom of the legislature would naturally decide the balance in favour of their opinion. It is chiefly for cases where they are clearly misled by error, ambition, or interest, that the Constitution has placed a check in the negative of the President."[19]

Of course, Jefferson was correct, the Constitution uniquely places with Congress the ability to enact law. With the President's blessing (or with his inaction), Congress may enact law with a simple majority of a quorum voting in favor of a bill. Against the President's veto, of course, it takes fully a two-thirds majority of a quorum to enact a bill as law.

Only Congress are given authority to legislate[20] and not the Executive Branch (so much for later administrative "law"). Because of this, it is not the place of the Executive to dictate anything to Congress (he cannot create law on his own accord), but only to help keep them on the proper path.

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19. *The Papers of Thomas Jefferson*, Series 1, Pg. 990.

20. Indeed, the *Legislative* power is *vested* (permanently fixed) in Congress in Article I, Section 1 of the Constitution. On his own accord, the President can only grant reprieves and pardons for offences against the United States, fill up vacancies temporarily, commission officers of the United States, etc. — he cannot even appoint ministers without the Senate's blessing.

The President's Oath, it should be noted, is to "preserve, protect and defend the Constitution of the United States", not necessarily any action of Congress. Thus, the President is to follow the Constitution and not blindly any actions of Congress.

Secretary of the Treasury Alexander Hamilton

Though it would take a bold man to contravene Randolph, Madison, and Jefferson decades later, Secretary of the Treasury Alexander Hamilton opposed their conclusions immediately.

Hamilton viewed the establishment of a national bank as central to establishing his monetary policy. As such, it was imperative that he support its basis, by whatever means necessary.

Without a great deal of respect evident for his position nor for himself, with a view only of establishing his monetary theory, Hamilton wrote that Congress had ample means to incorporate a national bank.

In words pre-dating Chief Justice John Marshall,[21] **Secretary of the Treasury Alexander Hamilton** wrote:

> "If the end be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that end, and is not forbidden by any particular provision of the Constitution — it may safely be deemed to come within the compass of the national authority."[22]

As it was imperative that Hamilton support his contention that Congress were empowered to incorporate a national bank, he proceeded with his only option, which was to essentially ignore the Constitution and history.[23]

Hamilton candidly admits the "republican maxim, that all government is a delegation of power"[24] and that "no government has a right to do *merely what it pleases*",[25] only to then ignore these very principles.

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21. Chief Justice Marshall is famous for his dictum (in his 1819 opinion regarding the constitutionality of the second Bank of the United States):

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."
>
> McCulloch v. Maryland, 17 US 316 @ 421, 1819.

22. *The Papers of Alexander Hamilton*, Syrett Edition, Columbia University Press, New York, 1965, Vol. VIII, Pg. 97 @ 107. Opinion dated February 23, 1791.

23. Hamilton could not easily oppose Randolph, Madison and Jefferson without also distancing himself from the (express words of the) Constitution.

24. *The Papers of Alexander Hamilton*, Volume VIII, Pg. 100.

25. Ibid, Pg. 103.

Hamilton can only ignore the Constitution by appealing instead to "general principle(s)" which he claims are "inherent" to "Government in general".[26] By attempting to resort to powers theoretically larger than the Constitution itself, he sought to over-rule or otherwise ignore the limitations imposed by the very words and structure of the Constitution.

Further attempting to turn delegated authority on its head, Hamilton writes that "it will be incumbent upon those, who may incline to deny it, to *prove* a distinction"[27] — in other words, that government has *inherent* power *except as otherwise shown* (except where specifically forbidden). This tactic would naturally follow from his attempt to look at inherent, general principles of government (in general).

Few people of such stature and knowledge would have the audacity to so boldly propose that American government has *inherent* power, that it can operate anywhere except where specifically prohibited. Such a system of government is widely considered antithetical to that established by the founders of American government.

Looking at the Constitution, one will not find any reference to inherent rights of government. Indeed, people have inherent rights (and reserved powers), government has only delegated and specified powers.

Article I grants to "a Congress of the United States" the "legislative Powers *herein granted*".

Article II vests the "executive Power" in a "President of the United States".

Article III vests with "one supreme Court, and…inferior Courts" the "judicial Power".

The Constitution goes on to list the powers (granted and) vested in each of the three branches of government.

If Hamilton's proposal was accurate, the Constitution would have consisted of the acknowledgement of the government's supreme authority in all matters, with perhaps a few restrictions thrown in where those bold enough to limit such omnipotence and omnipresence succeeded without a lopping off of their heads.

Hamilton, to best ensure success of his attempt to establish a national bank, also necessarily discounted the historical fact that the Constitutional Convention specifically withheld from Congress the specific authority to grant charters of incorporation.

Hamilton wrote of the incident:

> "What was the precise nature or extent of this proposition, or what the reasons for refusing it, is not ascertained by any authentic document, or even by accurate recollection. As far as any authentic document exists, it specifies only canals. If this was the amount of it, it would at most only prove, that it was thought inexpedient to give a power to incorporate for the purpose of opening canals, for which purpose a special power would have been necessary."[28]

It is crucial to note Hamilton's method to combat history — he infers that the sparse notes then published contained the *only* account of the convention debate regarding incorporation to attempt to confuse the issue.

He then states, knowing it to be inaccurate, that "*If* this was the amount of it...", *then* it would only prove the case against canals since that is all the official notes specify.

If, then statements prevent one from objecting to the *conclusion* ("then…") if one accepts the *premise* ("If…").

To discount the conclusion, one only needs to defeat the premise by showing a fallacy in logic.

The precise nature and extent of the proposition did not deal only with canals, as Hamilton knew well (thus the purpose of the qualifier "if").

It is true that the "authentic documents" of the era (Jackson's secretarial notes[29]) are quite vague and only make notation of the vote (on the granting of "letters of incorporation for Canals &ca"). Hamilton, knowing this was not the "amount of it", wrote that, "*if*" it was, then little was proved. *If* indeed — if cows could fly...

Historians, almost without exception, hold Madison's Notes as the best and definitive source for an accurate history of the events of the Convention. The truly-authentic document refutes Hamilton's premise resolutely.

It must be noted that Hamilton did not have Madison's Notes of the Convention pressing against him as evidence of the discussion at the convention.

Madison repeatedly refused publication of his notes during his lifetime (he died on June 28, 1836). Madison's wife Dolly, with his earlier blessing, sold her husband's papers after his death (in 1837, to the Library of Congress); they were first published a few years later.

That Madison's Notes clearly and unequivocally show that the question regarding granting of charters of incorporation was "so modified as to admit a *distinct* question specifying & limited to the case of canals" shows that the question was dealt with in both a *general* and *specific* manner.

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26. Ibid, Pg. 98.
27. Ibid.
28. Ibid, Pg. 110.
29. Perhaps irrelevant, it should be noted that Major Jackson was nominated to the position of Secretary of the Convention by Colonel Hamilton (see Madison's convention notes dated May 25, 1787).

Hamilton also questions "accurate recollection" (*by whom* is not stated) of the debate and vote about granting charters. Perhaps Hamilton was confused, but Madison states that he "*well recollected* that a power to grant charters of incorporation had been proposed in the General Convention *and rejected*" (he was, afterall, the very person at the convention who proposed this power).

In deciding who to give the benefit of the doubt when two opposing statements are given, it is likely safest to go with the person most objective who "well recollected" the event, who prepared himself extensively, and who took copious notes of the entire proceeding, including notation of this topic and not he who was absent often and had his own agenda to boot.

With such audacity that even few Americans today would have the courage to utter regarding American government, let alone write for all of posterity, Hamilton writes:

> "The constitutional *test* of a right application (of money) must always be whether it be for a purpose of *general* or *local* nature. If the former, there can be no want of constitutional power." [30]

If the only test of constitutionality was the test for a *general* nature, then the Constitution would be transformed into a grant of virtually unlimited power. Understandably, this grasp at omnipotent government was certainly not how Hamilton presented the Constitution *prior* to its ratification.

Hamilton was the most prolific of the three writers of *The Federalist* (including Madison) urging adoption of the Constitution. Had Hamilton ever written such views *before* ratification as he wrote *afterwards*, it would have certainly been the death knell of the Constitution. That the same person could write about the same charter in such different ways with the only difference being one of *ratification* should state volumes about the personal integrity and real agenda of that individual.

In *The Federalist* (#33), Hamilton wrote about the two phrases in the Constitution which most concerned the anti-federalists: the *necessary and proper* wording of Article I, Section 8, Clause 18 and the *supreme Law of the Land* wording of Article VI, Clause 2.

Hamilton calls "exaggerated colors of misrepresentation" the anti-federalist's view of these phrases being "the pernicious engines by which their local governments were to be destroyed and the liberties exterminated; as the hideous monster whose devouring jaws would spare neither sex nor age, nor high nor low, nor sacred nor profane". [31]

Further, the words *necessary* and *proper* were:

> "only declaratory of a truth which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government and vesting it with certain specified powers". [32]

Continuing, he states:

> "The declaration itself, though it may be chargeable with tautology or redundancy, is at least perfectly harmless." [33]

Stating that the declarations of supremacy are "perfectly harmless", Hamilton sought further to soothe anti-federalist' concerns that the ability of States to lay Taxes would be curtailed by federal action under the Constitution, writing:

> "yet a law for abrogating or preventing the collection of a tax laid by the authority of a State (unless upon imports and exports) [34] would not be the supreme law of the land, but a usurpation of power not granted by the Constitution." [35]

Hamilton further writes that the States:

> "retain an independent and uncontrollable authority to raise revenue to any extent of which they may stand in need, by every kind of taxation, except duties on imports and exports." [36]

Hamilton's writing before ratification well follow the express words and spirit of the Constitution. That Hamilton could claim only a few short years later that Congress could do anything (spend money) if for the general nature is thus incredible. This turnabout after ratification of the Constitution more accurately shows his true colors earlier hidden.

Hamilton, again seeking to supercede and ignore the Constitution, lastly questions, in his support for establishing a national bank:

> "Why may not the United States *constitutionally* employ the means *usual* in other countries for attaining the ends intrusted to them?" [37]

This reference to the activities of *other* governments has become a favorite and re-occurring tactic of politicians and bureaucrats wanting more power and authority than prescribed by the Constitution.

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30. *The Papers of Alexander Hamilton*, Volume VIII, Pg. 129.
31. *The Federalist*, #33.
32. Ibid.
33. Ibid.
34. Article I, Section 10, Clause 2 allows a State to lay Imposts or Duties on Imports or Exports which are "absolutely necessary for executing its inspection laws".
35. *The Federalist*, #33.
36. Ibid.
37. *The Papers of Alexander Hamilton*, Volume VIII, Pg. 131.

The obvious answer to this siren-song for omnipotent government is that the Constitution only grants specific powers to the United States — that a Republican form of government of delegated powers was here created.

Many other countries have parliaments which can essentially legislate at their whim; in others, despots who rule authoritatively — this is why the United States may not employ means usual in other countries!

That this argument could ever be used in a room full of fifth-grade schoolchildren, let alone lay adults, let alone scholars without a thorough refutation by the least of them seems almost beyond comprehension.

What governments in the rest of the world happen to be able to do legally does not impact what the Government of these United States of America may do, thank the Lord!

Hamilton's long opinion on the constitutionality of the Act of Congress to incorporate subscribers to the Bank of the United States was, frankly, a long and weakly-written apology for boundless government.

Though little of his opinion could withstand strict scrutiny by an open-minded jury offered an intelligent counter-opinion, it gave those pre-determined to establish the Bank of the United States sufficient excuse to establish this bank (by questionable means). They could point to Hamilton's lengthy treatise as proof positive of the necessity and propriety of establishing such a bank. That few of his words could withstand debate was irrelevant.

Like all government action to follow for two hundred years which exceeded the normal constraints of the Constitution, simply because the government may perform a given activity in *one* instance does not mean that government may perform that activity in *all* instances.

The floodgates to unbounded government action are not flung open simply because government may, in limited instances and within carefully-defined boundaries, perform the given activity in apparent contradistinction to normal Constitutional boundaries.

The proper means to keep government limited within its Constitutional parameters is to acknowledge the unusual circumstances where the Constitution does not prohibit an otherwise-prohibited action.

When an unusual circumstance allows an otherwise-prohibited activity, is is appropriate to allow it here *while prohibiting this activity outside this limited instance*!

One cannot allow government to ignore Constitutional parameters where it constrains them. If government can perform a normally-prohibited activity in one case out of one hundred, it is still properly limited in those 99 other cases!

Invariably, the following truths will provide the key to reclaim limited government.

Rarely does government do that which it is *never* allowed to do; *often* however, government routinely does that which it is *rarely* allowed to do (more accurately, often government does everywhere that which it may only do in limited situations).

Realizing that the government of the United States has unique powers (discussed much later) which may not be everywhere practiced will ultimately steer more Americans to study the difference, eventually curtailing inappropriate government action.

Differentiation must then occur between *authorized* and *unauthorized* activities, **and to enforce their differences as the cases demand**.

This differentiation, of course, demands understanding of the principles involved. This activity summarizes the purpose of *The Beacon of Liberty*. With knowledge, one can reclaim limited government and individual liberty.

The fundamental premise of *The Beacon of Liberty* is that if more power is truly required, Article V of the Constitution clearly spells out the means for amendment (or convention). Such procedure(s) offer the only appropriate means to expand government authority.

On February 25, 1791, the final day of the President's 10-day period to sign the Bill establishing a national bank before it would be enacted without his signature (Art. I:7:2), President Washington disappointedly approved the bank Act incorporating subscribers to the Bank of the United States.[38]

38. I Stat. 191.

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