Hamilton Argues for the Constitutionality of the National Bank
(February 15, 1791)

The dispute over the constitutionality of the Bank of the United States led to the classical statements of strict and loose construction of the Constitution by Jefferson and Hamilton. Jefferson, who questioned the constitutionality of the Bank of the United States was asked by Washington to provide a formal statement regarding the constitutionality of the bill. After receiving statements from Jefferson and from Attorney-General Edmund Randolph, Washington asked Hamilton to respond to these arguments against his bank bill. Hamilton then wrote the classic defense of loose construction.

February 23, 1791

The Secretary of the Treasury having perused with attention the papers containing the opinions of the Secretary of State and the Attorney-General, concerning the constitutionality of the bill for establishing a national bank, proceeds, according to the order of the President, to submit the reasons which have induced him to entertain a different opinion.

Though this mode of reasoning respecting the right of employing all the means requisite to the execution of the specified powers of the government, it is to be objected, that none but necessary and proper means are to be employed; and the Secretary of State maintains, that no means are to be considered necessary but those without which the grant of the power would be nugatory . . .

It is essential to the being of the national government, that so erroneous a conception of the meaning of the word necessary should be exploded.

It is certain, that neither the grammatical nor popular sense of the term requires that construction. According to both, necessary often means no more than needful, requisite, incidental, useful, or conducive to. . . . And it is the true one in which it is to be understood as used in the Constitution.

To understand the word as the Secretary of State does, would be to depart from its obvious and popular sense, and to give it a restrictive operation, an idea never before entertained. It would be to give it the same force as if the word absolutely or indispensably had been prefixed to it. . . .

The degree in which a measure is necessary can never be a test of the legal right to adopt it; that must be a matter of opinion, and can only be a test of expediency. . . .

This restrictive interpretation of the word necessary is also contrary to this sound maxim of construction; namely, that the powers contained in a constitution of government, especially those which concern the general administration of the affairs of a country, its finances, trade, defense &c., ought to be construed liberally in advancement of the public good... The means by which national exigencies are to be provided for, national inconveniences obviated, national prosperity promoted, are of such infinite variety, extent, and complexity, that there must of necessity be great latitude of discretion in the selection and application of those means. . . .
It leaves, therefore, a criterion of what is constitutional, and of what is not so. This criterion of what is constitutional, and of what is not so. This criterion is the end, to which the measure relates as a means. 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.

A hope is entertained that it has, by this time, been made to appear, to the satisfaction of the President, that a bank has a natural relation to the power of collection taxes— to that of regulation trade—to that of providing for the common defence—and that, as the bill under consideration contemplates the government in the light of a joint provision of the clause of the Constitution which immediately respects the property of the United States.

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