

Andrew Jackson's Veto of the Bank Bill

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"We, the people." These are the first three words of the United States Constitution. What do these words mean? They mean that the authority of the government is derived from the will of the people, all of the people, and not just from one particular group or class. The United States Constitution does not say "We, the rich people," "We, the intelligent people," "We, the aristocratic people," "We, the property-owning people," "We, the banking people," or "We, the influential people," In fact, there is no adjective in front of the word "people." Therefore, the meaning of the words "we, the people" is clear. It means that the authority of government is derived from all of the people and that government is the instrument through which the will of all of the people is expressed. John C. Calhoun wrote that "sovereignty resides in the people, and not in the government."¹ George Washington wrote:

The Federalist ? / see with

... It is desirable on all occasions, to unite with a steady and firm adherence to constitutional and necessary Acts of Government, the fullest evidence of a disposition, as far as may be practicable, to consult the wishes of every part of the Community, and to lay the foundations of the public administration in the affection of the people.²

In addition to the words "We, the people," there appears in the same sentence another set of words: "to promote the general welfare." But who is supposed to promote "the general welfare" under a federal system of government? Calhoun wrote:

... to pronounce on the general welfare of the States is a high constitutional power, appertaining not to Congress, but to the people of the several States, acting in their sovereign capacity. That duty they performed in ordaining and establishing

the constitution.³

Thus, according to Calhoun, to "pronounce on the general welfare" was a power reserved to the States, not Congress. This principle of State rights, and the belief that no one group or class of people in the United States was entitled to special protection or consideration from the government, served as the cornerstones of President Andrew Jackson's decision to veto the "act to incorporate the subscribers to the Bank of the United States." This veto, which took place on July 10, 1832, was a bold and far-reaching application of Executive power meant to quash forever an institution whose continued existence was, in the opinion of the President, inimical to the interests of the American people and contrary to the Constitution. In his response to Jackson's veto, Senator Daniel Webster, perhaps the leading proponent of the Bank Bill, pointed out that not only had the same measure been passed by two previous Congresses, in 1791 and 1816, and approved by two previous administrations, but that the constitutionality of the bank had been upheld by the United States Supreme Court, and that therefore Jackson had no valid grounds for vetoing the bill.⁴

only motivated not only by politics but by principle or will.
Webster's opposition to the President's veto was not merely an attempt to gain political advantage by showing that the

only
1 Political attack on Jackson's Policy. It also reflected
President had acted capriciously, although this might have been a motivating factor behind Webster's response, but rather reflected a fundamental difference in political philosophy between the President and the proponents of the bank which could be traced back the Hamilton-Jefferson controversy over the bank

question. If advocacy for a national bank reflected an essentially Federalist or Hamiltonian point of view, did that then mean that Jackson's veto was inspired by Jeffersonian principles or was it perhaps based upon some other philosophical framework?

Before examining the substance of Jackson's veto message, certain historical facts relevant to the veto must first be reviewed. A Bank of the United States was first proposed by Alexander Hamilton in 1790, during his tenure as Secretary of the Treasury in the Washington Administration. Hamilton justified the need for a national bank on several grounds, i.e., it would generate "active or productive capital;" it would provide the Government "pecuniary aids, especially in sudden emergencies;" and it would facilitate "the payment of taxes."⁵ That is, a national bank would expand the circulation of money, stimulate business and commerce, enhance tax collection, and thereby improve the efficiency of the government and increase the wealth of the nation. In short, Hamilton believed that such a bank would be beneficial to the nation. In his report to Congress, Hamilton wrote:

A new establishment of the sort ought not to be made without cogent and sincere reasons of public good.⁶

Considerations of public advantage suggest a further wish, which is - that the bank could be established upon principles, that would cause the profits of it to redound to the immediate benefit of the State.⁷

Thus, a national bank would provide many valuable services for the people while at the same time generate a profit for its

investors.

Hamilton also believed that a national bank was needed *a necessity* because the constitution prohibited the states from issuing their own currency. In his report to Congress Hamilton wrote:

The emitting of paper money by the authority of Government is wisely prohibited to the individual States by the national Constitution, and the spirit of that prohibition ought not to be disregarded by the Government of the United States.⁸

But although the bank would be performing governmental functions, Hamilton believed that the bank would have to be under private control because *it would be better if the bank were placed to protect the* if the government operated the bank, its decisions could be tainted by politics. According to Hamilton,

To attach full confidence to an institution of this nature, it appears to be an essential ingredient to its structure, that it shall be under a private not a public direction, under the guidance of individual interest, not of public policy; which would be supposed to be, and, in certain emergencies under a feeble or too sanguine administration, would be liable to being too much influenced by public necessity.⁹

Hamilton's doubts over the government's ability to manage the bank is not surprising in view of his fear of the people. *attitude toward*

In No. 11 of The Federalist Hamilton wrote:

Why has government been initiated at all?
Because the passions of men will not conform to the dictates of reason and justice, without constraint..

In view of Hamilton's distrust of the people, it was not likely that he would have been in favor of a bank that would be under public control, especially if the government was weak or too democratic.

Despite his reservations over the ability of the people to act responsibly, and his preference for private control, Hamilton conceded that the government should have the "right of ascertaining as often as may be necessary, the state of the bank,"¹⁰ but, he insisted, the government should have no control over the bank. In other words, the bank should be placed entirely under the control of private interests who presumably would be above political pressure which could otherwise muddy the operation of the bank. Hamilton was clear on this point. In his report to Congress Hamilton wrote:

It will only follow that it [the State] ought not to desire any participation in the direction of it, and, therefore, ought not to own the whole or a principal part of the stock; for, if the mass of the property should belong to the public, and if the direction of it should be in private hands, this would be to commit the interests of the State to persons not interested or not enough interested in their proper management."

Hamilton believed that the managers of the bank would not put profits ahead of the interest of the nation. Hamilton wrote that "public utility is more truly the object of public banks than private profit."¹² Even if this was true, Hamilton's proposal was still objectionable on constitutional grounds in that by transferring government functions to a bank, the government would be forfeiting its constitutionally mandated responsibilities to the detriment of the people who would have no representation under such an arrangement. If power is vested in the people, if the words "we, the people" had any meaning, then Hamilton's proposal for a national bank was nothing more

than an elaborate ploy to vest a profit-making institution with tremendous governmental powers, and at the same time allow private investors to make a profit at the expense of the American people. Such a scheme betrayed the lofty principles for which the War for Independence had supposedly been fought. Did Americans fight and die at places such as Lexington and Concord, Valley Forge, and Yorktown to found a government that would create a national bank which would perform government functions for profit? In 1779 George Washington wrote: "... Our cause is noble, it is the cause of Mankind!"¹³ After the war Washington also wrote:

Posterity as well as the present age will doubtless regard with admiration and gratitude the patience, perserverance, and valour, which achieved our revolution they will cherish the remembrance of virtues which had but few parallels in former times, and which will add new lustre to the most splendid page of history.¹⁴

These powerful and stirring words were tribute to the sacrifices and heroism of the American people during the War for Independence. Did the creation of a national bank mean that their sacrifices had been in vain?

Hamilton apparently had great faith in the ability of the private sector to play an important, and perhaps critical, role in promoting the economic development of the United States, and was willing to dispense with the democratic process to achieve this goal since, in the case of the bank, everyone who was not a stock holder, which meant practically every American citizen, would be excluded from having any say in the operation of the bank. Under Hamilton's program, popular sovereignty

would be sold to those who were able to pay. Hamilton wrote:

The directors being magistrates of the city, and the stockholders in general its most influential citizens, it is evident that the principle of private interest must be prevalent in the management of the bank.¹⁵

Hamilton further wrote:

As far as may concern the aid of the bank within the proper limits, a good government has nothing more to wish for than it will always possess, though the management be in the hands of private individuals.¹⁶

But such a proposal from Hamilton should not be surprising. Although Hamilton endorsed a document which begins with the words "we, the people," he was in fact an elitist who believed that the people were incapable of governing themselves through democratic means and therefore advocated a system of government in which the power of the people would be checked. Hamilton's views on this subject were clearly stated in The Federalist papers. In No. 9 of The Federalist Hamilton wrote:

A firm Union will be of the utmost moment to the peace and liberty of the States, as a barrier against domestic faction and insurrection.

That is, Hamilton believed that "the peace and liberty of the States" would be preserved through "a firm union" which would prevent "domestic faction and insurrection." What did Hamilton mean by "a Firm union?" and why did he believe that there would be "domestic faction and insurrection?" Such words suggest a fear of the people. And was not Hamilton's argument for judicial review in No. 78 of The Federalist motivated by a desire to limit the power of the people? Ralph Waldo Emerson wrote: "A man cannot bury his meanings so deep in his book but time

and like-minded men will find them."¹⁷

Nonetheless, despite the elitist nature of Hamilton's proposal, it could still be defended on philosophical grounds. John Adams would have enthusiastically endorsed Hamilton's views. Adams believed that a government was needed that would preserve and protect the right of private property and defend the rights of the rich. Adams wrote that "property is surely a right of mankind as really as liberty."¹⁸ Adams also believed that the people were totally incapable of governing themselves through democratic means. Adams wrote:

If by "the people" is meant the whole body of a great nation ... the proposition that they are the best keepers of their own liberties is not true. They are the worst conceivable; they are no keepers at all.¹⁹

Ralph Waldo Emerson would have approved of Hamilton's proposal too. Emerson had nothing good to say about government. In his essay on politics Emerson wrote: "... all public ends look vague and quixotic beside private ones."²⁰ Emerson would have also agreed with Hamilton's belief in private initiative.

Emerson wrote:

Hence the less government we have the better - the fewer laws, and the less confided power. The antidote to this abuse of formal government is the influence of private character, the growth of the Individual; the appearance of the principal to supersede the proxy; the appearance of the wise man; of whom the existing government is, it must be owned, but a shabby imitation.²¹

Even Margaret Fuller would have approved of Hamilton's proposal. Fuller wrote: "No institution can be good which does not tend to improve the individual."²² Could not the accumulation of wealth

from profit be seen as a form of individual improvement? The subscribers earning a profit from the bank would be improving themselves financially, and in a capitalist and materialist society, who could argue against wanting to make money? The Declaration of Independence contains the words "life, liberty, and the pursuit of happiness," and in the United States happiness was attained through the acquisition of money, which was what Hamilton's scheme would accomplish for its subscribers. Thus, people would subscribe to the bank out of a desire to make money and in the process would help to invigorate the economy of the country, thereby performing a public service and achieving happiness in the process. Therefore, by helping to generate profit, and thereby promoting the happiness of those who gained from this profit, Hamilton's proposal was consistent with what was stated in the Declaration of Independence. The problem was that it would permit only a small minority of the people to become happier. George Washington warned against schemes that would undermine the form of government established under the Constitution. In his Farewell Address Washington said:

... Towards the preservation of your Government and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles however specious the pretexts. One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown.²³

In other words, the people should avoid putting their faith in gimmicks that seem harmless but could insidiously alter the

government in a manner contrary to the Constitution.

The Bank of the United States had all the trappings of a private corporation. This is an important point which must be appreciated in order to understand Jackson's rationale for his veto. Review of the acts of 1791 and 1816, both of which incorporated a Bank of the United States, show that under both acts the bank was organized as a corporation with subscribers who purchased shares upon which a dividend was paid. In addition, the bank had a board of directors and only the subscribers had a say in the operation of the bank with the public being excluded from the decision-making process. Moreover, the bank was vested with the authority to loan money, charge interest, print currency, engage in business ventures and own property. There was nothing about the organization of this bank to suggest that it was a government agency. The federal government entered into a partnership with this bank, but did not have control over its operation. There was a provision for Congressional oversight, but not for Congressional control.²⁴ The bank was clearly a machine created to generate profit for its subscribers. Neither foreigners nor public official were barred from becoming subscribers. In fact, the only qualification necessary to become a subscriber was the ability to purchase shares. What made such an arrangement so objectionable was that it created a situation which could lead to a conflict of interest and be potentially dangerous to the welfare of the nation. John Quincy Adams wrote: "The duties of the president and directors of the bank is to protect and

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promote the interests of the stockholders."²⁵ What would happen if the bank favored a policy that would increase profits for the stockholders but hurt the nation in the process? During the Congressional debate in 1832 on the renewal of the bank's charter, Senator Thomas Hart Benton of Missouri bitterly denounced the bank on the ground that the bank had lent huge amounts of money to the West and as a result had rendered the entire region dependent on the bank and impoverished the people. Benton said that

The abduction of specie from the South and West, by the operation of these branches [of the bank], is now ascertained to exceed twenty-three millions of dollars! ... and in lieu of specie thus abducted from the South and West, these sections are deluged with a small paper currency, as illegal as it is unsound and vicious, and practically unconvertible into specie, because it is made payable five hundred or a thousand miles off.²⁶

Benton's hostility toward the bank was unmistakable and was expressed in the most colorful language. During the debate Benton said:

All the flourishing cities of the West are mortgaged to this moneyed power. They may be devoured by it at any moment. They are in the jaws of the monster! A lump of butter in the mouth of a dog! one gulp, one swallow, and all is gone!²⁷

Allegations of corruption were also lodged against the bank. In response to these allegations, Congress in 1832 appointed a committee to investigate six alleged cases of bank impropriety. These cases involved "usury," "the issuing of bank orders as circulation," "selling coin," "the sale of stock obtained from Government under special acts of Congress," "making

donations for roads and canals, and other objects," and "building houses to rent or sell, and erecting other structures in aid of that object."²⁸ There were also charges that the president of the bank had embezzled money from the institution and had engaged in nepotism.²⁹ One member of the committee believed that Congress did not have the authority to investigate these charges. In a separate report, the committee member, John Quincy Adams, who was defeated for re-election by Jackson in 1828, wrote:

But the subscriber does not believe that the president, or any director of the bank, is, or can be, accountable to a committee of either House of Congress, or to the House itself....³⁰

Adams down-played the allegations that had been made against the bank and believed that the bank had committed no wrongdoing and that its continued operation was essential for the survival of the nation. He also defended the honesty, integrity, and character of the bank's president, Nicholas Biddle, who, Adams pointed out, was nominated and appointed by the President of the United States as one of the five directors on the part of the government, thus underscoring the relationship between the federal government and the bank.³¹ In his report Adams wrote:

The subscriber has long entertained the opinion that the existence of a national bank is indissolubly connected with the continuance of our National Union. The fiscal operations of the Government in all its branches, he believes, cannot, without the aid of such an institution, be conducted, he will not say, well, but at all.³²

Adams's report reflected the huge philosophical gulf that separated the pro-bank and anti-bank forces. On the one side, there were those who fervently believed in the necessity of

the bank, and on the other side, there were those who, with equal fervor, believed that the bank was an evil institution whose existence was detrimental to the interests of the American people. In 1791 Thomas Jefferson, who at the time was the United States Secretary of State, wrote a letter to President George Washington regarding the bill to establish a national bank. In this letter, Jefferson argued against the establishment of a national bank and set forth the reasons for his opposition. Jefferson's fundamental argument was that the United States government did not have the constitutional authority to create a national bank. Jefferson wrote:

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.³³

That is, no where did the Constitution give the United States government the power to transfer constitutionally enumerated functions to a bank. Moreover, Jefferson argued that the bank would be assuming powers not specifically delegated to the government by the Constitution. For instance, Section 7, §.XI, of the Act of 1791 to incorporate the subscribers to the Bank of the United States stated:

No loan shall be made by said corporation, for use or on account of the government of the United States, to an amount exceeding one hundred thousand dollars, or of any particular state, to an amount exceeding fifty thousand dollars, or of any foreign prince or state, unless previously authorized by a law of the United States.³⁴

Jefferson would argue that this section of the law was unconstitutional. Where in the Constitution did it state that

Congress had the power to loan money or to delegate that function to a bank? According to Jefferson, Congress had the power to borrow money but not to loan money. The bank, on the other hand, would perform the reverse, i.e., loan money but not borrow. Jefferson wrote:

... this bill neither borrows money nor ensures the borrowing it. The proprietors of the bank will be just as free as any other money holders, to lend or not to lend their money to the public.³⁵

Jefferson also argued that the bill was unconstitutional on the ground that the bank was not necessary for the operation of the government, based on the phrase "to make all laws necessary and proper for carrying into execution the enumerated powers." Two of the enumerated powers of Congress were to "lay and collect taxes" and "to coin money." A bank, Jefferson argued, could be a convenient tool through which these functions could be performed, but was not necessary to perform these functions.³⁶ That is, the meanings of the words "convenient" and "necessary" were not the same.

Another clause in the bill that Jefferson would have found constitutionally objectionable was the provision which gave the bank the power to charge interest on its loans. Section 7, §.X, of the 1791 act stated:

Neither shall the said corporation take more than at the rate of six per centum per annum, for or upon its loans or discounts.³⁷

According to Jefferson, under the Constitution, taxes could not be levied for any purpose, but only for those purposes specifically enumerated by the Constitution - "to pay debts

and to provide for the general welfare of the Union."³⁸ Was not the collecting of interest a form of taxation, the purpose of which was to enrich the subscribers, and not to pay debts or to provide for the general welfare of the Union? Was the general welfare of the people improved through the payment of interest to a federally chartered institution whose operation was privately controlled?

At the core of the controversy over the constitutionality of the bank were two questions: 1. What were the limits of government's power? and 2. To what extent should government act on behalf of, but not necessarily in response to, the will of the people, the words "on behalf" implying discretionary powers? Or to put the question another way: Where did sovereignty lay - with the government or with the people? Alexander Hamilton believed that the government should have broad powers to act in the best interest of the nation and that the power of the people should be limited in order to insure the stability of the system. Hamilton said:

All communities divide themselves into the few and the many. The first are the rich and wellborn, the other the mass of the people.... The people are turbulent and changing; they seldom judge or determine right. Give therefore to the first class a distinct, permanent share in the government. They will check the unsteadiness of the second, and as they cannot receive any advantage by a change, they therefore will ever maintain good government.³⁹

In fact, Hamilton was highly disdainful of the ability of the people to govern themselves and believed that if the people were in power, anarchy and tyranny would be the result.

In No. 17 of The Federalist, Hamilton wrote:

Are not popular assemblies frequently subject to the impulses of rage, resentment, jealousy, avarice, and of other irregular and violent propensities? Is it not well known that their determinations are often governed by a few individuals in whom they place confidence, and are, of course, liable to be tainted by the passions and views of those individuals?

Hamilton also believed in the need for a strong central government that would insure national unity and be a force that would dominate the states. Hamilton wrote:

A good administration will conciliate the confidence and affection of the people, and perhaps enable the government to acquire more consistency than the proposed constitution seems to promise for so great a country. It may then triumph altogether over the State governments, and reduce them to an entire subordination...⁴⁰

In fact, Hamilton admired the British form of government. Hamilton said:

I believe the British government forms the best model the world ever produced.... This government has for its object public strength and individual security.⁴¹

While Hamilton favored a strong central government that would insure stability, Jefferson believed that such a policy would undermine the republican form of government and lead to despotism. In a letter to George Washington, Jefferson wrote:

That I have utterly, in my private conversations, disapproved of the system of the Secretary of the Treasury [Hamilton], I acknowledge and avow; and this was not merely a speculative difference. His system flowed from principles adverse to liberty, and was calculated to undermine and demolish the Republic....⁴²

Jefferson was also critical of Hamilton's assertion that

the government had "a right to employ all the means requisite and fairly applicable to the attainment of the ends of such power...."⁴³ Jefferson wrote that "... no government has a legitimate right to do what is not for the welfare of the governed" and that Hamilton's plans included merely "a sham limitation of the universality of this power to cases where money is to be employed."⁴⁴

Jefferson further believed that the concentration of power in the legislative branch was conducive to despotism. Jefferson wrote:

All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands is precisely the definition of despotic government.... An elective despotism was not the government we fought for....⁴⁵

To prevent the legislature, and indeed the government, from becoming despotic, Jefferson advocated a form of government based on separation of powers. Jefferson wrote:

[Government] should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, so that no one could transcend their legal limits, without being effectually checked and restrained by the others.⁴⁶

Jefferson's opinion of the people differed sharply from Hamilton's. Jefferson believed that the people were the ultimate guarantors against despotism. Jefferson wrote:

... I am not among those who fear the people. They, and not the rich, are our dependence for continued freedom.⁴⁷

In fact, Jefferson was scornful of those who were afraid of

the people and believed that only through "the preservation of State rights" could a monarchy be prevented. Jefferson wrote:

The sickly, weakly, timid man, fears the people and is a Tory by nature.... The Tories are for strengthening the Executive and General Government; the Whigs cherish the representative branch, and the rights reserved by the States, as the bulwark against consolidation, which must immediately generate monarchy.⁴⁸

Thus, to Jefferson, a strong, central government would undermine the freedom and liberty of the people and therefore a system of government based upon the separation of powers and the preservation of State rights, was needed to prevent the government from becoming tyrannical. Perhaps Jefferson most succinctly summarized his political philosophy when he wrote:

I am not a friend to a very energetic government. It is always oppressive.⁴⁹

The dispute between Hamilton and Jefferson escalated into a bitter conflict, marked by character assassination and the impugning of each other's motives. Hamilton denied that he wished to sabotage the power of the State governments or undermine the republican system of government and accused Jefferson of attempting to foment disunity. Hamilton wrote:

"An American," then, has justly, a from sufficient data, inferred that Mr. Jefferson's politics, whatever may be the motive of them, tend to national disunion, insignificance, disorder, and discredit.⁵⁰

Hamilton also denied that Jefferson had been called "the Cataline of the day - the ambitious incendiary," but accused Jefferson of engaging in personal attacks over questions of policy.

Jefferson responded by denying Hamilton's charges and

attacking Hamilton's character. Jefferson wrote:

... I will not suffer my retirement to be clouded by the slanders of a man whose history, from the moment that history can stoop to notice him, is a tissue of machinations against the liberty of the country which has not only received and given him bread, but heaped honors on his head.... Though little known to the people of America, I believe, that as far as I am known, it is not as an enemy of the Republic, nor an intrigor against it, nor a waster of its revenue, nor prostitute of it to the purposes of corruption, as the "American" represents me....⁵¹

The vituperative nature of the Hamilton-Jefferson dispute set the tone for the later debate which ensued in the wake of Jackson's veto. This dispute also reflected the philosophical differences which were to mark the later debate between the pro-bank and anti-bank forces.

Opposition to the Bank of the United States was a recurring theme of President Jackson's first administration. In his first annual message to Congress on December 8, 1829, Jackson attacked the Bank of the United States on the grounds that it was anti-democratic, unconstitutional and not necessary. Jackson wrote:

Both the constitutionality and the expediency of the law creating this bank are well questioned by a large portion of our fellow-citizens.... [I]f such an institution is deemed essential to the fiscal operations of the Government, I submit to the wisdom of the Legislature whether a national one, founded upon the credit of the Government and its revenues, might not be devised which would avoid all constitutional difficulties and at the same time secure all the advantages to the Government and country that were expected to result from the present bank.⁵²

In his second annual message to Congress on December 9, 1830, Jackson proposed that the bank become a part of the Treasury Department and be divested of its power to engage in profit-making activities such as making loans or purchasing property. Through such changes, the bank would no longer be constitutionally objectionable and would exist for the benefit of all the people. Jackson wrote:

Not being a corporate body, having no stockholders, debtors, or property and but few officers, it would not be obnoxious to the constitutional objections which are urged against the present bank; and having no means to operate on the hopes, fears, or interests of the large masses of the community, it would be shorn of the influence which makes the bank formidable.⁵³

Terminating the bank's charter would also benefit the States since the States would then be able to obtain paper currency from their own banks while the Bank of the United States would assume an entirely new role. Under Jackson's plan,

the Bank of the United States, though issuing no paper, would check the issues of the State banks by taking their notes in deposit and for exchange only so long as they continue to be redeemed with specie.⁵⁴

In other words, instead of being a competitor with the State banks, the Bank of the United States would become a sort of regulatory agency that would monitor the State banks to insure that they were not issuing worthless currency.

In 1832 the rechartering of the Bank of the United States was debated in Congress. The debate was marked by sharp philosophical differences that recalled the earlier Hamilton-Jefferson debate over the necessity and

constitutionality of the bank. Daniel Webster, Senator from Massachusetts, favored the continuation of the bank on the grounds that it performed important public functions and helped to maintain a stable currency while Thomas Hart Benton, Senator from Missouri, called for the abolition of the bank on the grounds that the bank was enriching itself at the expense of the American people who were not represented in the operation of the bank, and was inherently monarchical and in need of republicanism through the "superceding [of] the institution by smaller ones."⁵⁵

The subject of State rights became an issue during the debate. Webster conceded that under the Constitution there was no expressed authority to create a bank, but nonetheless, if created by Congress, the States did not have a right to tax it.⁵⁶ Moreover, according to Webster, under the Constitution, Congress had the power to create the bank because Congress deemed the creation of the bank to be "a necessary means of carrying on the Government, and of executing the powers conferred on Congress by the constitution."⁵⁷ Webster also alluded that the States could use the power of taxation to "put down" the bank.⁵⁸ Benton disagreed with Webster. According to Benton, the States had the concurrent power of taxation, and therefore had the right to tax the bank. Benton stated:

The right of the States to tax banking institutions of every kind, State or federal, is just as clear, and rests upon the same foundation, as her right to tax land and houses, merchants and jewellers, ferries and taverns.⁵⁹

Benton further asserted that the power of taxation was not the

exclusive right of the federal government, that the States had the same right of taxation too as a concurrent power under the Constitution.⁶⁰

Senator Gabriel Moore of Alabama agreed with Benton's state rights argument. Moore said:

... I must be permitted to say that I view the power of taxation as one of the highest attributes of State sovereignty, and that the State possesses this power in the most unlimited extent over all objects or subjects of property within its jurisdiction.⁶¹

However, Senator Josiah S. Johnston of Louisiana agreed with Webster. During the debate Johnston posed two questions: 1. Did the Congress have the constitutional power to grant the charter? and 2. Was the bank necessary? Regarding the first question, it was Johnston's belief that the Constitution would have to be amended if "the assent or sanction of one or all of the States" would be necessary to recharter the bank; regarding the second question, it was Johnston's belief that the bank was necessary "for great national purposes."⁶² Johnston said that the purpose of the bank was "not for the benefit of the stockholders" but rather was

to furnish a sound currency, a general medium of circulation through all the States - to equalize exchange, and other objects of public nature.⁶³

Senator Hugh L. White of Tennessee, Jackson's home state, criticized the bank as not being representative of the will of the people. White said that "he preferred State banks in which the holders of stock were citizens" and further stated that

Not only without the consent, but contrary to the consent of the States, the principal directors have the power to establish branches where they please. Who elects the officers? The principal bank outs in and changes the officers, at its pleasure.⁶⁴

The philosophical differences which divided the pro-bank and anti-bank groups were clear. The pro-bank group believed that Congress had broad powers to enact measures that were necessary for the good of the nation, and could enact laws which superseded the rights of the states while those who wanted the bank abolished believed that the scope of Congressional power was limited to those functions specifically enumerated by the Constitution and that Congress could not enact laws which infringed upon the rights of the states. Hence the same arguments which had divided Hamilton and Jefferson again emerged in the debate over the rechartering of the national bank.

This dispute was not confined only to Congress. Eminent legal authorities were also sharply divided on this issue. During the debate in Congress, the case McCulloch v. The State of Maryland was cited. In this case, the United States Supreme Court in 1819 upheld the constitutionality of the Bank of the United States. The Chief Justice, John Marshall, delivered the opinion of the Court. The Court found that Congress had the power to incorporate a Bank and that

The government of the Union is a government of the People; it emanates from them; its powers are granted by them; and are to be exercised directly on them, and for their benefit.⁶⁵

Moreover, the States did not have the right to tax the bank on the ground that such taxation infringed on "the constitutional

means employed by the government of the Union to execute its constitutional powers."⁶⁶ and that

The States [had] no power ... to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress, to carry into effect the powers vested in the national government.⁶⁷

The Court's decision was based on two principles: 1. that the Constitution conferred upon the national government the power to enact laws that were deemed to be necessary and proper for the carrying out of its constitutionally mandated powers, and 2. the sovereignty of the States was subordinate to that of the national government. Both principles reflected Hamiltonian views of government. Regarding the first principle, the word "necessary," to Marshall, meant that the national government had the right to employ

... any means calculated to produce the end, and not as being confined to those single means without which the end would be entirely unattainable.⁶⁸

And as for what was meant by the word "proper," Marshall wrote:

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.⁶⁹

Thus, according to Marshall, the national government had the right to use its discretion in deciding how best to exercise its constitutionally mandated powers, and that this discretion was based on the premise that the national government was acting on behalf of the people for whom the government was "ordained and established."

Regarding the second principle, Marshall wrote:

The great principle is, that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective States, and cannot be controlled by them.⁷⁰

Thus, to Marshall, the rights of the states were subordinate to the authority of the national government.

Marshall buttressed his opinion by citing The Federalist papers. Marshall wrote:

In the course of the argument, the Federalist has been quoted; and the opinion expressed by the authors of that work have been justly supposed to be entitled to great respect in expounding the constitution.⁷¹

Marshall's belief that the national government had broad powers which transcended the sovereignty of the States was consistent with the Hamiltonian philosophy of government.

However, President Jackson's Attorney General, Roger B. Taney disagreed with Marshall's opinion. Taney, who later became the Chief Justice of the United States Supreme Court, wrote, in a 54-page handwritten letter to Jackson, that the Constitution did not give to Congress the power to incorporate a national bank and advised Jackson to veto the bill to recharter the Bank of the United States. Whereas to Marshall, the national government had broad discretionary powers, to Taney, the power of the national government was strictly limited by the Constitution. Taney rejected Marshall's contention that the bank was constitutional because Congress deemed it necessary and proper. Taney argued that the Constitution did not specifically give Congress the power to establish a bank and

therefore a bank was an inappropriate means for Congress to exercise its constitutionally enumerated powers. Taney wrote:

Congress...can use those means only that the constitution has in expressed terms authorized - that is - the means necessary and proper to attain the end...and...that the means used must tend immediately & directly and not remotely & by inference to accomplish the object and must moreover be necessary and proper for that purpose.⁷²

Moreover, Taney argued that the creation of a bank was a power reserved to the States or to the people since the creation of a bank was a power not specifically given to Congress by the Constitution.⁷³

Another point Taney argued was that Congress did not have the right to delegate its constitutionally enumerated powers to instruments that were not subject to the control of the legislature. Taney wrote:

Congress cannot delegate its powers of Legislation nor suspend them nor extinguish them.... The offices and instruments of the Government created as the means of executing its powers, must always be subject to the control of the Legislative body....⁷⁴

Taney agreed that Congress had the right to employ corporations or individuals as agents of the government but

it [could not] by selecting a corporation as its agent disarm itself of the Legislative powers given to it by the constitution for the public good....⁷⁵

Taney's belief in limited government and his advocacy of State rights were consistent with the Jeffersonian philosophy of government.

Despite President Jackson's opposition to the renewal of the bank's charter, the bill to recharter the bank passed in

the House by a vote of 107 to 85, and in the Senate by a vote of 28 to 20. and was subsequently vetoed by Jackson. Jackson offered several reasons for vetoing the bill. Jackson felt that the bank was a tool of the rich, was incompatible with the Constitution and was unresponsive to the will of the people. He asserted that a small number of stockholders, many of whom were foreigners, were profiting from the bank, while the vast majority of the American people were excluded from the opportunity to obtain such a "gratuity."⁷⁶ Moreover, control of the bank could fall into the hands of just a few stockholders as foreign stockholders, who were prohibited from being elected to the board of directors, acquired more stock. Jackson found such a concentration of power objectionable. Jackson was also troubled by the possibility that foreigners could become the principal stockholders in the bank since this could threaten the interests of the United States, especially in time of war.

Perhaps the most innovative argument offered by Jackson involved the principle of the separation of powers. Jackson argued that not only did Congress not have the right under the Constitution

to barter away or divest themselves of any of the powers vested in them by the Constitution to be exercised for the public good[,]⁷⁷

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but that the question of whether a law was constitutional was not the exclusive prerogative of the Supreme Court and rejected the Court's opinion "that the law incorporating the bank [was] a constitutional exercise of power by Congress." To Jackson, the Supreme Court's McCulloch decision was not the final say

on the question of the bank, because if it was, then the Court had, in effect, imposed its will on the Congress and the Executive, in violation of the Constitution. It was Jackson's view that

It is as much the duty of the House of Representatives, of the Senate, and of the President to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval as it is of the supreme judges when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than the opinion of the Congress has over the judges, and on that point the President is independent of both.⁷⁸

Jackson also argued that the States had the right to tax the bank because within the States the bank operations were for the "private emolument" of the bank and therefore were subject to taxation, a power granted to the states by the Constitution.⁷⁹

Jackson's views on judicial review mirrored Jefferson's. Although having initially professed the need for a separate judiciary, Jefferson came to deplore what he considered to be the abuse of judicial authority by the Supreme Court through its power of judicial review, and argued that the Court was unresponsive to the will of the people since the justices were not elected. Jefferson wrote:

The nation declared its will [in 1800] by dismissing functionaries of one principle, and electing those of another, in the two branches, executive and legislature, submitted to their election. Over the judiciary department, the Constitution had deprived them of their control.⁸⁰

Jefferson also argued that the Supreme Court's power of

judicial review undermined the entire federal system of government. Jefferson wrote that of the three branches of government, the Supreme Court alone was given

the right to prescribe rules for the government of the others, and to that one too, which is unelected by, and independent of the nation.⁸¹

In conclusion, Jackson's veto of the bill to recharter the bank constituted an application of Jeffersonian principles, but with one important exception. Jackson was in agreement with Jefferson on the questions of state rights and the power of the Supreme Court. However, where Jackson differed from Jefferson was in Jackson's willingness to upset the system of checks and balances by arbitrarily vesting the Executive branch with a power that was supposed to be reserved to the Judiciary, which prompted Daniel Webster to compare Jackson to James the Second of England.⁸² This attempt by Jackson to usurp power was contrary to Jefferson's belief in the system of checks and balances and therefore marked a significant departure from Jefferson's political philosophy. / yes

Nonetheless, Jackson's veto stands as an unequivocal repudiation of Hamiltonian elitism and a powerful affirmation of the principle that the government was not created for the benefit of the rich or privileged, but was created to the serve all of the people, as reflected in the words "We, the people." / see note

Footnotes

1. Ross M. Lence, editor, Union and Liberty - The Political Philosophy of John C. Calhoun (Liberty Fund, Indianapolis), 1992, page 100.
2. John Frederick Schroeder, editor, Maxims of Washington (The Mount Vernon Ladies' Association, Mount Vernon, Virginia), 1974, page 49.
3. Union and Liberty - The Political Philosophy of John C. Calhoun, page 246.
4. Charles M. Wiltse, editor, The Papers of Daniel Webster - Speeches and Formal Writings, Volume 1 (University Press of New England, Hanover, New Hampshire), 1986, pages 518-519.
5. United States Congress, "Report on a National Bank," The Debates and Proceedings in the Congress of the United States (Washington, Gales and Seaton), 1834, 1st Congress, Appendix, December 14, 1790, pages 2032, 2034.
6. Ibid., page 2046.
7. Ibid., page 2051.
8. Ibid., page 2043.
9. Ibid., page 2051.
10. Ibid., page 2052.
11. Ibid., page 2052.
12. Ibid., page 2046.
13. Maxims of Washington, page 20.
14. Ibid., page 12.
15. "Report on a National Bank," page 2052.
16. Ibid., page 2052.
17. Brooks Atkinson, editor, The Complete Essays and Other Writings of Ralph Waldo Emerson (The Modern Library, New York), 1940, page 198.
18. George A. Peek, Jr., editor, The Political Writings of John Adams (The Liberal Arts Press, New York), 1954, page 148.
19. Ibid., page 146.
20. The Complete Essays and Other Writings of Ralph Waldo Emerson, 1940, page 431.
21. Ibid., page 431.
22. Perry Miller, editor., Margaret Fuller: American Romantic (Gloucester, Massachusetts, Peter Smith), 1969, page 64.
23. Maxims of Washington, page 35.
24. Richard Peters, editor, The Public Statutes at Large of the United States of America (Boston: Charles C. Little and James Brown), 1850, Volume I, pages 191-197; Volume III (Boston: Little, Brown and Company), 1856, pages 266-277.
25. United States Congress, "Report of Mr. Adams," Register of Debates (Washington, Gales & Seaton), 1825-1837, 22nd Congress, 1st Session, Appendix, page 59.
26. United States Congress, Register of Debates, 22nd Congress, 1st Session, page 1003.
27. Ibid., page 1003.
28. Ibid., Appendix, page 33.
29. "Report of Mr. Adams," pages 61, 64.
30. Ibid., page 58.
31. Ibid., page 70.

32. Ibid., page 72.
33. Merrill D. Peterson, editor, The Portable Thomas Jefferson (The Viking Press, New York), 1975, page 262.
34. Public Statutes, Volume I, pages 194-195.
35. The Portable Thomas Jefferson, page 262.
36. Ibid., page 264.
37. Public Statutes, Volume I, page 194.
38. The Portable Thomas Jefferson, page 263.
39. Justin Kaplan, editor, Bartlett's Familiar Quotations, 16th edition (Boston: Little, Brown), 1992, page 357.
40. Frederick C. Prescott, editor, Alexander Hamilton and Thomas Jefferson - Representative Selections (American Book Company, New York), 1934, page 42.
41. Bartlett's Familiar Quotations, pages 356-357.
42. The Portable Thomas Jefferson, page 456.
43. Alexander Hamilton and Thomas Jefferson - Representative Selections, page 104.
44. The Portable Thomas Jefferson, page 457.
45. Adrienned Koch and William Peden, editors, The Life and Selected Writings of Thomas Jefferson (The Modern Library, New York), 1944, page 237.
46. Ibid., page 237.
47. Ibid., page 673.
48. Ibid., page 712.
49. Ibid., page 440.
50. Alexander Hamilton and Thomas Jefferson, page 136.
51. The Life and Selected Writings of Thomas Jefferson, page 521.
52. James D. Richardson, compiler, Compilation of the Messages and Papers of the Presidents - 1782-1897, Volume II (Washington, Government Printing Office), 1896, page 462.
53. Ibid., page 529.
54. Ibid., page 529
55. Register of Debates, 22nd Congress, 1st Session, page 973.
56. Ibid., page 982.
57. Ibid., page 982.
58. Ibid., page 982.
59. Ibid., page 1002.
60. Ibid., page 998.
61. Ibid., pages 986-987.
62. Ibid., page 980.
63. Ibid., page 981.
64. Ibid., page 1054.
65. United States Supreme Court, McCulloch v. The State of Maryland et al., 4 Wheaton 316.
66. Ibid., 316.
67. Ibid., 317.
68. Ibid., 413-414.
69. Ibid., 421.
70. Ibid., 426.
71. Ibid., 433.
72. Roger B. Taney, Letter to Andrew Jackson, June 27, 1832, Andrew Jackson Papers, Volume 81 (Washington, The Library of Congress), 1913, page 3.

- 73. Ibid., page 5.
- 75. Ibid., page 8.
- 75. Ibid., page 16.
- 76. Richardson, Volume 2, page 577.
- 77. Ibid., page 584.
- 78. Ibid., page 582.
- 79. Ibid., page 588.
- 80. The Portable Thomas Jefferson, page 562.
- 81. Ibid., page 562.
- 82. The Papers of Daniel Webster, Volume 1, page 517.

Bibliography

Andrew Jackson Papers, Volume 81 (Washington, The Library of Congress), 1913.

Atkinson, Brooks, editor, The Complete Essays and Other Writings of Ralph Waldo Emerson (The Modern Library, New York), 1940.

Kaplan, Justin, editor, Bartlett's Familiar Quotations, 16th edition (Boston: Little, Brown), 1992.

Koch, Adrienne and Peden, William, editors, The Life and Selected Writings of Thomas Jefferson (The Modern Library, New York), 1944.

Lence, Ross M., editor, Union and Liberty - The Political Philosophy of John C. Calhoun (Liberty Fund, Indianapolis), 1992.

Miller, Perry, editor, Margaret Fuller: American Romantic (Gloucester, Massachusetts, Peter Smith), 1969.

Peek, George A., Jr., editor, The Political Writings of John Adams (The Liberal Arts Press, New York), 1954.

Peters, Richard, editor, The Public Statutes at Large of the United States of America, Volumes I and III (Boston: Little, Brown and Company), 1850 and 1856.

Prescott, Frederick C., editor, Alexander Hamilton and Thomas Jefferson - Representative Selections (American Book Company, New York), 1934.

Richardson, James D., compiler, Compilation of the Messages and Papers of the Presidents - 1782-1897, Volume 2 (Washington, Government Printing Office), 1896.

Schroeder, John Frederick, editor, Maxims of Washington (The Mount Vernon Ladies' Association, Mount Vernon, Virginia), 1974.

United States Congress, The Debates and Proceedings in the Congress of the United States (Washington, Gales and Seaton), 1834, First Congress.

United States Congress, Register of Debates (Washington, Gales and Seaton), 1825-1837, Twenty-second Congress.

United States Supreme Court, McCulloch v. The State of Maryland et al., 4 Wheaton 316.

Wiltse, Charles M., editor, The Papers of Daniel Webster - Speeches and Formal Writings, Volume 1 (University Press of New England, Hanover, New Hampshire), 1986.