FI, Task 2, Day 8-9

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Structured Academic Controversy (SAC)

**THE ISSUE: Is It Constitutional for the US to Have a National Bank?**

Procedure

Discourse

1. You and a partner will be assigned to take a pro or con position on this controversial issue.
2. You will study the issue and develop an argument for the position to which you were assigned.
3. You will make a presentation to the opposing side, laying out your position and the reasons for it. And, you will listen carefully to the opposing side do the same.
4. The two sides will come together and discuss the issue, and see if it is possible to arrive at a consensus. At this point, feel free to change your mind: what is *your* position? (there is no need to stay with your assigned position from steps 1-3).

Writing

1. Follow-up writing: You will draft a persuasive essay, arguing for the position you truly support.

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| **Purpose:**  Read to prepare the argument you will present to your opposing pair. Use information from these articles, the Constitution, and the Bill of Rights to make your case.  **Before reading**:  Think about what you already know about the author of your letter and his position on Federalism. | **Close Reading**  - Chunk the text  - Make sense  What does this section say? What does it mean?  -Ask your questions  -Make connections |

**THE ISSUE: Is It Constitutional for the US to Have a National Bank?**

**Background**

After months of battling and compromises, the US Constitution was finally adopted on September 17, 1787. Still, America was embroiled in heated arguments over exactly how the government would work and what powers it could really exercise. Political parties soon developed as groups argued about the direction of the country. Alexander Hamilton became a leading voice of the Federalists who believed that the federal government needed to be strong. On the other side, Thomas Jefferson, a Republican, argued that too much power in the hands of the federal government would lead to tyranny.

In 1791, Hamilton, President Washington’s Treasury Secretary, proposed that the United States charter a national bank in order to take care of Revolutionary War debt, create a single national currency, and stimulate the economy. Jefferson, who was Washington’s Secretary of State, argued that the creation of a national bank was not a power granted under the enumerated powers, nor was it necessary and proper.

When Hamilton’s proposal was before Congress, Jefferson wrote to President Washington arguing that the national bank was unconstitutional. Washington asked Hamilton to respond, providing justification for why the bank was constitutional. Excerpts of their letters are attached.

**Jefferson (Secretary of State) Argues AGAINST the Constitutionality of a National Bank- Feb. 23, 1791**

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| I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." To take a single step beyond the boundaries thus specially drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition.\*1  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.  I. They are not among the powers specially enumerated, for these are  a. A power to lay taxes for the purpose of paying debts of the United States; but no debt is paid by this bill, nor any tax laid. b. "to borrow money." But this bill neither borrows money nor ensures the borrowing it. . c. To "regulate commerce with foreign nations, and among the States with the Indian tribes." To erect a bank, and to regulate commerce, are very different acts. . . .\*2  II. Nor are they within either of the general phrases, which are the two following:  a. To lay taxes to provide for the general welfare of the United States, that is to say, "to lay taxes for *the purpose*of providing for the general welfare." They are not to lay taxes *ad libitum for any purpose they please;* but only *to pay the debts or provide for the welfare of the Union.* In like manner, they are not to *do anything they please*to provide for the general welfare, but  only to *lay taxes* for that purpose. To give Congress a distinct and independent power to do any act they please for the good of the Union . . . would be also a power to do whatever evil they please.\*3  b. The second general phrase is, "to make all laws *necessary* and proper for carrying into execution the enumerated powers." But they can all be carried into execution without a bank. A bank therefore is not *necessary,* and consequently not authorized by this phrase.\*4  It has been urged that a bank will give great facility or convenience in the collection of taxes. Suppose this were true; yet the Constitution allows only the means which are "*necessary*," not those which are merely *convenient*" for effecting the enumerated powers. If such a latitude of Construction be allowed to this phrase as to give any non-enumerated power, it will go to every one, for there is not one which ingenuity may not torture into a *convenience* in some in some instance *or other, to someone*of so long a list of enumerated powers . . .\* | \*1  \*2  \*3  \*4  \*5 |

bill – throughout this letter Jefferson is referring to the bill before Congress to establish a National Bank

ad libitum – according to its own wishes

latitude – freedom of choice

**Hamilton (Sec. of the Treasury) Argues FOR the Constitutionality of the National Bank – Feb. 15, 1791**

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| The Secretary of the Treasury having perused with attention the papers containing the opinions of the Secretary of State [Jefferson] 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.  . . . the Secretary of State maintains, that no means are to be considered *necessary* except those 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.\*1  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*. . . . 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 . . \*2  This restrictive interpretation of the word *necessary* . . . 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. . . .\*3  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 defense-and that [is provided for] in the clause of the Constitution which immediately respects the property of the United States.\*4  … the Secretary of the Treasury, with all deference, conceives, that the incorporation of a bank is a constitutional measure; and that the objections taken to the bill, in this respect, are ill-founded. . \* | \*1  \*2  \*3  \*4  \*5 |

perused – reviewed construction - interpretation

nugatory - Nonexistent or unusable

**THE ISSUE: Should the U.S. have a National Bank?**

**YES NO**

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| **Think about:**  -Why does Hamilton state that the meaning of “necessary” should be “exploded?  -What does Hamilton propose as the ultimate criteria for judging the constitutionality of the national bank? | **Think about:**  -Why does Jefferson include reference to enumerated powers?  -What is Jefferson’s interpretation of “necessary?” |
| Arguments: | Arguments: |