Roger Brooke Taney to Andrew Jackson, from Correspondence of Andrew Jackson. Edited by John Spencer Bassett.

THE ATTORNEY GENERAL (ROGER B. TANEY) TO JACKSON.1

1 Taney was Jackson's chief reliance for arguments justifying the removal of the deposits, and his opinions on that subject are important. Replies are preserved also from Barry, Postmaster General, and Woodbury, Secretary of the Navy.

Attorney General's Office, [March, 1833.]

Sir, In obedience to your directions I have the honor to state my opinion upon the different points to which you have called my attention in relation to the Deposite of the public money in the Bank of the United States.2

2 In Jackson's annual message, Dec. 4, 1832, he had suggested an investigation of the bank. The House of Representatives accordingly referred the subject to the committee of ways and means, which reported on Mar. 1, 1833. The majority amply supported the bank, but James K. Polk and two other members of the committee reported unfavorably. The House adopted the majority report by a vote of 109 to 46 (*Congressional Debates*, vol. IX., pt. II., pp. 1898–1902, 1922–1936) . The report of the minority does not appear in the *Congressional Debates*, but a supplemental report of the minority appears in *Niles' Register*, XLIV. 45. Both reports may however be found in 22 Cong., 2 sess., *House Reports*, no. 121, the majority being of five pages, the minority of 170.

1. The facts before you at the commencement of the late session of Congress were in my judgment sufficient to create strong doubts whether the Bank continued to be a safe depositary for the public money, and nothing has since happened to remove that

impression. On the contrary it has been strengthened and confirmed by the evidence furnished by the report of the committee of the House of Representatives.

The majority of the committee have indeed drawn a different conclusion from this testimony and their opinion has been sanctioned by the House. But there is nothing in these proceedings sufficiently decisive to govern the conduct of the Executive Branch of the Government in relation to the Deposites. The question whether they ought to be continued or withdrawn appears to me to be still open and yet to be determined. And the Executive having all the facts before it which were elicited by the late and former investigations must now regulate its action on this subject by the dictates of its own judgment.

It is evident upon the face of the report made by the majority of the committee, that their attention was mainly if not exclusively occupied by the enquiry whether the affairs of the Bank were in such a condition as would enable them to meet their pecuniary engagements. The facts stated by them in their report, the evidence they refer to, the arguments they offer and the opinions they express are all directed to this point. And the resolution proposed by them and adopted by the House of Representatives looks entirely to the same object.

It can be demonstrated I think that the inferences drawn from the testimony by the majority of the committee are erroneous and that the report of the minority exhibits a true and faithful picture of the present situation of the Bank. And if more time had been allowed in the House for the examination and comparison of the evidence the resolution proposed by the majority of the committee would probably have been otherwise disposed of. Yet a decision made under any circumstances by the House of Representatives is entitled to respect and cannot be altogether disregarded by the Executive. The investigation in this case was invited by the President in his message. And when the examination has been made accordingly, and an opinion expressed by the House I admit that their judgment upon the point to which their attention was directed ought to have a strong influence on the

conduct of the Executive when acting on the same evidence unless it were manifest that some imposition or deceit has been practised upon them. If therefore the deposites are to be continued or withdrawn merely on the ground that the Bank is solvent or insolvent in its circumstances and without reference to any other consideration, the vote of the House of Representatives would perhaps of itself be sufficient to induce the Executive to delay its action for the present and await the results of a future enquiry.

But is the Executive required to act in this business without reference to any other consideration? Is the ability of the Bank to meet its engagements the only point of Enquiry? And are the public deposites to be continued or withdrawn solely upon the ground that they are safe or unsafe in that particular? I apprehend the question is by no means such a narrow one. Various other considerations must be regarded and must influence the decision and some of them will be found not less important to the public than that of the solvency or insolvency of the institution.

The corporation was created for the purpose of obtaining a safe and useful agent for the Treasury Department through which the government might more conveniently collect and distribute the revenue according to the exigencies of the public service. The existence of the Bank is justified and defended solely upon the ground that the agency of such an institution is necessary to enable the government to carry on its fiscal operations. It is obvious therefore that to keep the money safely and to secure the public from ultimate loss is but one portion of its duty. It is equally bound to apply the funds entrusted to its care according to the directions of the government and in all other respects to fulfill the obligations contemplated by its charter. The money of the U. States is not directed to be deposited in the Bank for the benefit of the stock holders, but for the safety and convenience of the Government. And when the Executive Department is called upon to decide whether the deposites shall be continued or not the solvency of the institution is but one of the circumstances by which it is required to regulate its judgment. The Bank may be perfectly able to meet its engagements and yet be a very unsuitable agent to be entrusted

with the public money. It must not only have the capacity to do its duty. Its fidelity is equally essential.

Suppose for example that important money transactions had been concealed from the public directors, for the purpose of hiding from the government the real condition of the Bank? or

Suppose it to have attempted secretly to thwart the measures of the Government in a matter of public concern where the interests of the corporation came into collision with those of the U. States? In these and in various other cases that might readily be suggested, it would be manifest that the public deposites might be rightfully and lawfully withdrawn and that the government could not be bound to place the money of the U. States in the hands of an agent which had justly forfeited its confidence and shewn itself unworthy of further trust. The 16th section of the charter gives the power over the deposites to the Secretary of the Treasury in general terms and the language used proves that it was the intention of the law to vest the Executive Department with unlimited discretion in this respect, to be regulated only by the public interest and the conduct of the institution, and subject only to the revision and control of the Legislature upon the report to be afterwards made to them.

I come therefore to the conclusion that the capacity of the Bank to comply with its duties is but one of the considerations which should influence your decision in relation to the deposites. And if the Corporation has shown itself in any respect unfaithful to the duties of its agency and no longer worthy of public confidence, the deposites may be withdrawn by the Secretary of the Treasury and other agents employed upon whom more reliance can be placed. And the proceedings in Congress before referred to, do not by any means render it obligatory to suspend the action of the Executive until further investigations shall be made or Congress shall again act on the subject.

2. To the second question I answer that in my opinion the conduct of the Bank has been such that the Government can no longer rely on it as the agent for carrying into effect its fiscal arrangements and that the public interest requires that other agents should be forthwith provided, and the public money committed to their care.

I do not deem it necessary to enumerate here all of the charges against the Bank which appear to me to be sufficiently sustained by the testimony now before the public. Nor do I propose to enter on a train of argument to establish the facts which I am about to state and on which I rely to justify the withdrawal of the deposites. The evidence collected by the different examinations into the affairs of the Bank is already before you and you will judge whether it warrants the conclusions I draw from it. The corporation appears to me to have been guilty of gross and palpable violations of duty to the public in matters sufficiently important to justify the Executive in withdrawing from them its confidence and placing the money of the U. States in the hands of agents more worthy of the trust.

I. When the Government proposed to pay off about six millions of the national debt on the first of July 1832, it was found that although the Bank had then nine millions of the public money in its hands, it had traded so extensively and profusely upon it for its own benefit and to answer its own objects that the government was compelled to postpone the payment for three months longer than it originally contemplated.

I am aware that in this instance the Bank professed to be ready to meet the call and asked for the delay on the ground of the embarrassment and ruin it might produce to the mercantile community. But I do not perceive that the reason suggested by the Bank alters the case, or lessens the force of the charge against it. Why would the payment of this sum of money by the Bank in discharge of the national debt bring distress on the mercantile community? It was because the Bank had been trading for its own benefit on the public money to the full amount of the deposites as if they had been a part of its own capital, and it would have been obliged to “abridge the facilities” it had been in the habit of affording in order to meet the call of the public, or in other words to curtail its business. Is it within

the legitimate scope of its agency thus to use the public money for its own benefit? I admit that the Bank may to a certain extent rely on the government deposites as well as others to meet its engagements in the ordinary transactions of business, and may trade more largely for its own advantage on the faith of these deposites. But this right has its limits, and must be regulated by the principles of justice and a due regard to the interest of the public. The money they receive from the government is the money of the people. It is in the hands of the corporation as one of the agents of the people to be used for the public benefit. It is held by the corporation as a trustee for the real owners. And its duty requires it to be always ready to pay when payment shall be required at its hands. It is a gross abuse of its agency and trust, so to employ the money of its principal that it cannot be repaid when called for, without inflicting distress on a large proportion of the very people to whom the property belongs and for whose general benefit it was committed to the hands of the Bank. No agent of the Government whether a corporation or an individual can thus be permitted to deal with the public money for their own benefit. If they can be allowed to use it at all without a violation of duty, it must be so sparingly that it can be repaid at any time without producing public inconvenience. There is in truth no warrant in the charter authorizing the Bank to trade for its own benefit on the public money. The deposite is not a loan to the Bank. They pay no interest and give no consideration for it. It is placed there for safe keeping and to await the wants of the Government. And nothing can justify any use of it by the selected agent and trustee of the public which will subject the government or the community to injury and inconvenience.

2. The sudden and enormous increase of the loans of the Bank in 1831, is immediately connected with the subject just mentioned, and shews that the unjustifiable overtrading which occasioned the difficulty in meeting the calls of the Government in July was occasioned by motives still more reprehensible than even the love of private gain.

At the Session of Congress which commenced in 1831, the corporation petitioned for a renewal of its charter. And the reason assigned for the application was that unless the renewal was probable, it would be necessary for the corporation to proceed at once

to wind up its concerns in order to avoid the general distress and ruin which a sudden attempt to call in its immense loans would unavoidably produce.

The reason given by the Bank was true or it was not true. If the reason assigned by the corporation for its application at that time was not the true one and if it sought to obtain from Congress at that time a further extension of the period of its agency by false representations and statements, then the attempt of a public agent to mislead and deceive its principal, is of itself sufficient to forfeit all title to confidence, and would make it proper for the government to dismiss it at once from its employment.

But if the reason given was the true one how can the immense increase of its loans in the year 1831 and immediately preceding its application be accounted for? In that one year its loans were increased more than twenty millions of dollars, being a sudden and unprecedented increase of fifty pr. cent. on its previous accommodations. The corporation was perfectly aware it seems that the renewal of their charter was at least doubtful and therefore made this early application. It was equally aware as it stated of the necessity of beginning at once to wind up its concerns in order to save the community from the distress and injury which a sudden pressure at the close of its charter for the whole amount of its vast loans would unavoidably produce. And they could not fail to understand that the hasty and immense increase of its loans would greatly enhance the evil which by their application to Congress they professed to be so anxious to avoid. What then induced the corporation to adopt a measure which according to their own shewing was likely to be injurious to themselves and greatly distressing to the community? Can any impartial and unprejudiced mind doubt the motive? Was it not to enable the Bank to obtain a position by which it could exercise a controlling influence over the action of the government in relation to its charter? Was it not to compel the people to continue its monopoly and privileges, not on account of the benefits conferred by it, but to escape from the suffering which the corporation had the power to inflict? And if the loans made in the year 1831 immediately preceding the application to Congress could find any reasonable justification what can be said in defence of the additional seven millions of dollars which the Bank

showered upon the people between the first of January and the first of June 1832 while the application for a renewal of its charter was actually pending before Congress? and pressed too upon the Legislature on the ground that a decision was necessary at that time to enable the corporation to prepare for winding up its affairs if their application should prove unsuccessful?

In a case where such great interests are at stake we are not permitted to shut our eyes against the light of evidence, or to fancy that a good or innocent motive may have existed for an action where no such probable one can be assigned. Charity itself cannot suggest a justifiable inducement for this flood of Bank accommodation suddenly poured out upon the people at the very time when the corporation itself admits that it felt the necessity of looking to the approaching termination of its existence and of preparing gradually to close its vast and wide spread concerns. And when the heat and passions of the time shall have passed away and the prejudices which warm party contests never fail to engender, shall be dissipated I am convinced that many of those who at this day advocate the Bank and vindicate its conduct will be ready to acknowledge the delusions under which they are now acting. A fiscal agent which has thus endeavored to fasten itself upon the body politic, and to perpetuate its monopoly and exclusive privileges by the lash of its power is no longer worthy of the confidence or employment of the government.

3. Independently of the two considerations before mentioned the conduct of the Bank in relation to the 3 pr. ct. stocks of the U. States is of itself a sufficient reason for refusing further to confide in it as the fiscal agent of the government.

The deep interest which the people of the U. States have in the prudent and upright administration of the affairs of the Bank, both as stock-holders and depositers made it necessary that the government should be regularly advised of all of its important operations. And for this purpose the right of appointing five directors is secured to the U. States by the charter, and statements of the affairs of the corporation are required to be furnished to the Secretary of the Treasury. And any attempt of the private stockholders

in the Bank or of their agents to conceal its transactions from the government is a direct violation of duty and renders the corporation unfit to be further trusted with the public money. Has this part of its duty been performed by the Bank? Has it frankly made known to the Government the course and condition of its business, or has it endeavored to conceal any of its important pecuniary transactions? The conduct of the officers of the Bank in relation to the three per cents is too well understood to need comment. One of its greatest money operations, in which the interests of the public were deeply and closely concerned, was carefully and industriously concealed from the officers of the Government and the public interests seriously and injuriously committed by the agents of the Corporation, before the transaction came to the knowledge of the government. Nor is this the only instance in which the Bank has endeavored to hide its proceedings from the eyes of the officers of the U. States. It is abundantly proved that its business has been so arranged by the agency of committees and the powers vested in particular officers of the corporation, that it habitually and systematically deprives the government of that knowledge of its affairs which the charter intended to secure; and which was supposed by the legislature to be necessary for the safety of the public interests which it directed to be placed in the care of the Bank. The government has been left to find out as well as it can by direct and rigorous scrutiny many of the most objectionable proceedings of the corporation and its officers. Is the agent worthy of further confidence when it is ascertained that pains are taken to conceal his contracts and proceedings from his principal? In the case of individuals would any prudent man place his funds in the hands of such an agent? The regular and systematized arrangements which have been made to hide its proceedings from the government are not only indication of unfairness and misconduct, but at the same time deprives the government of that supervision and knowledge of the concerns of the institution which the charter intended to secure and which was given for the protection of the public property placed in the hands of the Corporation.

4. There is another reason still more cogent to my mind than those I have already stated for withdrawing the Deposites. There is abundant evidence to shew that the money of the

corporation has been employed to influence the press and to enlist newspapers in their service. The attempt of a great monied institution like the Bank of the U. States to exercise an influence over the press of the country by the mere power of money, is pregnant with so much evil that it cannot be too severely and pointedly reprobated. And to continue towards it the confidence of the government after the proofs which have been exhibited on this head would be giving the sanction of public approval to its conduct. It is due to the government and to the purity of our institutions, to mark it with the strongest tokens of disapprobation. And the withdrawal of the Deposites and the refusal to employ it as the Agent of the public, would be nothing more than a proper rebuke for the unjustifiable means it has used to obtain influence and power over public opinion.

Waiving therefore various other considerations which are calculated to strengthen the opinion I have formed on this point, and which are clearly and forcibly put forward in the report of the minority of the committee I respectfully advise that the deposites be not continued in the Bank of the U. States but that other agents be employed upon whose conduct towards the public more reliance may justly be placed.

3. Upon the third point which you have proposed for consideration, the principles already stated will shew the opinion I have formed. I think the renewal of the present charter ought not to be assented to under any circumstances or with any modifications.

The abuses of its power to which I have already referred furnish abundant reasons for refusing to continue the charter to the present Bank even if the constitutional objections stated in the veto message could be surmounted. 5 And if it could be demonstrated that a Bank chartered by the U. States was authorized by the constitution and essentially necessary for the purposes of the General Government, I should still think that the charter to the present corporation ought in no event whatever and under no circumstances to be continued. There is evidence enough to satisfy any unprejudiced mind that it has profusely lavished its money to obtain political power. It was openly in the field as a political partisan at the last election of President, using the vast power which it feels that it possesses in

order to influence the decision of the people. Such abuses of the privileges and franchises conferred upon it not only deprive it of all claim to public favor, but make it a fit subject for some striking mark of public reprobation.

4. On the fourth question the result of my reflections may be stated in a few words. I think the reason suggested by you on this point is entirely conclusive. A Bank of the U. States cannot be justified under the constitution if the fiscal operations of the government can be carried on with safety and convenience without it. And a full and fair experiment ought to be made before the General Government can be warranted in assuming that a Bank chartered by the U. States is a necessary and indispensable agent of the Treasury. The history of the financial concerns of this Government by no means prove the necessity of such a Bank.

Indeed the necessity must be very apparent that would reconcile me to the establishment of a Bank of the U. States with the power of branching in the different states under any limitations. The experience we have had with the present Bank shews very clearly the dangers to be apprehended from monied monopolies with a large capital. And however its privileges might be restricted in the first instance or wherever the mother Bank might be located, yet its capital would unavoidably be a large one and its power proportionably great. It would be the point on which the monied aristocracy would concentrate their power, and the instrument by which they would exercise a combined and corrupting influence in the government. And if a Bank of that description should be engrafted on our institutions and be considered as a settled and permanent establishment to be renewed by charter from time to time it would be constantly and silently seeking to advance its own interests and to remove restrictions which it found to be inconvenient or troublesome. The history of the present bank and the dangerous and formidable political power it now possesses will shew us what may be apprehended by a monied institution of large capital without a rival, which feels that money gives it power, and that power will bring it money.

5. The remaining enquiry is what system ought to be adopted for the deposite and distribution of the revenue?

The one you have proposed appears to me to be the best, and I think on experiment will be found to be quite as safe and convenient as the Bank of the U. States without being attended with any of the evils and dangers which must always arise out of an institution of that description. The state Banks judiciously selected and arranged will I have no doubt be able to perform all the duties of fiscal agents and to furnish a general currency as wholesome and stable as that of the U. States Bank.

I forbear to present at this time a detailed plan on this subject, because before such a scheme could be finally arranged the points where deposites are needed by the Treasury and disbursements are likely to be made must be carefully estimated so that the State Banks which are selected as agents may be prepared to meet the calls of the government. But I am convinced that there will be no difficulty in perfecting the plan as soon as the necessary information is obtained, and that the pledge of the Government to receive in payment of its dues every where the notes of certain designated Banks, would afford to the community a currency as sound and healthy and as little liable to fluctuation in amount and value as that now provided by the Bank of the U. States.

Upon the whole I respectfully advise that measures be taken to select and designate the State Banks who are to be employed as agents for the Treasury, and to make the proper arrangements with them. And that as soon as this is done, further deposites in the Bank of the U. States be discontinued and the reasons which lead to this decision be reported to Congress according to the directions of the charter.

I do not conceal from myself the fierce and desperate struggle which the Bank will make to maintain its monopoly and procure a restoration of the deposites. Nor am I insensible of its power. But I sincerely believe that the purity of our institutions and the best interests of the country call for prompt, firm and decisive measures on the part of the Executive, and I rely

for support on the intelligence and patriotism of the people. And I am Sir with the highest respect yr. obt. st.