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Landmark Cases OF THE U.S. SUPREME COURT



Background Summary & Questions (•••)

In 1791, the first Bank of the United States was established to serve as a central bank for the country. It was a place for storing government funds, collecting taxes, and issuing sound currency. At the time it was created, the government was in its infancy and there was a great deal of debate over exactly how much power the national government should have. Some people, such as Alexander Hamilton, argued for the supremacy of the national government and a loose interpretation of its powers, which would include the ability to establish a bank. Others, such as Thomas Jefferson, advocated states' rights, limited government, and a stricter interpretation of the national government's powers under the Constitution and, therefore, no bank. While Jefferson was President, the Bank's charter was not renewed. After the War of 1812, President James Madison determined that the country could utilize the services of a national bank to help fulfill its powers listed in Article I, Section 8, Clause 18 of the Constitution. In response to his suggestion, Congress proposed a Second Bank of the United States in 1816.

President Madison approved the charter and branches were established throughout the United States. Many states opposed opening branches of this bank within their boundaries for several reasons. First, the Bank of the United States competed with their own banks. Second, the states found many of the managers of the Bank of the United States to be corrupt. Third, the states felt that the federal government was exerting too much power over them by attempting to curtail the state practice of issuing more paper money than they were able to redeem on demand.

One state opposed to the Bank of the United States was Maryland. In an attempt to drive the Baltimore branch of the Bank of the United States out of business, the Maryland State Legislature required that all banks chartered outside of Maryland pay an annual tax of \$15,000. There was a \$500 penalty for each violation of this statute. James McCulloch, cashier of the Baltimore branch of the Bank of the United States, refused to pay the tax.

The State of Maryland took him to court, arguing that because Maryland was a sovereign state, it had the authority to tax businesses within its border, and that because the Bank of the United States was one such business, it had to pay the tax. Luther Martin, one of the attorneys for Maryland, reasoned that because the federal government had the authority to regulate state banks, Maryland could do the same to federal banks. Besides, he argued, the Constitution does not give Congress the power to establish a Bank of the United States. McCulloch was convicted by a Maryland court of violating the tax statute and was fined \$2,500.

McCulloch appealed the decision to the Maryland Court of Appeals. His attorneys, who included Daniel Webster, asserted that the establishment of a national bank was a "necessary and proper" function of the Congress. Webster stated that many powers of the government are implied rather than specifically stated in the Constitution. Furthermore, he argued, Maryland did not have the authority to levy the tax, because doing so interfered with the workings of the federal government.

After the Maryland Court of Appeals upheld the original decision against McCulloch, he appealed again. The case was heard by the Supreme Court of the United States, then headed by Chief Justice John Marshall.

QUESTIONS TO CONSIDER

1. What are the advantages for the federal government of establishing a national bank? Read through Article I, Section 8, Clause 18 of the U.S. Constitution to determine which functions of Congress might be helped by such a bank.
2. Why would states feel threatened by a national bank?
3. In your opinion, does the United States government have the authority to establish a national bank? Provide justification for your answer. You may want to review Article I, Section 8, Clause 18 of the Constitution to see what powers it specifically gives Congress.
4. If the United States does have authority to establish a bank, does Maryland have the authority to tax that

bank? Why or why not?

5. Why do you think the Supreme Court of the United States agreed to hear this case? What larger principles were at stake?

< **MCCULLOCH V. MARYLAND**

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Key Excerpts from the Opinion

The first question made in the case is: has congress power to incorporate a bank?

This government is acknowledged by all to be one of enumerated powers. . . .

Among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the articles of confederation, excludes incidental or implied powers; and which requires that everything granted shall be expressly and minutely described. Even the 10th amendment . . . omits the word "expressly," and declares only, that the powers "not delegated to the United States, nor prohibited to the states, are reserved to the states or to the people;" . . . A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution . . . would, probably, never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked.

Although, among the enumerated powers of government, we do not find the word "bank" or "incorporation," we find the great powers, to lay and collect taxes, to borrow money; to regulate commerce, to declare and conduct a war; and to raise and support armies and navies. . . . But it may with great reason be contended, that a government, entrusted with such ample powers . . . must also be entrusted with ample means for their execution. The power being given, it is the interest of the nation to facilitate its execution . . .

But the constitution of the United States has not left the right of congress to employ the necessary means, for the execution of the powers conferred on the government, to general reasoning. To its enumeration of powers is added, that of making "all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States, or in any department thereof."

. . . This provision is made in a constitution, intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been . . . an unwise attempt to provide . . . for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. . . .

. . . 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 . . .

. . . [I]t is the unanimous and decided opinion of this Court, that the act to incorporate the Bank of the United States is . . . constitutional; and that the power of establishing a branch in the State of Maryland might be properly exercised by the bank itself, we proceed to inquire . . . 2. Whether the State of Maryland may, without violating the constitution, tax that branch? . . .

. . . There is no express provision for the case, but the claim has been sustained on a principle which so entirely pervades the constitution. . . . This 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. From this . . . other propositions are deduced as corollaries. . . .

. . . That the power to tax involves the power to destroy. . . . If the states may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent-rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the states. . . .

... The result is a conviction that the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared. We are unanimously of opinion, that the law passed by the legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void.

QUESTIONS TO CONSIDER

1. How did Chief Justice John Marshall justify the power of the federal government to establish a bank? What phrases in the Constitution does he use to support his argument?
2. The Articles of Confederation did not allow the national government to exercise implied powers. Why?
3. How does one determine that a power is "implied" when it is not specifically stated in the Constitution?
4. In the Court's opinion, Chief Justice Marshall says, "the power to tax involves the power to destroy". Explain.
5. In making this decision, the Supreme Court of the United States helped to determine the relationship of the federal and state governments to one another. Which is supreme? What impact did this decision have on the future of the United States? If the decision had been different—that the states had power to regulate or tax the national government—how might our lives be different now?

< MCCULLOCH V. MARYLAND

Federalism Activity

Examine the list of government powers below and say whether you think each one is an enumerated (national) power, reserved (state) power, or concurrent (shared) power by placing the powers in the appropriate section of the Venn Diagram. Be prepared to explain your answer.

defend the country
issue drivers' licenses
levy taxes
create marriage laws
impose tariffs
declare war
make agreements with other countries

protect rights
make laws for the environment
coin money
conduct elections
punish law breakers
create standards for schools

