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# Power of the Federal Government v. Power of the State Government

## *McCulloch v. Maryland, 1819*

### ★★★★★★★★★★★★★★★★★ Background of the Case ★★★★★★★★★★★★★★★★★★

The Supreme Court first settled a dispute between a national and a state law in 1819. The Second Bank of the United States had been chartered by Congress in 1816. Large sections of the country, especially the West and South, bitterly opposed the Bank. The Bank's tight credit policies contributed to an economic depression, and many states reacted against what they saw as a "ruthless money trust" and "the monster monopoly." Two states even prohibited the bank from operating within their jurisdictions. Six other states taxed Bank operations. In 1818 the Maryland legislature placed a substantial tax on the operations of the Baltimore branch of the Bank of the United States. The cashier of the Baltimore branch, James McCulloch, issued bank notes without paying the tax. After Maryland state courts ruled against McCulloch for having broken the state law, he appealed to the United States Supreme Court.

### *C*onstitutional Issues ★★★★★★★★★★★★★★★★★★

One of the issues that concerned the Founders at the Constitutional Convention was how to divide power between the federal government and state governments. Reconciling national and local interests proved difficult. In the *McCulloch* case, the Supreme Court ruled in favor of federal power.

The constitutional questions in the *McCulloch v. Maryland* case concern both the powers of Congress and the relationship between federal and state authorities.

### ★★★★★★★★★★★★★★★★★ The Supreme Court's Decision ★★★★★★★★★★★★★★★★★★

Chief Justice John Marshall wrote the decision for a unanimous Court. He started with the question, "Has Congress the power to incorporate a bank?"

In first determining the extent of congressional power, Marshall held that the Constitution is a creation not of the states, but of the people, acting through statewide constitutional conventions. Therefore, the states are bound in obligation to the Constitution, which is "the supreme law of the land." Marshall summed up the decision based on the Supremacy Clause, saying, "If any one proposition could command the universal assent of mankind we might expect it to be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action . . . . The states have no power to retard, impede, burden, or in any manner control, the operation of the constitutional laws enacted by Congress."

Although the specific powers of Congress do not include the power to charter a corporation, the section enumerating these powers includes a statement giving Congress the authority to make the laws "necessary and proper" for executing its specific tasks. In Marshall's analysis,

the terms “necessary and proper” grant Congress implied powers to carry out granted, or enumerated, powers. “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 consistent with the letter and spirit of the Constitution, are constitutional,” the Chief Justice wrote. The choice of means is for Congress to decide. In the *McCulloch* case, the Court held that Congress had the power to incorporate a bank.

On the question of the validity of Maryland’s bank tax, Marshall again noted the Constitution’s supremacy, but he also recognized a state’s constitutional right to impose taxes. Echoing his earlier argument, Marshall observed that a government may properly tax its subjects or their property. The federal government and its agencies, however, are not subjects of any state. A tax on a national institution by one state would be an indirect tax on citizens of other states, who would not benefit from such a tax.

Furthermore, the power to tax, if misused, is also the power to harm an institution. The power of Congress to establish an institution must imply the right to take all steps necessary for its preservation. In a conflict between the federal power to create and preserve a corporation and a state’s power to levy a tax, the state must yield. Therefore, the Court denied Maryland’s power to tax the Second Bank of the United States. In this way Marshall ensured the power of Congress to enact legislation “under a Constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs.”

In conclusion, Marshall wrote, “. . . this is a tax on the operations of the bank, and is, consequently, a tax on the operation of an instrument employed by the government of the Union to carry its powers into execution. Such a tax must be unconstitutional . . . .”

The Court’s decision in the *McCulloch* case brought a storm of abuse raining down on the Court. Virginia passed a resolution urging that the Supreme Court be divested of its power to pass on cases in which states were parties. Ohio, which like Maryland had a tax on the United States Bank, simply continued to collect the tax. The decision was particularly offensive to believers in the strict, literal interpretation of the Constitution because it sustained the doctrine of implied powers. Nevertheless, the *McCulloch* decision, in upholding the principle of implied powers, enlarged the power of the federal government considerably and laid the constitutional foundations for the New Deal in the 1930s and the welfare state of the 1960s.

**DIRECTIONS: Answer the following questions on a separate sheet of paper.**

1. What constitutional principle did the Supreme Court establish in the *McCulloch* case?
2. What is the objective of the “necessary and proper” clause?
3. What was the basis for the Court’s ruling that Maryland could not tax the Second Bank of the United States?
4. How did the fact that Justice Marshall was a Federalist influence his ruling in the *McCulloch* case?
5. How did the *McCulloch* ruling contribute to the strength of the national government?