

CONSTITUTION 101

Module 7: The Legislative Branch: How Congress Works

7.4 Primary Source

MCCULLOCH V. MARYLAND (1819)

SUMMARY

View the case on the National Constitution Center's Website [here](#).

McCulloch v. Maryland involves one of the first disputes in American history over the scope of the new national government's powers: whether Congress could incorporate a Bank of the United States. This was controversial in the 1790s because Southern members of Congress and the executive branch, such as James Madison and Thomas Jefferson, believed that a national bank would benefit only Northern mercantile interests and would create a financial aristocracy; they believed that the new nation should depend on farmers and what they called "agrarian virtue." They generally feared a powerful national government. Alexander Hamilton and others, on the other hand, argued that a national bank was critical to facilitating commerce and the borrowing of money, both of which would be indispensable to the new nation.

[Read the Full Opinion](#)

Excerpt: Majority Opinion, Chief Justice Marshall

Ours is a government of limited powers, but debates over the scope of those powers continue. This government is acknowledged by all, to be one of enumerated powers. . . . But the question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to arise, so long as our system shall exist. In discussing these questions, the conflicting powers of the general and state governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.

When its actions are constitutional, the national government is supreme; just read Article VI's Supremacy Clause. If any one proposition could command the universal assent of mankind, we might expect it would be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action. . . . [T]his question is not left to mere reason: the people have, in express terms, decided it, by saying, 'this constitution, and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,' . . .

There is no "Charter Bank" Clause in the Constitution; but the national government holds implied powers, not just those explicitly set out in the Constitution. 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

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or implied powers; and which requires that everything granted shall be expressly and minutely described. . . .

A constitution sets out the broad outlines of the government's powers. 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 partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. . . . In considering this question, then, we must never forget that it is a constitution we are expounding. . . .

The power to charter a bank may be implied by some of the broad powers explicitly granted to Congress by the Constitution. The power of creating a corporation, though appertaining to sovereignty, is not, like the power of making war, or levying taxes, or of regulating commerce, a great substantive and independent power, which cannot be implied as incidental to other powers, or used as a means of executing them. It is never the end for which other powers are exercised, but a means by which other objects are accomplished. . . .

The Necessary and Proper Clause confirms this reading. 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.' . . .

The Constitution is meant to endure, so it sets out broad powers and principles, not all of the details. 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 to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. . . .

This is one of the most famous passages in constitutional law; it's worth reading closely. [T]he sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. 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. . . .

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Congress has the power to charter a national bank, but does Maryland have the power to tax it? It being the opinion of the court, that the act incorporating the bank 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 . . . [w]hether the state of Maryland may, without violating the constitution, tax that branch? . . .

The power to tax gives a government the power to destroy; in other words, it gives it the power to set a tax so high that it can tax a given institution or practice out of existence.

That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied. . . .

Maryland doesn't have the power to tax the national bank; the national government is supreme. 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 This was not intended by the American people. They did not design to make their government dependent on the states. . . .

[Read the Full Opinion](#)

***Bold sentences give the big idea of the excerpt and are not a part of the primary source.**