



LANDMARK SUPREME COURT CASES AND THE CONSTITUTION

McCULLOUGH V. MARYLAND (1819)

MONDAY, OCTOBER 22, 2007

OVERVIEW

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This month we spotlight one of the first and most important Supreme Court cases on federal power: *McCullough v. Maryland* (1819). In this case, Supreme Court held that Congress has implied powers derived from those listed in Article I, Section 8. The “Necessary and Proper” Clause gave Congress the power to establish a national bank.

RESOURCES

- <http://citizenbee.org/user/StudentGuide.aspx?id=690>
- http://www.oyez.org/cases/1792-1850/1819/1819_0/
- <http://www.billofrights.org/Instructional/Resources/FoundingDocuments/Docs/Constitution.htm>

ACTIVITY

It was 1819 and the United States had been a nation under the Constitution for barely a generation when an important case about federal power reached the Court. After a first attempt in 1791, Congress established the second National Bank of the United States in 1816. Many states opposed branches of the National Bank within their borders. They did not want the National Bank competing with their own banks, and objected to the establishment of a National Bank as an unconstitutional exercise of Congress’s power.

The state of Maryland imposed a tax on the bank of \$15,000/year, which cashier James McCullough of the Baltimore branch refused to pay. The case went to the Supreme Court. Maryland argued that as a sovereign state, it had the power to tax any business within its borders. McCullough’s attorneys argued that a national bank was “necessary and proper” for Congress to establish in order to carry out its enumerated powers.

Chief Justice John Marshall wrote, “Although, among the enumerated powers of government, we do not find the word ‘bank,’ . . . we find the great powers to lay and collect taxes; to borrow money; to regulate commerce. . . . 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.”

Further, the Court ruled that Maryland could not tax the national bank: “That the power to tax involves the power to destroy. . . . If the states may tax one instrument, employed by the [federal] government in the execution of its powers, they may tax any and every other instrument. . . . This was not intended by the American people. They did not design to make their government dependent on the states.”

Marshall also noted an important difference between the Constitution and the Articles of Confederation (the United States’ first governing document that had been replaced by the Constitution). The Articles said that the states retained all powers not “expressly” given to the federal government. The Tenth Amendment, Marshall noted, did not include the word “expressly.” This was further evidence, he argued, that the Constitution did not limit Congress to doing only those things specifically listed in Article I.



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QUESTIONS

1. What happened to bring *McCullough v. Maryland* to the Supreme Court?
2. Read Article I, Section 8 (link above) and underline the express powers of Congress that might be dependent on the operation of a bank. Can Congress effectively carry out its powers without establishing a national bank?
3. How did the Supreme Court rule?
4. To what extent did the ruling in *McCullough v. Maryland* expand federal power?



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ANSWERS

1. Maryland imposed a tax on Baltimore branch of the National Bank of the United States. The cashier refused to pay the tax.
2. Sections which could be underlined:

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States...

To borrow money on the credit of the United States;...

To coin money, regulate the value thereof,...

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years....

To provide and maintain a navy;

and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;

Students will most likely say that a bank would be required in order for Congress to perform these functions.

3. The Court ruled that the establishment of a national bank was constitutional, as it was necessary and proper in order for Congress to carry out its responsibilities. It was “within the letter and the spirit” of the Constitution. Further, Maryland could not tax the federal bank.
4. The ruling expanded federal power by allowing Congress to take actions which were not expressly listed in Article I, Section 8 nor expressly prohibited by Article I Section 9. The ruling’s description of what kind of actions can be justly implied, however, restricts the scope of the Necessary and Proper Clause to those laws that are “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...”



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Extension: The Necessary and Proper Clause in 1787

1. The *Federalist Papers* were a series of essays arguing in favor of ratifying the Constitution. Read the following quote from *Federalist* #33 and answer the questions below. In this excerpt, Alexander Hamilton defends the Necessary and Proper clause.

[I]t is EXPRESSLY to execute these powers [in Article I, Section 8] that the sweeping clause, as it has been affectedly called, authorizes the national legislature to pass all NECESSARY and PROPER laws. If there is any thing exceptionable, it must be sought for in the specific powers upon which this general declaration is predicated....The propriety of a law, in a constitutional light, must always be determined by the nature of the powers upon which it is founded.

- What does Hamilton refer to as the “sweeping clause”?
- How does Hamilton say the necessity and propriety of a law should be judged?

2. The *Anti-Federalist Papers* were a series of essays arguing AGAINST ratification of the Constitution. The following is from *Brutus* #1, in which Brutus (a pseudonym) argued that the Necessary and Proper Clause grants Congress almost unlimited power:

The powers given by this article are very general and comprehensive, and it may receive a construction to justify the passing almost any law. A power to make all laws, which shall be necessary and proper, for carrying into execution, all powers vested by the constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive...

- What warning does Brutus make about the Necessary and Proper clause?

3. Finally, read this excerpt from the unanimous ruling in *McCullough v. Maryland*.

It is not enough to say, that it does not appear that a bank was not in the contemplation of the framers of the constitution. It was not their intention, in these cases, to enumerate particulars. The true view of the subject is, that if it be a fit instrument to an authorized purpose, it may be used, not being specially prohibited.

- Does the Court’s ruling prove Hamilton or Brutus correct?