

McCulloch v. Maryland / Background •—Answer Key

As you read the background summary of the case below, look for the **important vocabulary terms**. You can find definitions for these terms on the separate vocabulary handout.

In 1791, the U.S. government created the first national bank. The national bank was controversial. Some people believed that the national government had the power to create a national bank, and others believed it did not have this power. When Thomas Jefferson was president, he did not renew the national bank's **charter**. Jefferson believed in placing greater limits on the power of the national government. However, when James Madison became president, he asked Congress to create a Second Bank of the United States in 1816.

Many branches of the Bank of the United States were opened throughout the country. Some states did not like these branches. There were several reasons why the states did not want these national banks: 1) they competed with the state banks, 2) many national bank managers were thought to be **corrupt**, and 3) the states believed that the national government was getting too powerful.

The state of Maryland tried to close a branch of the Bank of the United States by making that branch pay \$15,000 in taxes. James McCulloch, who worked at the Baltimore branch of the Bank of the United States, did not pay the tax. The state of Maryland took him to court.

The state of Maryland argued that if the national government could **regulate** state banks, the state could make rules for the national bank. Maryland also said that the Constitution did not allow the national government to create a national bank. Article I, Section 8 of the Constitution lists the powers of Congress. Creating a national bank is not on the list.

On the other hand, McCulloch's attorney argued that the power to create a national bank was a "necessary and proper" power of Congress. Article I, Section 8, Clause 18 of the U.S. Constitution states that Congress has the power "To make 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." He said that while it was true that there is nothing in the Constitution about a national bank, there are many things that the government must do that would be helped by a national bank. Therefore, creating a national bank was an **implied** power of Congress.

McCulloch was convicted of violating Maryland's tax law. McCulloch then appealed the lower court's decision to the Maryland Court of Appeals. After the Maryland Court of Appeals agreed with the lower court's decision, McCulloch **appealed** to the Supreme Court of the United States.

Questions to Consider

1. Why did states not like the idea of a national bank?
States like Maryland were opposed to a national bank because it was a threat to them. It competed with their banks and it tried to stop the practice, which the states engaged in, of issuing more paper money than they could redeem on demand. Furthermore, managers of some of the branches of the national bank were corrupt.
2. What are the advantages of having a national bank? Review Article I, Section 8 of the Constitution (see page 3). Which powers of Congress could be helped by a national bank?
 - The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;
 - To borrow Money on the credit of the United States;
 - To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;
 - To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;
 - To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

A national bank would be helpful to the federal government in that it could serve as a place to deposit any taxes and other funds that the federal government collected. A national bank could help Congress carry out the following powers: "to lay and collect Taxes, Duties, Imports, and Excises; to pay Debts . . ." In addition, Article 1 states, "all Duties, Imposts, and Excises shall be uniform throughout the United States." A national bank could help the government to achieve this.

3. Do you think the powers listed in Article I, Section 8 of the U.S. Constitution (see page 3) allow the government to create a national bank?
Answers will vary. Article I, Section 8 lists the powers of Congress and does not specifically include the power to establish a national bank. However, the final clause of Article 1, Section 8 says Congress has the power "to make 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, and any Department or Officer thereof." Looking at the powers in the previous clauses, including the power 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, one could find justification for establishing a national bank as it may be necessary to establish a bank to carry out these powers.
4. Should a state be able to tax a national bank? Why or why not?
Answers will vary. One could argue that states have the authority to tax the bank on the grounds that the bank is a business operating within the borders of the state, and therefore, should pay taxes like any other corporation or business. On the other side, one could argue

that states do not have the power to tax the national bank because doing so would interfere with a legitimate function of the federal government.

5. Why do you think the Supreme Court of the United States heard the case? What made the case important?

The Supreme Court of the United States agreed to hear this case to determine whether or not the federal government has the authority to establish a national bank and if so, whether the state has the authority to tax that bank. In determining the answer to these questions, the Court would examine the general question of what the implied powers (necessary and proper) clause means and how much authority it gives the federal government. The larger issue was the fundamental relationship between the states and the federal government, i.e., when there is a conflict between the two, how is it resolved? Which level of government has more authority? Or do they have co-equal authority?

Article I, Section 8 of the U.S. Constitution

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

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;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, 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, dock-Yards and other needful Buildings;--And

To make 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 or Officer thereof.