

McCulloch v. Maryland / Background ••—Answer Key

In 1791, the U.S. government created the first national bank for the country. During this time, a national bank was controversial because people had different opinions about what powers the national government should have. Alexander Hamilton believed that the national government had the power to create a new national bank. Thomas Jefferson believed that the national government did not have such a power. When Thomas Jefferson was president, he did not renew the national bank's charter. After the War of 1812, President James Madison decided that the country needed a national bank, and he asked Congress to create a Second Bank of the United States in 1816.

After President Madison approved the bank, branches were opened throughout the country. Many states did not want the new bank branches to open. There were several reasons why the states opposed 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.

Maryland tried to close down the Baltimore branch of the national bank by passing a law that forced all banks that were created outside of the state pay a \$15,000 tax each year. James McCulloch, who worked at the Baltimore branch, refused to pay the tax.

The state of Maryland took McCulloch to court saying that Maryland had the power to tax any business in its state. Luther Martin, a lawyer for Maryland, said that if the national government had the power to regulate state banks, then Maryland had the power to regulate national banks. He also said that the Constitution did not give Congress the power to create a national bank.

After McCulloch was convicted of violating the tax statute and fined \$2,500, he appealed the court's decision to the Maryland Court of Appeals. His lawyer argued that creating a national bank was a "necessary and proper" job 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 stated that many of the powers of the national government are not written in the Constitution but are necessary for the national government to do its job. He said that while it was true that there is nothing in the Constitution about a national bank, there are many things that the federal government must do that would be helped by a national bank. Therefore, creating a national bank was an implied power of Congress. McCulloch's lawyer also claimed that Maryland could not place a tax on the national bank because the tax would interfere with the national bank's ability to do its job.

The Maryland Court of Appeals agreed with the lower court's decision. McCulloch then appealed to the Supreme Court of the United States.

Questions to Consider

1. What are the advantages for the federal government of establishing a national bank?
A national bank would be advantageous to the federal government in that it could serve as a central repository for "storing government funds, collecting taxes, and issuing sound currency." Without a national bank, states issued their own currencies.
2. **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, or in any Department or Officer thereof." Which of the functions of Congress listed in **Article I, Section 8** (see page 3) might be helped by such a 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. Why might states feel threatened by a national bank?
States felt threatened by a national bank because it competed with their banks and because the national bank tried to stop the practice, which the states engaged in, of issuing more paper money than they could redeem on demand. Adding to the states' fear was the fact that managers of some of the branches of the national bank were corrupt.
4. In your opinion, does the U.S. government have the authority to establish a national bank? Provide justification for your answer.
Answers will vary. On the one hand, Article I, Section 8 lists the specific powers of Congress and does not include the power to establish a national bank. On the other hand, 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.

5. 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.

6. 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.