

McCulloch v. Maryland / Background •••—Answer Key

In 1791, the first Bank of the United States was established to serve as a central bank for the country. It was a place for storing government funds, collecting taxes, and issuing sound currency. At the time it was created, the government was in its infancy and there was a great deal of debate over exactly how much power the national government should have. Some people, such as Alexander Hamilton, argued for the supremacy of the national government and a loose interpretation of its powers, which would include the ability to establish a bank. Others, such as Thomas Jefferson, advocated states' rights, limited government, and a stricter interpretation of the national government's powers under the Constitution and, therefore, no bank. While Jefferson was president, the Bank's charter was not renewed. After the War of 1812, President James Madison determined that the country could utilize the services of a national bank to help fulfill its powers listed in Article I, Section 8 of the Constitution. In response to his suggestion, Congress proposed a Second Bank of the United States in 1816.

President Madison approved the charter and branches were established throughout the United States. Many states opposed opening branches of this bank within their boundaries for several reasons. First, the Bank of the United States competed with their own banks. Second, the states found many of the managers of the Bank of the United States to be corrupt. Third, the states felt that the federal government was exerting too much power over them by attempting to curtail the state practice of issuing more paper money than they were able to redeem on demand.

One state opposed to the Bank of the United States was Maryland. In an attempt to drive the Baltimore branch of the Bank of the United States out of business, the Maryland state legislature required that all banks chartered outside of Maryland pay an annual tax of \$15,000. There was a fine for each violation of this statute. James McCulloch, head of the Baltimore branch of the Bank of the United States, refused to pay the tax.

The state of Maryland took him to court, arguing that because Maryland was a sovereign state, it had the authority to tax businesses within its border, and that because the Bank of the United States was one such business, it had to pay the tax. Luther Martin, one of the attorneys for Maryland, reasoned that because the federal government had the authority to regulate state banks, Maryland could do the same to federal banks. Besides, he argued, the Constitution does not give Congress the power to establish a Bank of the United States. McCulloch was convicted by a Maryland court of violating the tax statute and was fined \$2,500.

McCulloch appealed the decision to the Maryland Court of Appeals. 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.” McCulloch’s attorneys, who included Daniel Webster, asserted that the establishment of a national bank was a “necessary and proper” function of Congress. Webster stated that many powers of the government are implied rather than explicitly stated in the Constitution. Furthermore, he argued, Maryland did not have the authority to levy the tax, because doing so interfered with the workings of the federal government.

After the Maryland Court of Appeals upheld the original decision against McCulloch, he appealed again. The case was heard by the Supreme Court of the United States, then headed by Chief Justice John Marshall.

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 4) 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. If the United States does have authority to establish a bank, does Maryland have the authority to tax that bank? Why or why not?

Answers will vary. One could argue that Maryland has 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 Maryland did 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 agreed to hear this case? What larger principles were at stake?

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.