McCulloch v. Maryland (1819)

State Taxes, National Supremacy

“... Although, among the enumerated powers of government, we do not find the word "bank" or "incorporation," we find the great powers 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 ... But it may with great reason be contended, that a government, entrusted with such ample powers ... must also be entrusted with ample means for their execution. The power being given, it is the interest of the nation to facilitate its execution. ...

— Chief Justice Roger B. Taney, speaking for the majority

The U.S. government created the first national bank for the country in 1791, a time during which a national bank was controversial due to competition, corruption, and the perception that the federal government was becoming too powerful. Maryland attempted to close the Baltimore branch of the national bank by passing a law that forced all banks that were created outside of the state to pay a yearly tax. James McCulloch, a branch employee, refused to pay the tax. The State of Maryland sued McCulloch saying that Maryland had the power to tax any business in its state and that the Constitution does not give Congress the power to create a national bank. McCulloch was convicted and fined, but he appealed the decision. The Supreme Court determined that Congress has implied powers that allow it to create a national bank, even though the Constitution does not explicitly state that power, and that Maryland’s taxing of its branches was unconstitutional.
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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, Clause 18 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 $500 penalty for each violation of this statute. James McCulloch, cashier 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. His attorneys, who included Daniel Webster, asserted that the establishment of a national bank was a "necessary and proper" function of the Congress. Webster stated that many powers of the government are implied rather than specifically 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? Read through Article I, Section 8, Clause 18 of the U.S. Constitution to determine which functions of Congress might be helped by such a bank.

2. Why would states feel threatened by a national bank?

3. In your opinion, does the United States government have the authority to establish a national bank? Provide justification for your answer. You may want to review Article I, Section 8, Clause 18 of the Constitution to see what powers it specifically gives Congress.

4. If the United States does have authority to establish a bank, does Maryland have the authority to tax that bank? Why or why not?
5. Why do you think the Supreme Court of the United States agreed to hear this case? What larger principles were at stake?
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, many 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. They competed with the state banks, many national bank managers were thought to be corrupt, and the states believed that the national government was getting too powerful.

Maryland tried closing 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 does 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. 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. Also, he claimed that Maryland could not place a tax on the national bank because the tax would not let the national bank 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, led by Chief Justice John Marshall.

Questions to Consider

1. What are the advantages of establishing a national bank? Article I, Section 8, Clause 18 of the Constitution to determine which functions of Congress might be helped by such a bank.
2. Why would the states feel uncomfortable with a national bank?

3. In your opinion, does the U.S. government have the power to create a national bank? Why or why not? Examine the enumerated powers in Article I, Section 8, Clause 18 to support your answer.

4. If the United States does have the power to create a national bank, does Maryland have the power to tax the bank? Why or why not?

5. Why do you think the Supreme Court of the United States heard the case?
Background Summary & Questions (•)

In 1791, the U.S. government created the first national bank. At this time, a national bank was controversial. Some people believed that the national government had the power to create a national bank. Others believed that the national government 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. The national banks competed with state banks and people thought that the national banks were corrupt. In addition, states were worried about the increasing power of the national government.

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. The State of Maryland also said that there was no permission in the Constitution for the national government to create a national bank. Article I, Section 8, Clause 18 of the Constitution lists the powers of Congress. It says nothing about creating a national bank.

On the other hand, McCulloch's attorney argued that the power to create a national bank was a "necessary and proper" power of Congress. It is true that there is nothing in the Constitution about a national bank; however, there are many things that the government must do that would be helped by a national bank. Therefore, creating a national bank is 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, which was led by Chief Justice John Marshall.

Questions to Consider

1. In your opinion, why did states not like the idea of a national bank?
2. What are the advantages of having a national bank? Review Article I, Section 8, Clause 18 of the Constitution. Which powers of Congress could be helped by a national bank?

3. Do the powers listed in Article I, Section 8 of the U.S. Constitution allow the government to create a national bank?

4. Should a state be able to tax a national bank? Why or why not?

5. Why do you think the Supreme Court of the United States heard the case? What made the case important?
Article 1, Section 8 of the 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;

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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.
Important Vocabulary (•••/••)

- charter
  Define:
  Use in a sentence:

- corrupt
  Define:
  Use in a sentence:

- regulate
  Define:
  Use in a sentence:

- implied (to imply)
  Define:
  Use in a sentence:

- appealed (to appeal)
  Define:
  Use in a sentence:
Important Vocabulary (•)

As you read the background summary of the McCulloch case, look for the important vocabulary words that are italicized. When you come to one of those terms, look at this page for its definition. Then, check to see if you understand the definition by either sketching a picture of what you think it means, or by putting it in your own words. Feel free to add terms from the reading that you would like to practice.

• charter

Definition: An authorization to establish an institution or organization

• Express this term in your own words or in a drawing:

• corrupt

Definition: Dishonest or immoral

Express this term in your own words or in a drawing:

• regulate

Definition: To control or direct according to rule, principle, or law

• Express this term in your own words or in a drawing:
• **implied** (to imply)

Definition: To express indirectly; suggest

• Express this term in your own words or in a drawing:

• **appealed** (to appeal)

Definition: To formally request that a lower court decision be examined and reconsidered by a higher court

Express this term in your own words or in a drawing:
How the Case Moved Through the Court System

**Supreme Court of the United States**
Reversed lower courts and overturned McCulloch's conviction, holding that establishing a national bank is within the constitutional powers of Congress under the "necessary and proper" clause and Maryland does not have authority to tax a federal institution.

*McCulloch v. Maryland (1819)*

**Maryland Court of Appeals**
Upheld decision of lower court and affirmed McCulloch's conviction.

*McCulloch v. Maryland (1818)*

**County Court of Baltimore County**
Convicted McCulloch, the manager of the Baltimore branch of the Bank of the United States, for failing to pay the $15,000 tax levied by the State of Maryland. McCulloch fined $2,500.

*McCulloch v. Maryland (1818)*
Who Should Decide?

Think (independently) about these questions:

− What decisions do you believe your parents or guardians should make for you?
− What decisions should you be able to make yourself?
− What decisions should be made cooperatively?

Once you have thought of your answers, fill in the chart below:

<table>
<thead>
<tr>
<th>Decisions I should make for myself</th>
<th>Decisions I should make with my parents</th>
<th>Decisions my parents should make for me</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

After you have discussed your opinions with other students, your teacher will prompt you to complete the chart on the next page.
<table>
<thead>
<tr>
<th>local government decisions</th>
<th>state government decisions</th>
<th>federal government decisions</th>
</tr>
</thead>
</table>

Important term: **Federalism**

Its definition:
Federalism Activity

Federalism is a major principle of American government. In a federal system of government, there are three levels of government: national, state, and local. Government power is divided between the different levels.

The national government generally has power over issues of national concern. The states generally have power over issues of state concern. For example, the national government has power over the defense of the nation. Defense must be coordinated for the entire nation. The states have the power to issue drivers' licenses because driving rules and conditions differ from state to state.

The national powers are often called enumerated or delegated powers. This is because they were specifically listed for the national government when the Constitution was written. You can find these powers written in Article I, Section 8, Clause 18 of the U.S. Constitution.

The state powers are often called reserved powers. This is because they were powers kept by the states when the Constitution was written. These powers are not written down in the U.S. Constitution. If a power is not listed for the national government in the U.S. Constitution, it generally belongs to the states. There are some exceptions to this rule, as the case of McCulloch v. Maryland shows.

Some powers are shared by the national and the state levels of government. These are called concurrent powers. For example, both the national government and the state governments are allowed to tax. This allows both levels of government to have the money they need to provide services.

Directions

Based on these ideas, examine the list of government powers below and say whether you think each one is an enumerated (national) power, reserved (state) power, or concurrent (shared) power. Use the Venn Diagram Handout and place each power in the appropriate section of the diagram. Be prepared to explain your answer.

List of powers:

- defend the country
- issue drivers' licenses
- levy taxes
- create marriage laws
- impose tariffs
- declare war
- make agreements with other countries
- protect rights
- make laws for the environment
- coin money
- conduct elections
- punish law breakers
- create standards for schools

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Powers of the Federal Government

At the time of Chief Justice John Marshall's decision in McCulloch v. Maryland, the country was not sure how much power the federal government should have. Many people believed it should have only the powers specifically listed in the Constitution. These people came to be known as "strict constructionists." Others believed the Constitution could be interpreted to give the federal government powers not specifically listed there. These people came to be known as "loose constructionists."

This debate is still not settled today. Over time, the relationship between the people, the states, and the federal government has evolved. Often the loose-constructionist view of the Constitution has prevailed, resulting in the federal government assuming many powers that would probably be surprising even to the loose constructionists of 1819.

In this activity, you will examine three brief excerpts from documents relating to the evolution of the balance of power between the individual states and the federal government. The first excerpt is Article II of the Articles of Confederation, which went into effect in 1781. This document was the first attempt by the new nation at establishing a national government and the rules for which parts and levels of the government would have which powers. The Articles of Confederation proved to be a failure and were replaced by the U.S. Constitution, which took effect in 1789. The second excerpt you will examine is the Tenth Amendment to the Constitution. The third excerpt is a passage from Article I, Section 8 of the Constitution, known as the "Necessary and Proper" clause.

Articles of Confederation, Article II

Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.

Questions to Consider

1. This excerpt is from the Articles of Confederation, which were in effect from 1781 to 1789. According to this Article, if there were any powers not explicitly given to the national government, who had these powers?
2. Think about the powers of the national government today. What are some of the responsibilities of the national government? What do some of the federal (national) agencies do? Then think about what the national government would not be allowed to do today if the Articles of Confederation were still in effect. What changes in technology and society have happened that the framers of the Articles of Confederation may not have imagined?

**United States Constitution, Amendment X**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

**Questions to Consider**

1. Compare the text of Amendment X to the text of Article II of the Articles of Confederation. Both documents refer to the delegation of powers to the national government; in the first document, there is one word before the word "delegated" which is missing in Amendment X. What is that word, and how does its omission in Amendment X make its meaning different from Article II?

2. The Articles of Confederation were a failure and were abandoned largely because they established a central government that was too weak. Why do you think the people who drafted this Amendment, which was adopted as part of the Bill of Rights, omitted the word referred to in Question 1?
United States Constitution, Article I, Section 8: Powers Granted to Congress

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 a 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; ...

[and other powers as well. See Article I, Section 8 of the Constitution for a complete listing.]

... 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.

Questions to Consider

1. Review this section of the Constitution, which lists the powers granted to Congress. Then, review the power that has come to be known as the "necessary and proper" clause, or the "elastic clause." How could this clause, together with the Tenth Amendment, be interpreted to permit the federal government to create a national bank?

2. In your opinion, taken together, do the Necessary and Proper Clause and the Tenth Amendment give too much power to the federal government? Explain your answer.
You Make the Call: Using the Constitution to Decide the Outcome

Congratulations! The year is 1819 and you are a justice on the Supreme Court of the United States. Your responsibility is to use the U.S. Constitution to determine the outcome of the *McCulloch v. Maryland* case. In order to make an educated decision, you must follow these procedures:

1. Prepare yourself by reading the Background Summary for *McCulloch v. Maryland*.
2. Read the excerpts from the U.S. Constitution below. In your own words, explain each of the excerpts.
3. Read the summary of the arguments presented by each side below. With whom do you agree? Why?
4. Write your decision. Be sure to include at least one idea from each of the three excerpts from the U.S. Constitution.

Excerpts from the Constitution

**Article I, Section 8**: The Congress shall have 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.

**Article VI, Clause 2**: The Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

**The Tenth Amendment**: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

Summary of the Arguments

**For McCulloch**: Daniel Webster argued that although the power to charter a national bank is not specifically stated in the Constitution, it is one of the implied powers that the "necessary and proper" clause grants Congress. According to Webster, the bank was a "necessary and proper" way for Congress to conduct the financial affairs of the country. On the issue of whether or not Maryland could tax the bank, Webster argued that if Maryland were allowed to tax the bank, the state could destroy the bank by taxing it out of existence.

**For Maryland**: Maryland's Attorney General, Luther Martin, represented the state. He challenged Webster's assertion that the authority to establish a national bank is an implied power, saying that because creating a bank was not specifically stated in the Constitution, Congress did not have the authority to do so. Rather, it is a power that is reserved for the states. He went on to argue that
because states are sovereign, they have the authority to tax institutions and businesses within their borders.
Developing a Political Cartoon Based on the Decision

The decision in *McCulloch v. Maryland* established precedent with regard to the implied powers of the Constitution, but it also established precedent with regard to which level of government, the national or state, was supreme when their laws conflicted.

Below is a segment of the decision in *McCulloch v. Maryland* that deals with the question of national supremacy. Read through the excerpt carefully, taking note of words, images, or ideas that might lend themselves to the development of a political cartoon that captures the idea of national supremacy. Then, on a separate sheet of paper, sketch such a cartoon. If you would like to see how political cartoons can be created from a Supreme Court decision, review the examples for *Brown v. Board of Education* [here](http://www.streetlaw.org/en/Page/509/Political_Cartoon_Analysis).

**Excerpt from McCulloch v. Maryland**

... This great principle is, that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective states, and cannot be controlled by them. From this ... other propositions are deduced as corollaries ...

... That the power to tax involves the power to destroy ... 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; they may tax patent-rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the states.

... The result is a conviction that the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared. We are unanimously of opinion, that the law passed by the legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void.
Justifying the Implied Powers of the Federal Government

The authors of the U.S. Constitution wanted to replace the weak national government of the Articles of Confederation with a stronger central government. However, they were concerned about giving the new national government too much power. They tried to limit the strength of Congress by specifically listing the powers that Congress could have. But they recognized that they could not anticipate every power that Congress would need in future decades and centuries, so they ended the list of enumerated (specifically listed) powers with a special power to address this problem. Article I, Section 8, Clause 18 of the Constitution is often called the necessary and proper clause, or the elastic clause.

Article I, Section 8, Clause 18 of the U.S. Constitution

[The Congress shall have Power] . . . [t]o 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."

Questions to Consider

1. Does this clause give unlimited power to Congress to make laws? Support your answer with evidence from the clause.

2. Why do you think this clause is sometimes called the elastic clause?

3. After studying the distinction between strict constructionists and loose constructionists, how do you think each group would interpret the amount of power the clause gives Congress?
Can We Justify the Implied Powers of Congress?

According to the necessary and proper clause, Congress generally may assume additional powers not specifically listed in the Constitution, sometimes called implied powers, if there is a link to a power that is listed in the Constitution. For example, Congress may allocate money to test a missile-defense system (something not specifically listed in the Constitution) because Article I, Section 8, Clause 12 gives Congress the power to “raise and support Armies.”

While this example may seem like an obvious extension of Congress’s power, other powers that Congress has assumed over the years are not so obvious extensions of powers specifically listed in the Constitution. The exercise below gives you a list of implied powers of Congress. Beside each one, try to locate a clause in Article I, Section 8 of the Constitution that could justify Congress assuming that implied power. If you do not think there is justification in the Constitution for that power, write “no justification” in the space provided. Be prepared to back up your answers.

Example: Congress gives licenses to broadcasters to play music on the radio.

Answer: Clause 3 may justify this activity. It gives Congress the power to regulate interstate commerce. Broadcasting is a business. Thus, it is commerce. Airwaves cross over state lines, so it involves interstate commerce.

1. Congress sets a federal minimum wage.

2. Congress establishes the United States Air Force.

3. Congress establishes national parks.
4. Congress creates federal laws against pollution.

5. Congress makes laws regarding discrimination in employment.

6. Congress decides that televisions should have V-chips that enable parents to block certain shows.

7. Congress passes the Gun-Free School Zones Act prohibiting anyone from possessing a firearm in a school zone.
Chief Justice John Marshall's Legacy

Throughout our history, many individuals have left a legacy, or something for which they will be remembered. For instance, Dr. Martin Luther King, Jr. is known for his leadership in the civil rights movement. John Marshall is remembered for the landmark decisions he made while Chief Justice of the United States - decisions that have shaped the country in important and historic ways. Many of those key decisions are summarized below.

In this activity, you will create a poster or brief PowerPoint presentation in which you use words or images to summarize:

- John Marshall's key ideas about how power should be balanced between states and the national government. (Refer to one or more of the cases below as evidence)
- Marshall's ideas about how powerful the Supreme Court ought to be. (Refer to one or more of the cases below as evidence.)
- Marshall's view of the power of the Constitution. (Refer to one or more of the cases below as evidence.)

Then, evaluate Marshall's legacy. In what ways, if any, do you think Marshall’s decisions have influenced history? Are they relevant today? Explain your opinions.

Your poster or presentation should be visually appealing and the messages should be clear and organized.

Here’s the evidence:

*Marbury v. Madison (1803)*

At the end of his term, President John Adams appointed William Marbury as justice of the peace for the District of Columbia. The Secretary of State, John Marshall (the same person who later became Chief Justice) failed to deliver the commission to Marbury and left that task to the new Secretary of State, James Madison. Upon his inauguration, Adams’ political enemy, Thomas Jefferson told Madison not to deliver the commissions because he did not want supporters of Adams working in his new government. Marbury filed suit and asked the Supreme Court to issue a writ of mandamus, or a court order which would require Madison to deliver the commission to Marbury.

Chief Justice Marshall wrote the opinion in the case. He said that while Marbury was entitled to the commission, the Supreme Court did not have the power to force Madison to deliver the commission. He reasoned that the Judiciary Act of 1789, the act written by Congress which authorized the Supreme Court the to issue such writs conflicted with Constitution so the law was unconstitutional. He said that when ordinary laws conflict with the constitution, they must be struck down or made “null and void.” This is called judicial review. In effect, he wrote that the Constitution is the supreme law of the land and the courts — especially the Supreme Court — are the ultimate “deciders” of what is constitutional.
Through this decision, Marshall established the judicial branch as an equal partner with the executive and legislative branches of the government.

*McCulloch v. Maryland (1819)*

In the early years of our country, there was disagreement about whether the national government had the power to create a national bank. The first president, who believed in a strong national government created a national bank. The third president, who believed states should have more power closed the bank. The fourth president opened a new national bank in 1816.

Many state banks did not like the competition and the conservative practices of the national bank. As a way to restrict the national bank's operations or force the banks to close, the state of Maryland imposed a huge tax on the national bank. After the Bank refused to pay the tax, the case went to court. Maryland argued that the federal government did not have the authority to establish a bank, because that power was not specifically delegated to them in the Constitution.

The Supreme Court reached a unanimous decision that upheld the authority of Congress to establish a national bank. In the opinion, Chief Justice John Marshall conceded that the Constitution does not explicitly grant Congress the right to establish a national bank, but noted that the "necessary and proper" clause of the Constitution gives Congress the authority to do that which is required to exercise its enumerated powers. Thus, the Court affirmed the existence of implied powers.

On the issue of the authority of Maryland to tax the national bank, the Court also ruled in the Bank's favor. The Court found that "the power to tax involves the power to destroy . . . If the states may tax one instrument [of the Federal Government] they may tax any and every other instrument . . . the mail . . . the mint . . . patent rights . . . judicial process? This was not intended by the American people...." Furthermore, he said, "The Constitution and the laws made in pursuance thereof are supreme; they control the Constitution and laws of the respective states and cannot be controlled by them."

*Cohens v. Virginia (1821)*

The Cohen brothers sold Washington D.C. lottery tickets in Virginia, which was a violation of Virginia state law. They argued that it was legal because the (national) U.S. Congress had enacted a statute that allowed the lottery to be established. When the brothers were convicted and fined in a Virginia court, they appealed the decision. In determining the outcome, the Supreme Court of Virginia said that in disputes that involved the national and state government, the state had the final say. The Cohens appealed to the Supreme Court.

The (national) Supreme Court upheld the conviction, saying that the lottery was a local matter and that the Virginia court was correct in allowing the Cohens to be fined.

However, the most important part of this decision is what Marshall and the Supreme Court had to say about which court has the final say in disputes between states and the national government. The Supreme Court said it had the right to review state criminal proceedings. In fact, the Court said that it was required to hear cases that involved constitutional questions, including those cases when a state or a state law is at the center of the case.

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Gibbons v. Ogden (1824)

Aaron Ogden held a license to operate a steamboat on the well-traveled route between New York and New Jersey. The State of New York gave him the license as a part of a monopoly granted to Robert Livingston and Robert Fulton. The route was so successful financially that competitors wanted to be able to operate there, too. When competitors could not get a license from New York, they got licenses from the U.S. Congress.

Thomas Gibbons held such a license from Congress. At issue in this case is whether New York's monopoly over steamboat passage in the waters between New York and New Jersey conflicted with Congress' constitutional power to regulate interstate commerce.

Ogden argued that the New York monopoly was not in conflict with Congress' regulation of commerce because the boats only carried passengers between the states and were not really engaged in commerce. The Supreme Court disagreed. Justice Marshall, who wrote the decision, ruled that the Constitution gives Congress power to regulate commerce among several states. He said that commerce was not just about exchanging products. In his opinion, commerce could include the movement of people, navigation, as well as the exchange of products, ideas, and communication. Since the (national) Congress could regulate all of these types of interstate commerce, the New York monopoly was illegal.
Key Excerpts from the Majority Opinion

The decision was 7 to 2. Chief Justice Roger B. Taney delivered the opinion of the Court.

The first question made in the case is—has congress power to incorporate a bank?

This government is acknowledged by all to be one of enumerated powers.

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 or implied powers; and which requires that everything granted shall be expressly and minutely described. Even the 10th amendment . . . omits the word "expressly," and declares only, that the powers "not delegated to the United States, nor prohibited to the states, are reserved to the states or to the people;" . . . 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, probably, never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked.

Although, among the enumerated powers of government, we do not find the word "bank" or "incorporation," we find the great powers, 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. . . . But it may with great reason be contended, that a government, entrusted with such ample powers . . . must also be entrusted with ample means for their execution. The power being given, it is the interest of the nation to facilitate its execution.

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." . . .

. . . 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 . . . an unwise attempt to provide . . . for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. . . .

. . . 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. . . .

. . . [I]t is the unanimous and decided opinion of this Court, that the act to incorporate the Bank of the United States 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. . . . 2. Whether the State of Maryland may, without violating the constitution, tax that branch? . . .

. . . There is no express provision for the case, but the claim has been sustained on a principle which so entirely pervades the constitution. . . . This great principle is, that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective states, and cannot be controlled by them. From this . . . other propositions are deduced as corollaries. . . .

. . . That the power to tax involves the power to destroy. . . . 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; they may tax patent-rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the states. . . .

. . . The result is a conviction that the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared. We are unanimously of opinion, that the law passed by the legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void.

**Questions to Consider**

1. How did Chief Justice John Marshall justify the power of the federal government to establish a bank? What phrases in the Constitution does he use to support his argument?

2. The Articles of Confederation did not allow the national government to exercise implied powers. Why?
3. How does one determine that a power is "implied" when it is not specifically stated in the Constitution?

4. In the Court's opinion, Chief Justice Marshall says, "the power to tax involves the power to destroy". Explain.

5. In making this decision, the Supreme Court of the United States helped to determine the relationship of the federal and state governments to one another. Which is supreme? What impact did this decision have on the future of the United States? If the decision had been different—that the states had power to regulate or tax the national government—how might our lives be different now?
Summary of the Decision

In an opinion written by Chief Justice Marshall, the Supreme Court unanimously ruled in favor of McCulloch and against the state of Maryland. The Court addressed two questions: 1) whether Congress had the authority under the Constitution to commission a national bank, and 2) if so, whether the state of Maryland had the authority to tax a branch of the national bank operating within its borders.

The justices first addressed the issue of whether the Constitution gave Congress the power to establish a national bank. They acknowledged that it was not within the enumerated powers of Congress, authority explicitly given to Congress in the Constitution, to establish a national bank. He also noted that there is nothing in the Constitution restricting the powers of Congress to those specifically enumerated. Rather, only the “great outlines” of the powers of the three branches are specified. Instead of listing every power of Congress, the Constitution gives Congress the authority to make “all laws which shall be necessary and proper” for exercising the powers that are specifically enumerated. This means that Congress has the authority to pass any law that is “necessary and proper” to exercise its power as specified in the Constitution, even if the Constitution does not explicitly give Congress the authority to pass that specific law or to regulate that specific matter. This is the principle of unenumerated powers. The justices noted that the Constitution expressly gives Congress the powers 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.” Because a national bank would be “necessary and proper” to allow Congress to exercise these enumerated powers, the Court concluded that the Constitution gave Congress the authority to establish one.

The second issue the Court considered is whether the state of Maryland had the authority to tax a branch of the national bank operating within its borders. The Court determined that it did not. In their decision, the justices declared that “the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective states, and cannot be controlled by them.” In other words, if the United States Congress passed a law within its authority under the Constitution, a state legislature could not pass a law to interfere with that action. “The power to tax is the power to destroy,” they decided. Allowing a state to tax a branch of the national bank created by Congress would allow that state to interfere with the exercise of Congress’s constitutional powers. Thus because “states have no power, by taxation or otherwise, to retard, impede, burden or in any manner control” the operation of constitutional laws passed by Congress, Maryland could not be allowed to tax a branch of the national bank, even though that branch was operating within its borders. The law passed by the Maryland state legislature imposing a tax on the Bank of the United States “is unconstitutional and void.”