

McCulloch v. Maryland (1819)

" . . . 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 John Marshall

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About landmarkcases.org

This site was developed to provide teachers with a full range of resources and activities to support the teaching of landmark Supreme Court cases, helping students explore the key issues of each case. The "Resources" section features basic building blocks such as background summaries and excerpts of opinions that can be used in multiple ways. The "Activities" section contains a range of short activities and in-depth lessons that can be completed with students. While these activities are online, many of them can be adapted for use in a one-computer classroom or a classroom with no computer.

Depending upon the amount of time you have to teach the case, you may want to use one or more of the "Resources" or "Activities" in conjunction with one or more of the general teaching strategies. These general teaching strategies include moot court activities, political cartoon analysis, continuum exercises, and Web site evaluation.

If you have time constraints, look at the Teaching Recommendations on page 3.

Feel free to experiment with these materials!

Teaching Recommendations Based on Your Time

If you have one day . . .

- Complete the federalism activity with students and read the background information on the case.
- For homework, have students complete the activity titled "You Make the Call" and read about the actual decision.

If you have two days . . .

- Complete the federalism activity with students and read the background information on the case.
- For homework, have students complete the activity titled "You Make the Call".
- On the second day, review the homework and have students explain their positions. Then go over the decision excerpt together and answer the questions.
- For homework on the second day, have students complete the activity titled "Developing a Political Cartoon Based on the Decision".

If you have three days . . .

- Complete the activities for the first and second days.
- On the third day, have students share their cartoons with other students, explaining any symbolism used in the cartoon. Complete the activity titled "Justifying the Implied Powers of the Federal Government".
- For homework, students could complete the brief essay topic at the bottom of the "Justifying" activity.

If you have four days . . .

- Complete the activities for the first, second, and third days.
- For homework on the third day, divide students into two groups: one group to support the statement at the bottom of the "Justifying" activity and one group to refute the statement.
- On the fourth day, hold a brief debate on the statement, selecting several students to support each side.

McCulloch v. Maryland (1819)

Background Summary and Questions • • •

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 link to 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.

McCulloch v. Maryland (1819)
Background Summary and Questions • • •

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?

McCulloch v. Maryland (1819)

Background Summary and Questions • •

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.

McCulloch v. Maryland (1819)
Background Summary and Questions • •

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?

McCulloch v. Maryland (1819)
Background Summary and Questions •

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:

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.

Background Summary and Questions •

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?

Diagram of 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)

Key Excerpts from the Opinion

Chief Justice Marshall 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?

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.

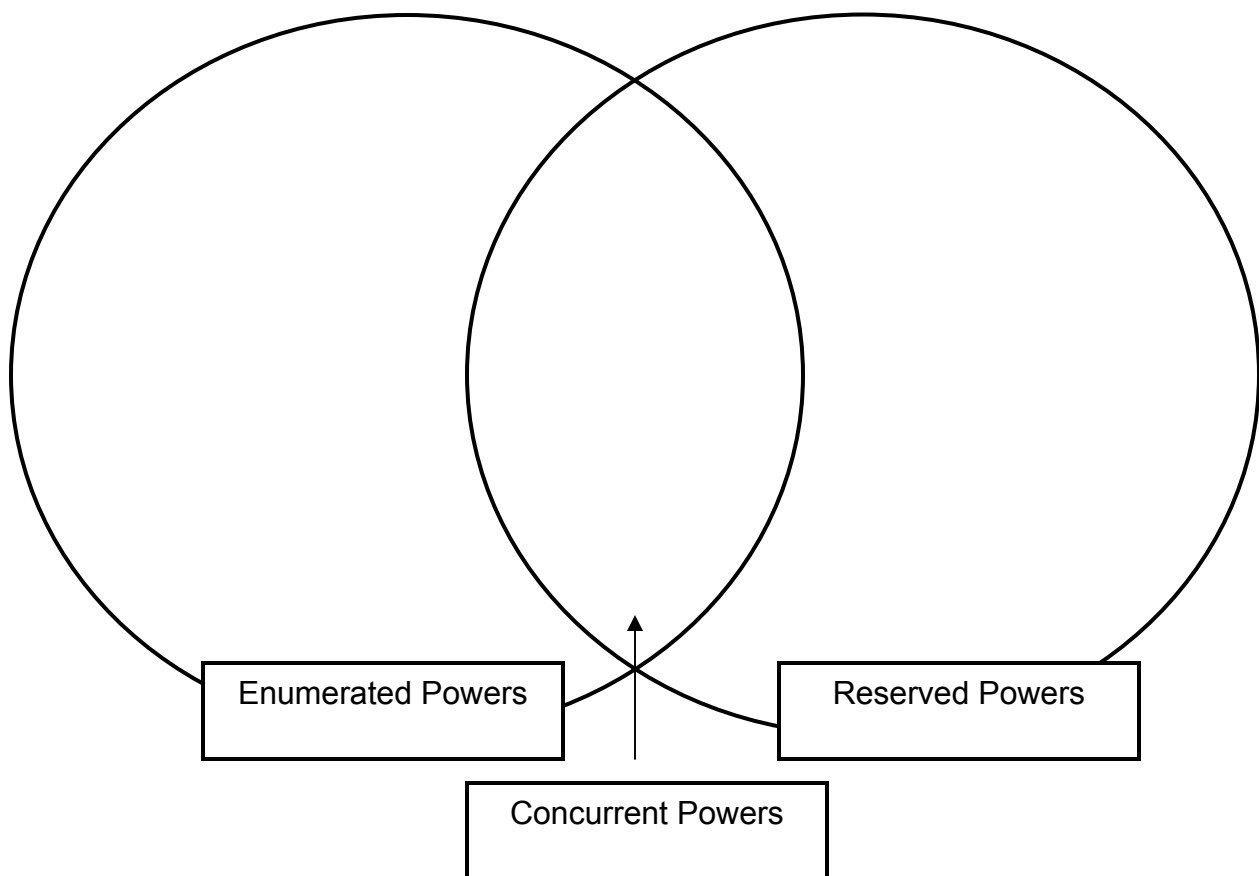
Some powers are shared by the national and the state levels of government. These are called concurrent powers. For example, both the national government and the state governments are allowed to tax. This allows both levels of government to have the money they need to provide services.

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. Place those powers on a Venn diagram such as the one below and be prepared to explain your answer.

Federalism Activity

List of Powers:	
defend the country	make laws for the environment
issue drivers' licenses	coin money
levy taxes	conduct elections
create marriage laws	punish law breakers
declare war	create standards for schools
make agreements with foreign countries	
protect rights	

Venn Diagram of Government Powers



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 was the first attempt by the new nation at establishing a national government. The Articles 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.

Powers of the Federal Government

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 are any powers not explicitly given to the national government, who has these powers?
2. If the Articles of Confederation were still in effect today, how might this Article restrict powers the federal government has? For instance, what are some things the federal government does now which could not have been "expressly delegated to the United States" in the Articles of Confederation because they involve changes over time in society or technology that the framers could not have foreseen?
3. Would it be better for the individual states to have the powers you thought of in Question 2, or is it better for the federal government to have them? Why?

Powers of the Federal Government

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?

Powers of the Federal Government

United States Constitution Article I, Section 8: Powers Granted to Congress

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. This section of the Constitution lists the powers granted to Congress. Section 18 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? Before answering this question, refer to the rest of Article I, Section 8, which lists the specific powers of Congress.
2. 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 U.S. 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.
2. Read the excerpts from the U.S. Constitution on the next page. In your own words, explain each of the excerpts.
3. Read the summary of the arguments presented by each side. 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.

The Documents

United States 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*](#).

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 the above 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.

IMPLIED POWER: 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 advocacy of civil rights for African Americans. John Marshall is remembered for the decisions he made while Chief Justice of the United States.



Marbury v. Madison was the first case that was heard by the Supreme Court of the United States after John Marshall became Chief Justice of the United States. In the opinion he wrote for that case, Marshall foreshadowed the views he would express in later decisions. Among these cases are *McCulloch v. Maryland*, *Cohens v. Virginia*, and *Gibbons v. Ogden*.

Read the synopsis of each of these cases. As you read, look for commonalities in each of the decisions. When you are finished reading, answer the questions that follow.

Marbury v. Madison (1803)

At the end of his term, Federalist President John Adams appointed William Marbury as justice of the peace for the District of Columbia. The Secretary of State, John Marshall (yes - 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, Thomas Jefferson told Madison not to deliver the commissions. 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.

In his opinion, Chief Justice Marshall said that while Marbury was entitled to the commission, the Supreme Court did not have the power to issue the *writ of mandamus*. This was because the Judiciary Act of 1789, the act written by Congress which authorized the Supreme Court to issue such *writs*, was unconstitutional. Thus, the Court gave up the power to issue *writs*, but affirmed their power of judicial review, saying that if a law written by the legislature conflicts with the Constitution, the law is "null and void."

McCulloch v. Maryland (1819)

Many state banks did not like the competition and the conservative practices of the Bank of the United States. As a way to restrict the Bank's operations, the state of Maryland imposed a tax on it. 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 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. They did not design to make their government dependent on the States." 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 D.C. lottery tickets in Virginia, which was a violation of Virginia state law. They argued that it was legal because the 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 Supreme Court upheld the conviction. It answered the larger question of whether or not the Supreme Court could review decisions of the highest state courts, including those in which the state was a party, by saying, "When we consider the situation of the government of the Union and of a State in relation to each other; the nature of our Constitution; the subordination of the State governments to that Constitution; the great purpose for which jurisdiction over all cases arising under the Constitution and laws of the United States is confided to the judicial department are we at liberty to insert in this general grant an exception of those cases in which a State may be a party? . . . We think . . . not. We think a case arising under the Constitution or laws of the United States is cognizable in the Courts of the Union whoever may be the parties to that case."

Gibbons v. Ogden (1824)

Aaron Ogden held a Fulton-Livingston 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 secured a license from the U.S. Congress to operate a ferry service along the same route. 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. Justice Marshall, who wrote the decision, disagreed. He ruled that the concept of commerce included not only the exchange of products, but also navigation and commercial intercourse generally. Since navigation on interstate waterways came under Congress', not the states', power to regulate, the New York monopoly was illegal. Marshall essentially expanded the meaning of commerce and asserted Congress' power over it. In fact, the commerce power now extends to almost every kind of movement of persons, things, ideas, and communication, for commercial purposes or not, across state lines.

Chief Justice John Marshall's Legacy

Questions to Consider:

1. What were Marshall's beliefs regarding the power of the federal government? In your answer, cite evidence from the cases.
2. What were Marshall's beliefs regarding the power of the judicial branch? In your answer, cite evidence from the cases.
3. What is Marshall's legacy? In other words, what long-term impact did his decisions have on future cases and on the United States as a whole?
4. Who would have liked Marshall's decisions? Who would have disliked them?
5. Create a poster in which you commemorate Chief Justice John Marshall as a "National Hero" or a "Wanted" Man. If you choose to do a National Hero poster, list at least two reasons why he is a national hero. On the poster, include the name of the organization that is "honoring" him. If you choose to do a "Wanted" poster, list at least two reasons why he is "wanted." Include the name of the organization that is "looking" for him.