

# Text: *McCulloch v. Maryland*, 1819

Excerpt from the U.S. Supreme Court, 17 U.S. 4 Wheat. 316 316 (1819)

*ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND*

## *Syllabus*

Congress has power to incorporate a bank

The Act of the 10th of April, 1816, ch. 44, to “incorporate the subscribers to the Bank of the United States” is a law made in pursuance of the Constitution.

The Government of the Union, though limited in its powers, is supreme within its sphere of action, and its laws, when made in pursuance of the Constitution, form the supreme law of the land.

There is nothing in the Constitution of the United States similar to the Articles of Confederation, which exclude incidental or implied powers.

If the end be legitimate, and within the scope of the Constitution, all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect.

The power of establishing a corporation is not a distinct sovereign power or end of Government, but only the means of carrying into effect other powers which are sovereign. Whenever it becomes an appropriate means of exercising any of the powers given by the Constitution to the Government of the Union, it may be exercised by that Government.

If a certain means to carry into effect of any of the powers expressly given by the Constitution to the Government of the Union be an appropriate measure, not prohibited by the Constitution, the degree of its necessity is a question of legislative discretion, not of judicial cognizance.

The Bank of the United States has, constitutionally, a right to establish its branches or offices of discount and deposit within any state.

The State within which such branch may be established cannot, without violating the Constitution, tax that branch.

The State governments have no right to tax any of the constitutional means employed by the Government of the Union to execute its constitutional powers.



The States have no power, by taxation or otherwise, to retard, impede, burthen, or in any manner control the operations of the constitutional laws enacted by Congress to carry into effect the powers vested in the national Government.

...

The first question made in the cause is -- has Congress power to incorporate a bank?

It has been truly said that this can scarcely be considered as an open question entirely unprejudiced by the former proceedings of the Nation respecting it. The principle now contested was introduced at a very early period of our history, has been recognised by many successive legislatures, and has been acted upon by the Judicial Department, in cases of peculiar delicacy, as a law of undoubted obligation.

It will not be denied that a bold and daring usurpation might be resisted after an acquiescence still longer and more complete than this. But it is conceived that a doubtful question, one on which human reason may pause and the human judgment be suspended, in the decision of which the great principles of liberty are not concerned, but the respective powers of those who are equally the representatives of the people, are to be adjusted, if not put at rest by the practice of the Government, ought to receive a considerable impression from that practice. An exposition of the Constitution, deliberately established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded.

The power now contested was exercised by the first Congress elected under the present Constitution....

It was reported to the then existing Congress of the United States with a request that it might be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification.”

This mode of proceeding was adopted, and by the convention, by Congress, and by the State legislatures, the instrument was submitted to the people.... From these conventions the Constitution derives its whole authority. The government proceeds directly from the people; is “ordained and established” in the name of the people, and is declared to be ordained,

“in order to form a more perfect union, establish justice, insure domestic tranquillity, and secure the blessings of liberty to themselves and to their posterity.”

The assent of the States in their sovereign capacity is implied in calling a convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it, and their act was final. It required not the affirmance, and could not be negated, by the State Governments. The Constitution, when thus adopted, was of complete obligation, and bound the State sovereignties....



The Government of the Union then (whatever may be the influence of this fact on the case) is, emphatically and truly, a Government of the people. In form and in substance, it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit.

This Government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge; that principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise so long as our system shall exist. In discussing these questions, the conflicting powers of the General and State Governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.

...But this question is not left to mere reason; the people have, in express terms, decided it by saying, “this Constitution, and the laws of the United States, which shall be made in pursuance thereof,” “shall be the supreme law of the land,” and by requiring that the members of the State legislatures and the officers of the executive and judicial departments of the States shall take the oath of fidelity to it. The Government of the United States, then, though limited in its powers, is supreme, and its laws, when made in pursuance of the Constitution, form the supreme law of the land, “anything in the Constitution or laws of any State to the contrary notwithstanding.”

...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. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation are intrusted to its Government. It can never be pretended that these vast powers draw after them others of inferior importance merely because they are inferior...

...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”...

**Source:** *McCulloch v. Maryland*