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Period 3

McCulloch v. Maryland and the Necessary and Proper Clause

The United States was a newly independent country in 1791 still recovering from the effects of the dominion of Great Britain during its years as a colony. The government leaders were still unsure if a strong federal government was the best option for the country. Many of them such as Thomas Jefferson, who the Secretary of State at the time felt that a limited government was the best option because it did not centralize all the powers into the national government. Secretary of Treasury Alexander Hamilton proposed a charter to Congress that would create a national bank. Jefferson with his ideas of a limited government was against this charter because it would give the federal government too much power. He debated Hamilton by saying that no where in the Constitution did it state that the national government had the power to create a national bank and that the government had only the explicit powers the Constitution gave it. Hamilton then stated that the national government had all the powers the Constitution did not deny them and that the necessary and proper clause in Article one and section eight of the Constitution gave it the right to create all the laws necessary to carry out the Constitution. With the support of President George Washington, congress passed the twenty-year charter. The charter expired in 1811 and Jefferson never renewed it. When President James Madison came into power and the War of 1812 came he decided that he needed the services of a central bank. Congress chartered a National bank in 1816, which established many local branches through out the United States. Many state legislatures were looked upon by state chartered banks to establish strict laws that would limit the activity of the national banks and decrease the competition between the national and state banks.

The state of Maryland imposed a $15,000 tax on the Baltimore branch of the national bank. James McCulloch a cashier at the bank refused to pay the tax and the state of Maryland took him to court. The defense of the state of Maryland's tax on the national bank was that if the national government had the power to regulate state banks than the state banks had the power to tax and make rules for the national banks. The state of Maryland also argued that nowhere in the Constitution where the powers of Congress were listed did it state that Congress had the power to create a national bank. In defense of McCulloch his attorney argued that Congress' establishment of a national bank was a "necessary and proper power of Congress". He insisted that the creation of a national bank helped exercise other powers stated in the Constitution and therefore it was an implied power of Congress to create one. McCulloch was convicted of violating Maryland's tax law and in a series of appeals his case reached the Supreme Court where led by Chief Justice John Marshall ruled that the states had no right to tax the national banks and that even though creating a national bank was not one of the enumerated powers in the Constitution the government "entrusted with such ample powers . . . must also be entrusted with ample means for their execution".

The Framers of the Constitution were thinking of future incidents such as McCulloch v. Maryland when they included the necessary and proper clause in Article one, Section eight of the Constitution. They knew that they were probably missing some laws and that with the change of times new laws would be needed to carryout the

Constitution. The necessary and proper clause gave Congress flexibility in doing their job of executing the Constitution by giving them the liberty of interpreting which laws are needed and creating the necessary laws that allowed them to carryout the power of the Constitution.

If the Framers of the Constitution had excluded the necessary and proper clause the outcome of the ruling in McCulloch v. Maryland would have been much different. The clause gives Congress the right to interpret which laws are necessary to create when they are not explicitly stated in the Constitution. If the clause was not there the Congress would have to abide by only the laws that are stated and would not have the liberty of creating new ones. The Supreme Court and Chief Justice Marshall would have probably concluded that since nowhere in the Constitution it is stated that the national government has the right to create a national bank then the national banks would be unconstitutional. They would have been forced to interpret the Constitution only by what is stated directly and would have no leeway in interpreting it otherwise even though they felt that the creation of a national bank was necessary.

The state of Maryland based its case against McCulloch on the fact that creating a national bank was not one of the enumerated powers of Congress in the Constitution; this was also the case of Thomas Jefferson when he was secretary of state and did not want Hamilton to establish the national bank. Both parties felt that Congress only had the powers explicitly stated in the Constitution.

If the ruling had gone in the favor of Maryland, it would have taken away more power from the central government. The ruling could have been a step back for the country bringing it back to the same position it was in when the Articles of Confederation were in effect and there was a weak central government and strong states. One of the purposes of creating a new Constitution was to create a stronger central government because the Framers felt that it was necessary. A ruling for Maryland in this case would have contradicted that purpose.

When Chief Justice John Marshall said that government "entrusted with such ample powers . . . must also be entrusted with ample means for their execution" he gave Congress the power to whatever it deems necessary to execute the Constitution. Without this ruling Congress would be limited in power and would have to abide by the laws created in 1788 that could be outdated today. With his ruling Marshall and the Supreme Court established the basis for a strong central government in the United States that is still in effect today.