

McCulloch v. Maryland

4 Wheaton 316 (1819)

Chief Justice Marshall delivered the opinion of the Court.

In the case now to be determined, the defendant, a sovereign State, denies the obligation of a law enacted by the legislature of the Union, and the plaintiff, on his part, contests the validity of an act which has been passed by the legislature of that State. The constitution of our country, in its most interesting and vital parts, is to be considered; the conflicting powers of the government of the Union and of its members, as marked in that constitution, are to be discussed; and an opinion given, which may essentially influence the great operations of the government. No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision. But it must be decided peacefully, or remain a source of hostile legislation, perhaps of hostility of a still more serious nature; and if it is to be so decided, by this tribunal alone can the decision be made. On the Supreme Court of the United States has the constitution of our country devolved this important duty.

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 recognized by many successive legislatures, and has been acted upon by the judicial department, in cases of peculiar delicacy, as a law of undoubted obligation. . . .

The power now contested was exercised by the first Congress elected under the present constitution. The bill for incorporating the bank of the United States did not steal upon an unsuspecting legislature, and pass unobserved. Its principle was completely understood, and was opposed with equal zeal and ability. After being resisted, first in the fair and open field of debate, and afterwards in the executive cabinet, with as much persevering talent as any measure has ever experienced, and being supported by arguments which convinced minds as pure and as intelligent as this country can boast, it became a law. The original act was permitted to expire; but a short experience of the embarrassments to which the refusal to revive it exposed the government, convinced those who were most prejudiced against the measure of its necessity, and induced the passage of the present law. It would require no ordinary share of intrepidity to assert that a measure adopted under these circumstances was a bold and plain usurpation, to which the constitution gave no countenance.

These observations belong to the cause; but they are not made under the impression that, were the question entirely new, the law would be found irreconcilable with the constitution.

In discussing this question, the counsel for the State of Maryland have deemed it of some importance, in the construction of the constitution, to consider that instrument not as emanating from the people, but as the act of sovereign and independent States. The powers of the general government, it has been said, are delegated by the States, who alone are truly sovereign; and must be exercised in subordination to the States, who alone possess supreme dominion.

40 It would be difficult to sustain this proposition. The Convention which framed the constitution
was indeed elected by the State legislatures. But the instrument, when it came from their
hands, was a mere proposal, without obligation, or pretensions to it. 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
45 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. They acted upon it in the only manner in which they
can act safely, effectively, and wisely, on such a subject, by assembling in convention. It is
true, they assembled in their several States — and where else should they have assembled?
50 No political dreamer was ever wild enough to think of breaking down the lines which
separate the States, and of compounding the American people into one common mass. Of
consequence, when they act, they act in their States. But the measures they adopt do not, on
that account, cease to be the measures of the people themselves, or become the measures of
the State governments.

From these conventions the constitution derives its whole authority. The government
55 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,
ensure domestic tranquility, 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
60 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. . . .

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
65 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 entrusted to its government. It can never be pretended that
these vast powers draw after them others of inferior importance, merely because they are
inferior. Such an idea can never be advanced. But it may with great reason be contended,
70 that a government, entrusted with such ample powers, on the due execution of which the
happiness and prosperity of the nation so vitally depends, 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. It can never be their interest, and cannot be presumed to have been their
intention, to clog and embarrass its execution by withholding the most appropriate means. . .
75 require it) which would impute to the framers of that instrument, when granting these powers
for the public good, the intention of impeding their exercise by withholding a choice of
means? If, indeed, such be the mandate of the constitution, we have only to obey; but that
instrument does not profess to enumerate the means by which the powers it confers may be
executed; nor does it prohibit the creation of a corporation, if the existence of such a being be
80 essential to the beneficial exercise of those powers. It is, then, the subject of fair inquiry, how
far such means may be employed. . . .

We admit, as all must admit, that the powers of the government are limited, and that its limits
are not to be transcended. But we think the sound construction of the constitution must allow
to the national legislature that discretion, with respect to the means by which the powers it

85 confers are to be carried into execution, which will enable that body to perform the high
duties assigned to it, in the manner most beneficial to the people. 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. . . .

90 It being the opinion of the Court, that the act incorporating the bank 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 —

Whether the State of Maryland may, without violating the constitution, tax that branch?

That the power of taxation is one of vital importance; that it is retained by the States; that it is
95 not abridged by the grant of a similar power to the government of the Union; that it is to be
concurrently exercised by the two governments: are truths which have never been denied.
But, such is the paramount character of the constitution, that its capacity to withdraw any
subject from the action of even this power, is admitted. The States are expressly forbidden to
lay any duties on imports or exports, except what may be absolutely necessary for executing
100 their inspection laws. If the obligation of this prohibition must be conceded, the same
paramount character would seem to restrain, as it certainly may restrain, a State from such
other exercise of this power; as is in its nature incompatible with, and repugnant to, the
constitutional laws of the Union. . . .

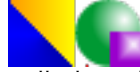
On this ground the counsel for the bank place its claim to be exempted from the power of a
105 State to tax its operations. There is no express provision for the case, but the claim has been
sustained on a principle which so entirely pervades the constitution, is so intermixed with the
materials which compose it, so interwoven with its web, so blended with its texture, as to be
incapable of being separated from it, without rending it into shreds.

This great principle is, that the constitution and the laws made in pursuance thereof are
110 supreme; that they control the constitution and laws of the respective States, and cannot be
controlled by them. From this, which may be almost termed an axiom, other propositions are
deduced as corollaries, on the truth or error of which, and on their application to this case,
the cause has been supposed to depend. These are, 1st. that a power to create implies a
power to preserve. 2nd. That a power to destroy, if wielded by a different hand, is hostile to,
115 and incompatible with these powers to create and to preserve. 3d. That where this
repugnancy exists, that authority which is supreme must control, not yield to that over which
it is supreme. . . .

If we apply the principle for which the State of Maryland contends, to the constitution
generally, we shall find it capable of changing totally the character of that instrument. We
120 shall find it capable of arresting all the measures of the government, and of prostrating it at
the foot of the States. The American people have declared their constitution, and the laws
made in pursuance thereof, to be supreme; but this principle would transfer the supremacy, in
fact, to the States. . . .

The Court has bestowed on this subject its most deliberate consideration. The result is a
125 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 . . .



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