Power in the Marshall Court: the Political Impact of McCulloch v. Maryland

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The United States Congress enjoys a broad interpretation of its constitutional powers. This is due, in part, to the monumental Supreme Court decision of *McCulloch v. Maryland* in 1819. In a unanimous decision, Chief Justice John Marshall asserted that the powers of Congress are supreme over those of the states in all matters pertaining to their duties, explicit or implicit, as set forth in the Constitution.

This paper will give a brief history of the case, including the political background and the makeup of the Marshall Court. It will then examine the decision itself with emphasis on the main issues involved and the major questions to be answered. An analysis of the political impact of the case will follow, stressing the long-term consequences of the decision.

In 1790, United States Secretary of the Treasury Alexander Hamilton proposed the charter of a national bank. He argued that such an institution would be beneficial in helping the government fulfill its constitutional responsibility to collect taxes, secure loans to the government, and administer public finances. Many
people, however, bitterly opposed the idea of a national bank. They felt the Constitution did not allow for such an establishment and that it might upset fundamental principles of constitutional interpretation. Nevertheless, despite the opposition, a bill was passed that granted a twenty-year charter to the first Bank of the United States.

In 1811, the charter expired and attempts to renew it again sparked a major controversy concerning constitutional interpretation. The opposition was led primarily by Jeffersonian-Republicans and private banking interests whose concerns were similar to the opponents of the first bank. They felt, above all, that Congress did not have the constitutional authority to establish a national bank. Once again, however, their complaints were in vain and a second Bank of the United States was chartered in 1815. The establishment of the second bank did not do much to quell the controversy. Opposition by the states became even stronger.

In 1819, James McCulloch, a cashier in the Maryland branch of the Bank of the United States, refused to pay a fifteen thousand-dollar tax assessed the bank by the state of Maryland. The tax was authorized by the state legislature, but McCulloch did not think the tax was appropriate and refused to pay it. Maryland sued him in a state court and won. Subsequently, McCulloch appealed to the Supreme Court.

The case reached the Court at a time of interesting political circumstances. Republican ideology, in various forms, dominated the political discourse of the day. "Republicanism was . . . a theory of representative government, that is, government in which certain persons
were given the power and responsibility to make political decisions for others. While republican theory located sovereignty in the people, the people, as a practical matter, did not rule” (White 53). The representatives ruled. “The variant of republicanism dominant in the Marshall Court drew upon an indigenous ideology . . . [of] American exceptionalism, the idea that the United States was a unique and specially favored nation, with an opportunity to reach levels of economic prosperity and social enlightenment not available to other cultures” (52). A main feature of this particular brand of republicanism was its emphasis on federal supremacy over the states. In their view, a republic consisted of various component parts united for self-preservation and convenience. The desire for a strong central government was also a hallmark of the Federalists, a political party that had a strong influence on the Marshall Court.

The Federalists insisted that national interests should supersede those of the states. They argued that a powerful national government would protect and preserve the Union as a whole while allowing the states to regulate certain affairs within their respective spheres. Congressman Robert G. Harper described the Federalist agenda this way:

In the management of our domestic affairs their [the Federalist’s] system has been, in the first place to support vigorously the independence and authority of the federal government; which alone is capable of ensuring our safety from abroad, by opposing to foreign nations the barrier of
our united strength, and of maintaining our peace at home, by checking the ambition and repressing the passions of the several states, and balancing their forces, so as to prevent the greater from overpowering and subduing the lesser. (Billias 45)

During the ratification of the Constitution, the Federalists contended that a bill of rights was not necessary to limit the powers of the national government; the only powers available to the U.S. were enumerated or delegated in the Constitution. What they meant, in essence, was that the Antifederalists need not fear a broad abuse of central authority because the Constitution clearly spelled out what the U.S. could and could not do. However, this was no comfort to the Antifederalists and “several states would not ratify the document without a promise that this assurance would be written into the Constitution as an amendment. The Tenth Amendment embodies the Federalists’ commitment to the Antifederalists on this matter” (Young 25).

The Tenth Amendment states: “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.” In other words, those powers not exercised exclusively by the U.S., or explicitly prohibited to the states, should belong to the states. As we shall see, the Court’s interpretation of the Tenth Amendment, in light of other key constitutional provisions, will provide the basis for their reasoning in *McCulloch*.

As previously mentioned, the Marshall Court may
be characterized as guided by a particular brand of republican philosophy and the agenda of the Federalist Party. That this is a generalization and not descriptive of all the justices is true, but the significance of personal political ideology should not be underestimated. "Political affiliations and inclinations not only contributed to the selection of persons to sit on the Court, they contributed to the outcome of decisions" (White 292). The most influential justices on the Court openly identified themselves as Federalists or Federalist sympathizers. These included: Justices Story, Todd, Duvall, Washington, and Chief Justice John Marshall. Keeping in mind the fundamental pillar of Federalism, that of strengthening the national government, will help to understand the logic of the Court's decision.

The Court had two questions to resolve in *McCulloch v. Maryland*. First, did the United States Congress have the constitutional authority to charter a national bank? If so, did the State of Maryland have the right to tax it? If Congress were to prevail, it would have to prove it had the constitutional right to establish a financial institution, a formidable task since no such power is enumerated in the Constitution. In addition, they would need to articulate the unconstitutionality of a state tax on a federal entity (Swisher 23). While these questions may seem fairly simple on their face, they raised several other important issues that will be discussed in the analysis of the opinion and in the ultimate political impact of the decision.

The magnitude of *McCulloch* should not be underestimated. "The great significance of [the case] was
evident from the lawyers selected to argue it” (White 543). They included Daniel Webster, Wirt, and Pinkney for the bank, and Martin, Hopkinson, and Jones for the state of Maryland. Chief Justice Marshall certainly recognized the importance of the decision, approaching it cautiously. He said, “No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision” (Wheat 400).

Writing the unanimous opinion of the Court, Chief Justice Marshall held that Congress did have the authority to establish a national bank and that Maryland did not have the right to tax it. The opinion immediately addressed the first question of whether Congress had the constitutional authority to charter a national bank. The Court reasoned that even though the Tenth Amendment did grant several powers to the states, the “necessary and proper” clause of Article I, section 8 allows Congress the power to make all laws that are “necessary and proper” for carrying into execution their delegated constitutional powers. The delegated powers clause includes the congressional power to tax, borrow money, regulate commerce, and exercise war powers.

The problem presented here is that “since some of the foregoing powers [are] in themselves broad, a loose interpretation of the word ‘necessary’ could raise problems for the protection of state autonomy. This was especially true in light of the subsequent establishment of the federal judicial review power” (Young 25). How the Court decided to interpret the term could have a tremendous effect on states’ rights and federal supremacy.

The Court chose to widely interpret the “necessary
and proper” clause. Chief Justice Marshall wrote, “The Constitution of the United States has not left the right of Congress to employ the necessary means for performing its functions to general reasoning. It has supplied the ‘necessary and proper’ clause to ensure that all enumerated and delegated congressional powers have the means to be executed” (Wheat 410). In other words, the establishment of a national bank was “necessary and proper” to aid Congress in its constitutional responsibility to levy taxes, make governmental loans, and administer public finances.

The second question the Court addressed was whether the State of Maryland had the constitutional right to tax a national bank. While admitting the states did have the right to tax and regulate normal commerce, Chief Justice Marshall denied the idea that a state could tax a federal entity. He argued that, “the states are expressly forbidden to lay any duties on imports or exports, except what may be absolutely necessary for executing their inspection laws” (425) The limits on state powers are found in and enforced by the Constitution. Therefore, the idea that a state would even think of taxing a federal entity authorized by the Constitution, for the preservation of the Union, was “absolutely repugnant” to the laws of the Union (425).

In addition to being unconstitutional, the attempt to tax a federal entity is contrary to the “supremacy” clause of Article VI. The clause states: “[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."

Because the national bank was created pursuant to the Constitution, it was entitled to supremacy over state law. Chief Justice Marshall termed this the great principle, "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" (426).

In response to Maryland's claim that the government's right to tax the state meant the states also had the right to tax the government, Chief Justice Marshall argued that the two cases were not based on the same reason. The federal government was created by the consent of the people of the states, who conferred upon it the power to tax. The people are represented in Congress by representatives who exercise this power. When they tax the states, they are taxing their constituents and the taxes must be uniform (435). In short, the government has the power to tax because the people have granted them this power. "But, when a state taxes the operations of the government of the United States, it acts upon institutions created, not by their own constituents, but by people over whom they claim no control" (435). An attempt to tax the government then, according to Marshallian logic, was wrong because the government never consented to be taxed. This meant, in essence, that the citizens of the states agreed that the federal government could tax them, but the federal government never agreed to be taxed by the states.

The ultimate verdict in *McCulloch v. Maryland* had a lasting impact on the overall structure of the federal
government. Along with the questions it answered concerning congressional authority and a state's right to tax, the case was full of larger political consequences. The impact of the case will be examined on three levels: how it affected the states, Congress, and the Supreme Court itself.

For states' rights advocates, the *McCulloch* decision signified a drastic loss of state power and an assurance that federal authority was supreme. It also created in the states a strong mistrust of both Congress and the Supreme Court. In reference to the decision, Thomas Jefferson called the Court "sappers and miners constantly working underground to undermine the foundations of our confederated fabric" (Dumas 146-53). In his opinion, the Court was construing the Constitution "from a coordination of general [national] and special [state] government to a general and supreme one alone" (146-53).

The decision also indicated to what extent a state could be considered sovereign. The opinion that a state could not tax a federal entity severely restricted a state's authority to tax to those situations explicitly enumerated in the Constitution. In general, the opinion demonstrated that while federal powers would be broadly interpreted, state powers would be significantly limited. The best example of this is the Court's interpretation of the Tenth Amendment. *McCulloch* drastically weakened the Tenth Amendment. While the Court acknowledged the states to have certain powers, they insisted on a broad interpretation of the "necessary and proper" clause. Their
broad interpretation of congressional authority essentially meant that the powers "reserved" for the states by the Tenth Amendment really did not exist or were quite limited. In the opinion of the states, the Court's heavy bias toward the federal government indicated that separation of powers really did not exist, and if it did, it was only to separate the states from the rest of the government.

A major concern for the states was that Congress would be free to exercise almost any authority it pleased under the pretense of implied powers and that the Court would uphold their actions. A dissatisfied citizen wrote that, "the judiciary had in McCulloch given a general letter of attorney to the future legislators of the Union" (White 559). With this power they could essentially wipe out any authority a state might have under the Tenth Amendment. In addition, the broad ruling would make it difficult for the Court to rule in favor of the states when Congress actually did overstep its constitutional bounds.

Finally, many states' rights supporters saw McCulloch as the first step to a quasi-monarchy. They felt it might lead to imprudent federal internal improvements, national universities, and even national churches. That this concern was valid, at least in part, is evidenced by the fact that McCulloch would later serve as a model of constitutional reasoning in cases involving the status of slavery within particular states and internal improvement projects of the federal government.

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McCulloch greatly expanded the power of Congress. The supremacy of federal over state power was unarguably the most important consequence of the decision. This was best articulated by Chief Justice Marshall himself with this blanket statement of federal supremacy.

If any one proposition could command the universal assent of mankind, we might expect it would be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action... It is the government of all; its powers are delegated by all; it represents all, and acts for all... The Nation, on those subjects on which it can act, must necessarily bind its component parts.

(Wheat 405)

With this full fledged endorsement from the Court, Congress could be assured of preferential treatment in future problems arising with the states.

An important aspect of the decision was the Court's interpretation of both the "necessary and proper" and "supremacy" clauses. The Court construed the meaning of the former to allow for the establishment of any institution that would help Congress execute those duties explicitly enumerated in the Constitution. The allowance for vague, implied powers gave Congress tremendous latitude in drafting legislation.

The Court's interpretation of the "supremacy" clause not only defined the broad scope of what Congress could legally tax, it also set a strong precedent for supremacy of federal laws over state laws, even if the former happened to be only implied powers. This meant that it did not matter how effective a states' laws were; if
they conflicted with any federal law that complied—implicitly or explicitly—with the Constitution, the state law was invalid.

Although Congress was the main beneficiary of the Court's reasoning in *McCulloch*, the executive branch was also strengthened due to its weighty influence on both Congress and the Supreme Court.

The judicial authority and political influence of the Supreme Court were strengthened tremendously in *McCulloch v. Maryland*. Chief Justice Marshall made no attempt to conceal his belief that the Supreme Court should be a policy-making body. His activist approach is best exemplified by his statement, "It is a constitution we are expounding" (407). He felt it the duty of the Court to interpret the Constitution in a way that would increase adherence to the provisions found in the Constitution. Actively seeking to square actions with the Constitution was not only a practical constraint, it was the Court's responsibility.

By declaring Maryland's tax law unconstitutional, the Marshall Court exercised and strengthened the power of judicial review it had established a decade earlier. Judicial review became the most important contribution the Court would make to the American legal system and possibly one of the greatest contributions to legal philosophy as a whole. In this case, the power of review was used to bolster the authority of Congress in its debate with a state. "By deciding that Congress should have extensive discretion and power, Marshall's judgment itself obviously affected the balance of power between the federal government and the states" (Campbell 214).

Without question, the federal government was granted the ultimate deference.

*McCulloch v. Maryland* was a case as broad in its scope as in its consequences. Undoubtedly, the Court's Federalist leanings played an important part in its decision to favor a strong central government. Chief Justice Marshall clearly pronounced that the federal government was supreme over the states in most areas. He left no doubt that the Court favored judicial activism as a way to promote and protect the United States Constitution. By answering specific questions of constitutionality and the power to tax, the Marshall Court expounded many other important issues whose consequences may be seen to this day.

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