

## McCulloch v. Maryland (1819)

Among the important reflections of nationalism in this era were the decisions of the United States Supreme Court under Chief Justice John Marshall. One of the strongest of these assertions of nationalism was the case of *McCulloch v. Maryland* (1819), in which the Maryland statute taxing the branch of the Bank of the United States in that state was declared unconstitutional. This opinion further clearly upheld the constitutionality of the bank, a matter of some dispute earlier between Hamilton and Jefferson/

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Is it true, that this in the sense in which the word "necessary" is always used? Does it always import an absolute physical necessity, so strong, that one thing, to which another may be termed necessary, cannot exist without the other? We think it does not....To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable. Such is the character of human language, that no word conveys to the mind, in all situations, one single definite idea; and nothing is more common than to use words in a figurative sense....It is essential to just construction, that many words which import something excessive, should be understood in a more mitigated sense -in that sense which common usage justifies. The word "necessary" is of this description. It has not a fixed character peculiar to itself. It admits of all degrees of comparison; and is often connected with other words, which increase or diminish the impression the mind receives of the urgency it imports. A thing may be necessary, very necessary, absolutely or indispensable necessary. To no mind would the same idea be conveyed, by these several phrases....This word, then, like others, is used in various senses; and, in its construction, the subject, the context, the intention of the person using them, are all to be taken into view.

Let this be done in the case under consideration. The subject is the execution of those great powers on which the welfare of a nation essentially depends. It must have been the intention of those who gave these powers, to insure, as far as human prudence could insure, their beneficial execution. This could not be done by confining the choice of means to such narrow limits as not to leave it in the power of congress to adopt any which might be appropriate, and which were conducive to the end. The 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 to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur.

Take, for example, the power "to establish post-offices and post-roads." This power is executed by the single act of making the establishment. But, from this has been inferred the power and duty of caring the mail along the post-road, from one post-office, or rob the mail. It may be said, with some plausibility, that the right to carry mail, and to punish those who rob it, is not indispensable necessary to the establishment of a post-office and post-road. This right is, indeed, essential to the beneficial exercise of the power, but not indispensably necessary to its existence.

So, of the punishment of the crimes of stealing or falsifying a record or process of a court of the United States, or perjury in such court.

But the argument which most conclusively demonstrates the error of the construction contended for by the counsel for the State of Maryland, is founded on the intention of the convention, as manifested in the whole clause. To waste time and argument in providing that, without it, congress might carry its powers into execution, would be not much less idle than to hold a lighted taper to the sun.

That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied. But all inconsistencies are to be reconciled by the magic of the word confidence. Taxation, it is said, does not necessarily and unavoidably destroy. To carry it to the excess of destruction would be an abuse, to presume which would banish that confidence which is essential to all government.

But is this a case of confidence? Would the people of any one State trust those of another, with a power to control the most insignificant operation of their state government? We know they would not. Why, then, should we suppose that the people of any one State would be willing to trust those of another with a power to control the operations of a government to which they have confided their most important and most valuable interests? In the legislature of the Union alone, are all represented. The legislature of the Union alone, are all represented. The legislature of the Union alone, therefore, can be trusted by the people with the power of controlling measures which concern all, in the confidence that it will not be abused.

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 customhouse; 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.

This is not all. If the controlling power of the States be established; if their supremacy as to taxation be acknowledged; what is to restrain their exercising this control in any shape they may please to give it? Their sovereignty is not confined to taxation. That is not the only mode in which it might be displayed. The question, in truth, is a question of supremacy; and if the right of the States to tax the means employed by the general government be conceded, the declaration that the constitution, and the laws made in pursuance thereof, shall be the supreme law of the land, is empty and unmeaning declamation.

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[From *McCulloch v. The State of Maryland et al.* (4 Wheaton ).]