Constitutionality of a Central Bank

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Who determines whether a law is constitutional?

Ultimately, the Supreme Court

Precedent - A court decision that can use as a guide for future cases involving similar facts and issues.

In a discussion with your parents, you might make an argument for a later curfew on Friday night.

Your parents might **deliberate** and finally make a **decision**—that your curfew this Friday will be midnight.

That decision might serve as a **precedent** for your curfew on future Friday nights.

The Facts: McCulloch v. Maryland (1819)

In 1816, Congress enacted legislation to create the Second Bank of the United States, in Philadelphia.

In 1818, the Bank opened a branch in Baltimore, Maryland.

State banks in Maryland did not want the Second Bank operating in Maryland.

The Maryland legislature attempted to restrict competition by imposing a tax on any business not chartered by the state of Maryland – including the Second Bank of the United States.

The Facts: McCulloch v. Maryland (1819)

The Baltimore Branch refused to pay the tax and the state sued.

The Maryland courts upheld the tax. The state of Maryland argued that "the Constitution is silent on the subject of banks."

Maryland argued the Constitution did not *explicitly* give the federal government the authority to charter a bank, the power to do so was reserved for the states.

As a result, the state of Maryland held that the Second Bank of the United States was unconstitutional.

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The case was appealed to the U.S. Supreme Court.

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The U.S. Supreme Court saw two questions:

1. Does Congress have the power under the Constitution to incorporate a bank even though that power is not explicitly granted in the Constitution?

2. Does the state of Maryland (or any state) have the power to tax an institution created by Congress as a result of congressional powers established by the Constitution?

McCulloch v. Maryland (1819), <u>on Question 1</u>

1. Does Congress have the power under the Constitution to incorporate a bank even though that power is not explicitly granted in the Constitution?

McCulloch v. Maryland (1819), <u>on Question 1</u>

The Constitution does not give Congress the expressed power to charter a bank.

However, the Constitution does grant Congress the powers to tax and to spend, to borrow money, and "*to coin Money [and] regulate the Value thereof*"

- (Article I, Section 8, Clause 5)

McCulloch v. Maryland (1819), on Question 1

The Constitution grants Congress the power to adopt:

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 or Officer thereof

- (Article I, Section 8, Clause 18)

McCulloch v. Maryland (1819), <u>on Question 2</u>

2. Does the state of Maryland (or any state) have the power to tax an institution created by Congress as a result of congressional powers established by the Constitution?

The Court held that the "power to tax is the power to destroy"

Therefore a state tax on the Second Bank of the United States violated the Constitution as the supreme law of the land as described in Article VI, Clause 2, which is known as the supremacy clause.

McCulloch v. Maryland (1819)

Thus, the Supreme Court ruled the Maryland law was unconstitutional and upheld the constitutionality of the Second Bank of the United States.

The decision established an important legal **precedent** concerning the powers of Congress and the balance of power between state governments and the federal government.

What is the difference between a primary and secondary source?

Primary source—The original materials, or the source material, that is closest to the person, period, or idea being studied.

Secondary source—Materials that interpret and analyze information originally presented elsewhere.

Is the U.S. Constitution a primary or secondary source?

The Constitution is a primary source because it is an original document.

The Constitution is the supreme law of the land.

Expressed powers – powers granted to Congress specifically in Article I, Section 8 of the Constitution.

Read an expressed power from Article 1, Section 8.

Why did the writers specifically grant these powers to the national government?

They felt they were needed for a national government to function well.

Necessary and proper clause—Allows Congress "to make all Laws which shall be **necessary and proper** for carrying into Execution the foregoing Powers, and all the Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof" (Article 1, Section 8, Clause 18).

What does "elastic" mean?

Necessary and proper clause—Allows Congress "to make all Laws which shall be **necessary and proper** for carrying into Execution the foregoing Powers, and all the Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof" (Article 1, Section 8, Clause 18).

What does "elastic" mean?

The necessary and proper clause provides Congress **implied powers**.

Read your statement. Is it an expressed power from Article I, Section 8? If so, stand up.

Expressed Powers

- To lay and collect taxes (clause 1)
- To regulate commerce (business) (clause 3)
- To establish post offices (clause 7)
- To establish naturalization laws (clause 4)
- To raise an Army and Navy (clauses 12-14)

If you have one of the five **expressed power** statements, find a "station" in the room.

The remaining statements are **implied powers**.

If you have an **implied power**, find the **expressed power** that best matches your **implied power**.

To lay and collect taxes (Article I, Section 8, Clause 1)

- To punish tax evaders
- To use tax revenues to fund public schools, health, and housing programs
- To require states to meet certain conditions to qualify for federal funding

To regulate commerce (business) (Article I, Section 8, Clause 3)

- To regulate banking
- To establish a minimum wage
- To ban discrimination in workplaces and public facilities
- To pass laws protecting the disabled
- To regulate air travel
- To build the interstate highway system

To establish naturalization laws (Article I, Section 8, Clause 4)

- To regulate and limit immigration
- To establish the U.S. Border Patrol

To establish post offices (Article I, Section 8, Clause 7)

- To prohibit mail fraud and obstruction of the mail
- To bar the shipping of certain items through the mail

To raise an army and navy (Article I, Section 8, Clauses 12-14)

- To draft Americans into the military
- To establish military colleges
- To create the U.S. Air Force as a separate branch of the military

How about this Expressed Power?

To coin money, regulate the value thereof…

What is necessary and proper to enact this power?

What gives “coin,” or money, value?

Fiat money – money whose value comes from the fact that it is endorsed by the government and it has exchange value.

In other words, people value dollars because others will accept the dollars given to them in exchange for goods and services.

What will likely happen to the **prices of goods** when too much money is printed?

(Prices will rise.)

What happens to the **value of the money** if buying the same goods requires more and more money?

(The value of the money decreases.)

How are the supply of money and the value of money related?

The inflation rate in Zimbabwe reached 89.7 sextillion (89,700,000,000,000,000,000,000) percent in mid-November 2008.

Source: http://research.stlouisfed.org/publications/review/11/09/293-302Waller.pdf

Economists often describe “inflation” as too much money chasing too few goods.

Or, inflation is caused when the money supply grows at a faster rate that the economy’s ability to produce goods and services.

So, to manage the value of money, Congress must find a way to manage the supply of money.

Using the power of the necessary and proper (elastic) clause, what could Congress do?

In 1913, Congress used its implied powers to pass the **Federal Reserve Act**, creating the Federal Reserve System, the central bank of the U. S.

The Federal Reserve System is authorized to exercise the power given to Congress to "to coin Money, [and] regulate the Value thereof" by regulating the financial system and using monetary policy to promote **price stability**.

"Price stability" is defined as low and stable rate of inflation.

Recently the Fed set a longer-term goal of 2 percent.

The lesson concludes by summarizing the role of the Fed in the economy.

Constitutionality of a Central Bank

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Standards and Benchmarks (see pages 17-18)

Lesson Description

The Constitution of the United States outlines the basic principles of the U.S. government. This lesson focuses on the express and implied powers of Congress and the power of the Supreme Court to decide whether a law is unconstitutional. In this lesson, students learn about *McCulloch v. Maryland*, a case decided in 1819 over (1) whether the state of Maryland had the right to tax the Second Bank of the United States and (2) whether Congress had violated the Constitution in establishing the Bank. Students also review the expressed powers of Congress identified in the Constitution and analyze how Congress implements the necessary and proper (elastic) clause to enact its expressed powers. Finally, students use their knowledge of *McCulloch v. Maryland* and the necessary and proper clause to consider the constitutionality of the Federal Reserve System.

Grade Level

8-12

Concepts

Expressed powers

Federal Reserve Act

Fiat money

Implied powers

Necessary and proper (elastic) clause

Precedent

Value of money

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Teachers: Go directly to the Online Course Login

ELEMENTARY SCHOOL

MIDDLE SCHOOL

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COLLEGE

CONSUMERS

Questions?