

|| TRANSCRIPT: MCCULLOCH V MARYLAND

i *The following transcript is a verbatim account of the video or audio file accompanying this transcript.*

McCullough V Maryland is a case that comes out of disputes that go back to the founding of the nation about whether there is Authority in the Constitution to create a National Bank you might think National Bank we don't have national banks exactly we don't have national banks but at the very beginning of the country it was thought by some people that we should have national banks that we had to have a National Bank that the Constitution authorized the National Bank at the same time it was thought by a lot of people the Republicans the anti-federalists that we could not possibly have a National Bank that would lead to tyranny that would lead educator ship that would lead to too much power in the federal government and so there are these debates starting at the very beginning of the nation about whether there can be a National Bank and whether it be constitutional a National Bank gets created for a certain period of time it eventually lapses and a second National Bank is created by the time the second National Bank is created even the people like Jefferson who thought there really shouldn't be a bank and it really is unconstitutional kind of giving in they've kind of accepted that this question has been vetted everybody has determined that a National Bank is going to exist and it's okay so there all these debates early on where Jefferson and eventually Madison or on one side against federal power Alexander Hamilton is on the other side in favor of federal power Hamilton wins all the debates and this is one of them so the National Bank gets created and a lot of the states are really unhappy about this they think this is going to

be a tool of federal power over the states and they really don't want it but there's not much they can do so one thing they can do is try to tax the bank out of existence so state legislatures impose taxes on the national banks that are in their states the branches of the National Bank that are in their states and they impose these taxes as a way of getting back at the bank it's good revenue stream but also they don't want the bank to exist so they all impose taxes so the question that comes before the court in McCulloch V Maryland is there are two questions actually does Congress have the power to create and establish a National Bank and does Maryland have the power to tax the if such a bank can't exist and marshal in true martial fashion this is why Marshall gets the big chair right Marshall says two things Marshall says yes the government of United States has the power to create a bank and no the government of Maryland does not have the power to tax the bank so in both cases Marshall is giving more power to the federal government they can create the bank and the bank is immune from state taxes although there's a little asterisk there and there are some state taxes that it wouldn't be immune from there are two reasons why McCulloch is such an important case one has to do with the outcome and the other has to do with the method so in terms of the outcome in McCulloch the part of the Constitution that the Supreme Court is interpreting is a part that says that Congress shall have all power Necessary and Proper in order to establish and effectuate the goals of the federal government the question is well what are Necessary and Proper powers and the people who didn't think there should be a bank thought necessary means necessary only those things that are required to establish the powers and establish the institutions that the federal government is allowed to establish Marshall doesn't think that Marshall said necessary means whatever is good and reasonable and helpful to

any of the powers and so he expands that what the meaning of Necessary and Proper means and he expands the power of Congress to do a lot of stuff now in this case it's the National Bank but it could be anything the second reason why McCulloch is really important and this is how I teach it is in deciding that question

Marshall basically goes through every major method of interpretation of the Constitution that there is he looks at the text he looks at the history he asked pragmatic questions would it make sense for us to interpret the Constitution this way so he's asking institutional questions and eventually he's also asking political process questions about how the course should interact with the other branches of government

so when you read McCullough you see it has everything in it it has the aggrandizement

power it's talking about federalism it's talking about the relationship between the federal government and a state governments it's talking about separation of powers and checks and balances and where the court comes in and where Congress comes in and it's a primer on all the major methods of interpretation and so you can read this one case and see almost all of the issues in early constitutional law right there in this one case after Marshall says the bank of United States is constitutional he then says well and Maryland's attempt to tax it is really just an attempt to destroy it and that makes Maryland's law unconstitutional but Marshall doesn't actually get the last word here because although the the Bank of the United States is upheld in Maryland's laws struck down it's not that many years later that the bank's Charter is again up for renewal and Andrew Jackson vetoes the the attempt to renew it and simply says I believe not only the bank is bad policy but he says specifically I think the bank is unconstitutional and on those grounds he vetoes the United States and there is no

National Bank I think one of the things that's important about justice President Jackson's veto message is it was one of the early and most forceful indications that that at least one president did not believe in what we today called judicial supremacy it's quite common today for people to think and believe that once the Supreme Court has decided something that is that and that is the law President Jackson didn't believe that he didn't think he was bound by a Supreme Court decision in exercising his constitutional power of the veto one of the the consequences of McCulloch is that it sets up a showdown between Marshall on the one hand and a lot of the sort of stronger states rights proponents so there's this exchange of angry editorials in the Virginia newspapers all of which were written under pseudonyms of course but John Marshall was was writing in defense of his decision and a couple of Virginia judges most notably Spencer Rhone we're writing attacks on the decision so I think part of what you see coming out of McCulloch is a is a sense that the court is a sort of essential cog in this centralizing and nationalizing mission right so it's it's it's a federalist capital F Federalist opinion in that it's seeking to create a stronger Center as against the periphery and it's putting the court if not at the apex of that sort of central government at least as a key player and an essential cog in that central government in Marbury even though the court is interpreting the Constitution and the statute and making decisions about how we read language Marshall insists that he's not doing that Marshall insists the Constitution is clear the statute is clear we lay them against each other and we look at them and we say they're in conflict and therefore the statute cannot stand in McCulloch what he says and these are the language is the language that is often etched in stone in in the the halls of the Supreme Court he says things like the Constitution is not a legal code we don't read the Constitution in the same

way we would read a tax code he says this is a constitution we are expounding what does he mean by that he means you have to interpret it the words don't speak for themselves we have to ask ourselves how do you read the Constitution and we have to read it generously what does he mean by generously he means generously to the federal government where powers are given we read those powers generously and where limitations are placed on the states we read those limitations generously right Marshall always has his eye on the ball and what is the ball power to the federal government so he is giving power to the federal government and he's also articulating that constitutional interpretation is its own thing and it has to be done carefully it has to be done by judges and it has to be done through all these different modes of interpretation the words can't speak for themselves you have to look at the history you have to the process if look at the consequences of reading the words in a particular way and he says it's a constitution that's meant to last right it's a constitution that's meant to enable Congress to govern