

Introduction: John Marshall and the Politics of *McCulloch v. Maryland*

GARY J. SCHMITT

In recognition of the 200th anniversary of the Supreme Court's landmark decision in *McCulloch v. Maryland*, AEI's Program on American Citizenship commissioned five distinguished scholars to author essays keyed to that decision. The program hosted a panel discussion with the authors to present their initial drafts in late February 2019. The chapters that follow are the finalized versions of those essays. In addition, following the panel presentation and generated by that panel's discussion, Nelson Lund, university professor at George Mason University's Antonin Scalia Law School, published a short essay in *Law & Liberty* on *McCulloch* that we asked him to expand and that is now included in our volume.

The decision in *McCulloch* found that the US Congress had the constitutional power to charter a national bank and, further, that Maryland's effort to tax the bank violated the federal government's sovereign authority in this matter. As important as the actual decision was, it is Chief Justice John Marshall's opinion in the case that has gone down in American history as a landmark for its guidance in assessing the constitutional scope of the nation's legislative authority. Famously, the chief justice wrote:

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 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.¹

Maryland's lawyers had argued that the necessary and proper clause concluding Article I, Section 8 of the Constitution should be read as limiting Congress' implied powers to those that could be said to be "strictly necessary." On the heels of critiquing this reading, the chief justice declared, in what has become one of the most famous sentences in American constitutional history, "We must never forget that it is *a Constitution* we are expounding."²

Arguably, Marshall's opinion in *McCulloch*, along with his opinion in *Marbury v. Madison*, cementing the Court's authority to engage in judicial review of enacted statutes' constitutionality, is the most significant of the chief justice's many far-reaching opinions. As his first biographer summarily put it, this was the "greatest of Marshall's treatises on government."³ Given the potential importance of this case's decision for how the nation was to be governed, Marshall's opinion generated significant criticism both public and private. And, as the following chapters show, Marshall's opinion still generates debate today.

Chapter 1, authored by Nelson Lund, jumps straight into this fray. As its title indicates ("The Destructive Legacy of *McCulloch v. Maryland*"), the chapter sees the 200th anniversary of the case as an apt time to reevaluate Marshall's argument and its contribution to American constitutional jurisprudence. Troubled by the use of *McCulloch* to justify expansive federal power, Lund zeroes in on why he believes the opinion has lent itself to such abuse.

Michael Zuckert, professor emeritus at the University of Notre Dame, continues this critique in Chapter 2, "The Sound of the Third Hand Clapping: James Madison's Reading of the Necessary and Proper Clause." He argues that, in the congressional debate over the establishment of the First National Bank, James Madison offers a distinct and coherent middle ground between Thomas Jefferson's and Alexander Hamilton's reading of the clause. Less expansive than Hamilton's interpretation but not as limiting as Jefferson's, Madison argues that the clause cannot be read in such a way as to give Congress the implied authority to pass legislation creating the bank. As such, Zuckert argues, Madison offers a prospective rebuttal to Marshall's argument and decision in *McCulloch*.

Christopher Wolfe, professor of politics at the University of Dallas, contributes Chapter 3, "*McCulloch v. Maryland* and John Marshall's

Constitutional Interpretation.” In contrast with the two preceding chapters, Wolfe argues for the soundness of Marshall’s opinion. He offers that, when read closely, it actually provides a model of constitutional jurisprudence that is distinctly different from that put forward by many, if not most, modern Supreme Court justices.

The author of Chapter 4 is Robert Webking, professor of political science at the University of Texas at El Paso. In “A Friend of the Constitution’: John Marshall’s Defense of *McCulloch v. Maryland*,” Webking unpacks the chief justice’s anonymously written defense of his opinion and his rebuttal to the broader charge that the decision rested on a false reading of the constitutional order as ratified in 1787. Diving into these essays, Webking also discovers Marshall’s claim that the decision in *McCulloch* does not—as is widely assumed—rest on a reading of the necessary and proper clause; even if the clause had been “entirely omitted,” Webking argues, the law establishing the bank would have been constitutional.

Abram N. Shulsky, senior fellow at the Hudson Institute, broadens the debate over the Court’s decision and the bank’s establishment with Chapter 5: “How an Economist Might View *McCulloch v. Maryland*.” Shulsky examines the financial and economic reasons for the bank’s creation, not the least of which was stimulating the commercial character of the young republic and, over time, enhancing the nation’s geopolitical power, in the model of the Bank of England.

The sixth and final chapter, “*McCulloch v. Maryland* and John Marshall’s Judicial Statesmanship,” is authored by AEI Resident Scholar Adam J. White. White wrestles with whether a justice should ever be thought of as engaging in statesmanship given statesmanship’s inherent political character. Turning to Edmund Burke’s views regarding statesmanship, White develops a theory of judicial restraint that, he argues, is reflected in Marshall’s opinion in *McCulloch*. Instead of an assertion of judicial power, White argues that a more exacting reading of Marshall’s opinion reveals this landmark decision is not as far-reaching as it is often understood to be. It is couched in terms that respect both precedent and the judgment of the other branches of government about the nation’s needs.



Certainly, John Marshall's history before becoming chief justice reveals a man quite capable of handling the complexities and practicalities of political life. Despite coming from a modest background—hardscrabble, frontier Virginia and limited formal education⁴—Marshall would have been seen as a significant member of the founding generation even if he had never served as chief justice.

As a young lieutenant in a Virginia regiment, Marshall fought in Virginia and served at Valley Forge and, by dint of character and abilities, quickly rose in the estimation of Gen. George Washington and his aide-de-camp, Alexander Hamilton. With the war ending, Marshall began a law practice in Richmond, Virginia, and, in fairly short order, was elected to the Virginia House of Delegates. Despite his relative youth, he was subsequently selected to serve on the Council of State—a body elected by the two houses of the Virginia legislature to assist the governor in exercising his duties. Along with James Madison, Marshall was a key successful defender of the new constitution at the Virginia Ratifying Convention and assisted Madison in drafting a proposed “bill of rights” that convention members argued should be added to the document in exchange for their approval.

With the rise of party politics in the 1790s, Marshall became a leading figure among Virginia Federalists. In that role, he rallied public opinion there in favor of President George Washington's controversial Proclamation of Neutrality in 1793 and the even more controversial Jay Treaty with Great Britain in 1794.

Not long after succeeding Washington as president, John Adams asked Marshall to join the team of Elbridge Gerry and Charles Cotesworth Pinckney in negotiating a new accord with postrevolutionary France. The diplomatic effort came to naught, as the French side demanded in exchange for a new peace treaty that the United States provide France with a substantial low-interest loan and a significant bribe to the French foreign minister, Charles Maurice de Talleyrand. When the French demand was eventually exposed (“the XYZ Affair”), along with the American commissioners' refusal to pay, Marshall was hailed as a diplomatic hero and became forever associated with the phrase: “millions for defense but not one cent for tribute.”

More prominent now than ever, Virginia Federalists solicited Marshall to run for a seat in the US Congress, which he successfully did in the spring of 1799. Scarcely a year later, Marshall was confirmed as Adams' secretary

of state, despite being unaware of the president's nomination and the Senate's consent to his nomination. In the nine-month period he served in that role, Marshall oversaw the federal government's move to the new capital city, negotiations with the Barbary States and Spain, and the completion of a treaty ending the Quasi-War with France.

It would be surprising if Marshall's success as a lawyer, state and national legislator, diplomat and cabinet official, and author of a multivolume biography of Washington did not affect in some fashion his greatest role: chief justice of the US Supreme Court. Of course, Marshall was not the first chief justice. In little over a decade, three others had held the post before him. Undoubtedly, Marshall saw an opportunity others did not. His 34-year tenure as chief justice is still a record.

As a key proponent of the Constitution's ratification, an expositor of that document in Virginia and elsewhere, a lawyer participating in cases involving its interpretation, and a student of William Blackstone's *Commentaries on the Laws of England*, Marshall was fully aware of the distinct duties that sitting on the nation's highest court would entail. Yet, if the principles undergirding the governing order were to be thought clear and not constantly open to debate and, in turn, if the broader public were to gain deeper respect for the Constitution, then the more unanimity the Court showed in interpreting the document, the better.

To that end, Marshall ended the Court's practice whereby each justice issued a separate opinion in every decision taken by the Court. While dissents were still allowed, the chief justice strove for a unified voice from the bench. Of the 1,129 Supreme Court decisions during Marshall's time as chief justice, fewer than 90 were not unanimous. Of the nearly 550 opinions that Marshall penned, only three dozen decisions failed to gain full concurrence from the other justices. As remarkable as those figures are, they are even more noteworthy when one recalls that Marshall was the last justice nominated by a Federalist president. For three decades his new colleagues were all appointed by presidents whose parties (Republican, Republican-Democrat, and Democrat) were not necessarily in sync with the Federalist understanding of the constitutional order and its underlying principles.

The idea that Marshall, as chief justice, might, within the limits of his judicial duties, exercise a principled prudence should not surprise. In

Marbury v. Madison (1803), for example, Marshall affirmed that it was “the province and duty of the judicial department to say what the law is” and, since the Constitution was law, the Court could and should strike down an act of Congress when it conflicted with the Constitution.⁵ Yet, as Robert Faulkner points out, the straightforward logic Marshall lays out here to legitimate judicial review stays clear of the earlier argument found in *Federalist* 78 that the underlying purpose of judicial review is to forestall the “ill humours” that popular government and majority rule might impose on a minority or government itself. Issuing his opinion in the wake of the “Revolution of 1800” and the ascendancy of the Jefferson-led government, “Marshall’s caution,” Faulkner suggests, was likely generated by his recognition that the American public was now “considerably more democratically inclined”; it would not do to shove in their face the Court’s potential role in frustrating their will.⁶ Hence, the more prosaic justification for judicial review.

Similarly, the chief justice avoided a confrontation with President Thomas Jefferson by arguing that, under Article III of the Constitution, the Court had no authority to issue a writ of mandamus ordering the delivery of William Marbury’s commission as a justice of peace by Secretary of State Madison. Marshall’s reading of the law here was far from obvious. However, the near certainty that Jefferson, acting under his own views about the chief executive’s constitutional authority to interpret his powers, would refuse to obey the Court’s order was obvious. Issuing the writ and having the president ignore it would leave the “least dangerous branch” looking even more powerless. From this perspective, Marshall’s jurisprudence sacrificed the immediate paper victory for the longer-term, more substantial victory of cementing the Court’s role as constitutional arbiter.⁷

While understanding Marshall’s opinion in the bank case should always start with a careful reading of his legal analysis, one should never lose sight of Marshall’s broader hope to craft arguments for the Court’s decisions that might have lasting significance and acceptance. As Marshall probably understood, this would be no easy task with the matter at hand in *McCulloch v. Maryland*.



Marshall issued his opinion in *McCulloch* in a period designated by American history books as the Era of Good Feelings (1815–25), so called because the partisan divide between Republicans and Federalists had ended due to the decisive electoral victories of the former and the demise of the latter. However, the era was hardly without heated policy and constitutional debate. Indeed, as some of the chapters that follow note, *McCulloch* itself was the object of such debate and was seen as having a potentially pivotal say in resolving those disputes to the loss of one partisan faction or another.

Beyond the narrow legal issues pertaining to the bank's constitutionality, its ability to increase the amount of currency in circulation nationally and provide greater monetary stability was understood by advocates as supporting the idea that the United States should be a republic of a certain kind: a large commercial republic. Not only would such a republic increase wealth and, in turn, national power, but it would, as commerce expanded, also increase ties between regions of the country and reinforce citizen interest in protecting the essential right to property. As much as the system of separated powers, a modern liberal economy was thought to be essential for sustaining the larger goals of a new political order.

Others, however, read the bank's monopoly position—and the fact that considerable discretion over the country's economic life was being delegated to a relatively few private individuals—as running contrary to the new government's republican spirit and design. Madison in particular wondered whether the bank was, as he put it sometime later, part of Treasury Secretary Alexander Hamilton's larger plan “to administer the government . . . into what he thought it ought to be” by expanding executive branch authority and thereby moving policy decisions further away from Congress, the more republican branch of government.⁸

Marshall's argument against a restricted view of the necessary and proper clause was thus understandably seen as having significant implications. The first issue was whether a more expansive understanding of Congress' implied authorities—which may or may not have exactly reflected Marshall's own views in the matter—included the power to support internal improvements (roads, canals, and such) that went beyond those arguably necessary for carrying out discrete constitutional requirements, such as delivering the mail or moving military forces where needed. In time,

Congress and the executive branch accepted such broad authority that it became the underlying legitimating authority for the “American system”—a system of tariffs to promote American manufacturing (mostly found in the North) and generate revenues to support infrastructure improvements (mostly benefiting the agricultural West).

On its face, the system appeared to tie together the expanding nation and increase its overall industrial power. However, from the viewpoint of the exporting South, which now faced protectionist tariffs abroad, it was far from an equitable system. Indeed, it appeared to result in the “majority faction” that Madison had promised in *Federalist* 10 would be *less* likely to appear because of “the greater variety of parties and interests” resulting from America’s “greater number of citizens and extent of territory.”⁹

Further fueling the South’s anxiety about accepting a liberal reading of congressional powers—and the parallel resurrection of Anti-Federalist-inspired theories about the federal union as a compact of states—was of course the question of slavery. In 1787, the Articles of Confederation Congress passed the Northwest Ordinance, which established the rules for governing the territories north of the Ohio River and east of the Mississippi. It outlined the path for those territories to enter the union as states and, as part of that process, banned slavery in the territories. Congress, operating under the new Constitution, reaffirmed each provision in 1789.

By 1819, however, when *McCulloch* was decided, the economic “necessity” of slavery’s expansion into the West and the possibility of slavery’s expansion into new states carved from the Louisiana Purchase territories were running headlong into the question of whether Congress has the power to effectively ban slavery in new states. In the weeks just before Marshall issued his opinion, Rep. James Tallmadge of New York introduced and the House passed a measure amending the statute granting Missouri accession into the Union; the amendment banned further import of slaves into the territory and freed any children of slaves born thereafter. The Senate rejected the measure, with slave states’ senators arguing that the matter was for the people of the new states to decide, not Congress.

The Missouri Compromise the following year “settled” the issue of slavery’s expansion by dividing the Western territories into two halves:

one allowing slavery in new states, the other not. However, at the time of *McCulloch*, the debate over Congress' authority was very much alive. Marshall made no mention of slavery, but, surely, it was on everyone's mind.



A fundamental feature of the new republic was its written constitution. Along with a system of separated powers, proponents thought that spelling out the powers and duties of each branch would functionally guarantee the new government would be limited in its ends and means. However, as even Madison admits in *Federalist* 44, it would be foolish to think that one could possibly draft a document involving a “complete digest of laws on every subject to which the Constitution relates.”¹⁰ Inevitably, the need would arise to infer what other authorities were thought to be “necessary and proper” to conduct the government’s business. And, just as inevitable, disputes would arise as to what unstated powers might be constitutional (or not) and what the grounds would be for making that judgment.

This does not mean that the Constitution is a blank slate on which any interpretation can be pasted. More often than is appreciated, the document’s central features and text guide the government’s day-to-day operations. In the case of the necessary and proper clause, its original meaning is limned to a degree by comparing it with the similar phrasing (“expressly delegated”) found in the earlier Articles of Confederation. It is also instructive that the clause concludes a section that lists the authorities to be *given* to the new Congress—as opposed to Article I, Section 9’s list of things Congress cannot do. Taken together, it is reasonable to interpret the clause as giving Congress additional powers beyond the strictly necessary.

But this gets one only so far: “Necessary and proper” may be read as confined to carrying out the specific, enumerated powers laid out elsewhere in the Constitution, or it may read as empowering Congress to carry out those enumerated powers in light of the objects, the broader constitutional ends, for which the specific authorities are intended. For Madison and others, the latter interpretation provides too much latitude for a republican government of limited ends. For Hamilton and friends, the former provides too little latitude for the republican government to be as effective as it was envisioned to be.

Determining the intent behind a particular provision is no less problematic than determining what the text, in this instance necessary and proper, is meant to convey. When the law establishing the First National Bank was passed by the First Congress, 18 of the 55 delegates to the Constitutional Convention were members of either the Senate or the House of Representatives.¹¹ In the Senate, the committee preparing the measure for consideration included five members from the Philadelphia convention. Only one of these, Pierce Butler from South Carolina, voted against the bill but did so largely on sectional grounds and from worries about delegating such power to such few hands; Butler actually admitted he was in favor of a bank but believed the already existing Bank of North America could handle the government's needs.

After passage in the Senate in January 1791, the House took up the bill on February 1. The next day, Madison, "father of the Constitution," gave extended remarks against the bank on grounds of policy and the Constitution. When he turned to the necessary and proper clause, he argued that it should be read as giving Congress implied powers but only those necessary in a "natural and obvious" way "to effectuate" the enumerated authorities—which, to his mind, the establishment of a bank was not.¹² To bolster his argument, Madison turned to the Constitutional Convention, where, he noted, the delegates had voted down the general power of incorporation. If the Constitution's drafters had intended Congress to have such an "independent and substantive prerogative," then, Madison argued, they would have listed it in the document.¹³

Putting aside whether the convention's decision not to give Congress a general power of incorporation prohibits Congress from incorporating a specific entity (a bank) as a means to execute particular enumerated powers, Madison's turn to the Philadelphia meeting was not taken as definitive. Elbridge Gerry suggested that the memories and intentions of the delegates would invariably vary and, as such, they were "not a sufficient authority for Congress . . . to construe the Constitution."¹⁴ None of the nine House members who had also been in the convention objected to Gerry's response to Madison, and the bill passed by a vote of 39 to 20.

After Washington signed the bank bill, nascent Republicans continued to think that Congress had overreached. Even so, there was some uncertainty among their ranks. James Monroe, then a senator from Virginia and

an ally of Jefferson, argued that the measure had “exceed[ed] the power of Congress” and that it did not “appear . . . to flow from” any constitutional power. “But,” even he admitted, “in this I may be wrong.”¹⁵

In time, the Republican-dominated Congress allowed the 20-year charter of the First National Bank to lapse. However, the decision to let the charter lapse was a close-run thing. By 1811 President Madison’s Treasury Secretary Albert Gallatin was in favor of rechartering the bank, and Congress’ decision not to do so was by a margin of a single vote in each chamber.¹⁶ Following the War of 1812 and acknowledging the difficulties the federal government had in raising sufficient funds to fight the war, Madison inched toward favoring the establishment of a second national bank, diffidently telling Congress in late 1815: “The probable operation of a national bank will merit consideration.”¹⁷ Four months later, Congress passed and Madison signed the bill chartering a second national bank for a 20-year period.

With this Republican vote and Madison’s signature, Congress’ power to establish a bank would seem to have been settled as a constitutional matter. As Marshall noted in the opening of his opinion in *McCulloch*:

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 recognised by many successive legislatures, and has been acted upon by the Judicial Department, in cases of peculiar delicacy, as a law of undoubted obligation.¹⁸

As Caleb Nelson has written, “James Madison and other prominent founders did not consider the Constitution’s meaning to be fully settled at the moment it was written. . . . [But they believed] subsequent interpreters would help ‘fix’ its meaning on disputed points.” Eventually, “once practice had settled upon one of the possible interpretations of a disputed provision, they expected that interpretation to persist.”¹⁹ As Madison himself would write some years later, such fixing was “reasonable” because society needs settled law, and the “exposition of the law publicly made, and repeatedly confirmed by the constitutional authority, carries with it, by fair inference, the sanction” of people’s representatives and the courts.²⁰

Yet, as Madison knew when he wrote this in 1831, the matter was not fixed. President Andrew Jackson would veto the bank's rechartering the following year on policy and constitutional grounds, arguing that, as the nation's chief executive, he also had an obligation to interpret a law's constitutionality and that he found "nothing in [the bank's] legitimate functions which makes it necessary or proper."²¹ As Justice Joseph Story noted in his *Commentaries on the Constitution*, published the following year, the question of the bank and Congress' authority to establish a bank was "up to this very hour, still debated." And while Story believed the issue should no longer be an "open question," he admitted that, to the extent it still was, then one might regretfully conclude that the Constitution is "forever to remain an unsettled text."²²



We should not take Story's last comment as signaling his doubt that the meaning of the Constitution's text is always open to new interpretations. Presumably, in writing *Commentaries*, he thought some interpretations are sounder than others. However, the very fact that Story thought it necessary to write *Commentaries* indicates that he did not take for granted that, under the pressure of political life, new and different views would not arise that challenge earlier opinions and precedents.

As the history of Marshall's opinion in *McCulloch v. Maryland* and the debate over the national banks suggest, important policy issues cannot help but generate great interest. And, with great interest, attempts to legitimate or contest that policy decision by reference to the Constitution almost always arise. This does not mean abandoning questions of constitutionality to prevailing politics. To the contrary, it substantiates the need to revisit the most important cases, such as we do here, to keep alive the dialogue about the Constitution's first principles as a necessary and proper component of maintaining an effective but still limited form of republican government. The debate never ends, and, as such, the obligation to return again and again to the opinions of the greatest cases never ceases as well.

Notes

1. *McCulloch v. Maryland*, 17 US 316, 421 (1819).
2. *McCulloch v. Maryland*, 17 US 316, 407 (1819).
3. Alfred J. Beveridge, *The Life of John Marshall: The Building of the Nation 1815–1835* (Washington, DC: Beard Books, 2000), 308.
4. Although John Marshall's formal education was limited, he was relatively well schooled in key classics by his mother and, for a short time, by a tutor who lived with the family. For background on Marshall's life, his tenure as chief justice, and the underlying principles guiding his jurisprudence, see Joel Richard Paul, *Without Precedent: Chief Justice John Marshall and His Times* (New York: Riverhead Books, 2018); and Robert K. Faulkner, *The Jurisprudence of John Marshall* (Princeton, NJ: Princeton University Press, 1968).
5. *Marbury v. Madison*, 5 US 137, 177 (1803).
6. Faulkner, *The Jurisprudence of John Marshall*, 210–13.
7. Paul, *Without Precedent*, 254–59.
8. James Madison's point here is that, by interpreting Congress' constitutional powers broadly, allowing Congress (in turn) to pass laws with systemic policy implications (such as creating the bank and supporting domestic manufacturing with high tariffs and subsidies), and reading the president's Article II authorities expansively, Madison's *Federalist* coauthor had attempted, under the color of the law, to establish a system of government that was neither what the Constitutional Convention nor the state ratifying conventions thought they had approved. Max Farrand, ed., *The Records of the Federal Convention of 1787, Volume 3* (New Haven, CT: Yale University Press, 1911), 533–34.
9. James Madison, *Federalist No. 10: The Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection*, Congress.gov, November 23, 1787, <https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-10>.
10. James Madison, *Federalist No. 44: Restrictions on the Authority of the Several States*, Congress.gov, January 25, 1788, <https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-44>. "No language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas." See James Madison, *Federalist No. 37: Concerning the Difficulties of the Convention in Devising a Proper Form of Government*, Congress.gov, January 11, 1788, <https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-37>. Compounding the interpretative problem, according to Madison, was that the Constitution was employing "known ideas" and "old words" for a new kind of government. James Madison, Letter to Edward Livingston, April 17, 1824, <https://founders.archives.gov/documents/Madison/04-03-02-0291>.
11. See Benjamin B. Klubes, "The First Federal Congress and the First National Bank: A Case Study in Constitutional Interpretation," *Journal of the Early Republic* 10, no. 1 (Spring 1990): 19–41, https://www.jstor.org/stable/3123277?seq=1#page_scan_tab_contents.
12. *Annals of Congress*, House of Representatives, 1st Congress, 3rd Session, 1947

(February 2, 1791), <http://rs6.loc.gov:8081/cgi-bin/ampage?collId=llac&fileName=002/llac002.db&recNum=335>.

13. *Annals of Congress*, House of Representatives, 1st Congress, 3rd Session, 1950 (February 2, 1791), <http://rs6.loc.gov:8081/cgi-bin/ampage?collId=llac&fileName=002/llac002.db&recNum=336>.

14. *Annals of Congress*, House of Representatives, 1st Congress, 3rd Session, 2004 (February 7, 1791), <http://rs6.loc.gov:8081/cgi-bin/ampage?collId=llac&fileName=002/llac002.db&recNum=363>.

15. James Monroe, Letter to Nicholas Lewis, February 7, 1791, <http://monroepapers.com/items/show/481>.

16. Federal Reserve Bank of the Philadelphia, *The First Bank of the United States: A Chapter in the History of Central Banking*, June 2009, 10, <https://www.philadelphiafed.org/-/media/publications/economic-education/first-bank.pdf>.

17. James Madison, “Seventh Annual Message” (speech, US Congress, Washington, DC, December 5, 1815), <https://millercenter.org/the-presidency/presidential-speeches/december-5-1815-seventh-annual-message>.

18. *McCulloch v. Maryland*, 17 US 316, 401 (1819).

19. Caleb Nelson, “Originalism and Interpretive Conventions,” *University of Chicago Law Review* 70, no. 2 (2003): 521, <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5210&context=uclrev>.

20. James Madison, Letter to Charles J. Ingersoll, June 25, 1831, <https://founders.archives.gov/documents/Madison/99-02-02-2374>.

21. Andrew Jackson, “Bank Veto” (speech, US Senate, Washington, DC, July 10, 1832), <https://millercenter.org/the-presidency/presidential-speeches/july-10-1832-bank-veto>.

22. Joseph Story, *Commentaries on the Constitution of the United States, Volume 3* (Boston, MA: Hilliard, Gray, and Company, 1833), Chapter XXV, Sec. 1254.