

Sec. 8—Powers of Congress

Cl. 18—Necessary and Proper Clause

Chartering of Banks

As an appropriate means for executing “the great powers, to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies . . . ,” Congress may incorporate banks and kindred institutions.¹⁷⁴⁸ Moreover, it may confer upon them private powers, which, standing alone, have no relation to the functions of the Federal Government, if those privileges are essential to the effective operation of such corporations.¹⁷⁴⁹ Where necessary to meet the competition of state banks, Congress may authorize national banks to perform fiduciary functions, even though, apart from the competitive situation, federal instrumentalities might not be permitted to engage in such business.¹⁷⁵⁰ The Court will not undertake to assess the relative importance of the public and private functions of a financial institution Congress has seen fit to create. It sustained the act setting up the Federal Farm Loan Banks to provide funds for mortgage loans on agricultural land against the contention that the right of the Secretary of the Treasury, which he had not exercised, to use these banks as depositories of public funds, was merely a pretext for chartering those banks for private purposes.¹⁷⁵¹

Currency Regulations

Reinforced by the necessary and proper clause, the powers “to lay and collect taxes, to pay the debts and provide for the common defence and general welfare of the United States,” and “to borrow money on the credit of the United States and to coin money and regulate the value thereon . . . ,”¹⁷⁵² have been held to give Congress virtually complete control over money and currency. A prohibitive tax on the notes of state banks,¹⁷⁵³ the issuance of treasury notes impressed with the quality of legal tender in payment of private debts¹⁷⁵⁴ and the abrogation of clauses in private contracts, which called for payment in gold coin,¹⁷⁵⁵ were sustained as appropriate measures for carrying into effect some or all of the foregoing powers.

¹⁷⁴⁸ *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819).

¹⁷⁴⁹ *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738, 862 (1824).
See also *Pittman v. Home Owners' Corp.*, 308 U.S. 21 (1939).

¹⁷⁵⁰ *First National Bank v. Follows ex rel. Union Trust Co.*, 244 U.S. 416 (1917);
Missouri ex rel. Burnes Nat'l Bank v. Duncan, 265 U.S. 17 (1924).

¹⁷⁵¹ *Smith v. Kansas City Title Co.*, 255 U.S. 180 (1921).

¹⁷⁵² *Juilliard v. Greenman*, 110 U.S. 421, 449 (1884).

¹⁷⁵³ *Veazie Bank v. Fenno*, 75 U.S. (8 Wall.) 533 (1869).

¹⁷⁵⁴ *Juilliard v. Greenman*, 110 U.S. 421 (1884). See also *Legal Tender Cases* (*Knox v. Lee*), 79 U.S. (12 Wall.) 457 (1871).

¹⁷⁵⁵ *Norman v. Baltimore & Ohio R.R.*, 294 U.S. 240, 303 (1935).