

## Chapter VIII: *Sovereignty and Union*

monopolies”<sup>197</sup> and “aristocratical principles.”<sup>198</sup> Its charter lapsed in 1811 and was not renewed until 1816. During the first years of an inflationary trend between 1815 and 1818 the Bank was inactive, and state banks had emerged as the principal depositories of currency, issuing their own bank notes. When the Bank of the United States began to do business again in January 1817, it immediately established branches in numerous states, issued national bank notes, loaned money on various pledges on stock and state notes, and generally tried to compete with the state banks in what was regarded as an active, thriving economy. When cotton prices fell sharply in 1818 and depositors sought to redeem their notes in specie, the speculative efforts of the branch banks—some of them corrupt, as in Maryland—came to light. The results were a panic and general hostility to the Bank. Between 1816 and 1818 several states enacted legislation designed to regulate or to prohibit the operations of the national bank offices within their borders.<sup>199</sup> Maryland’s version, passed in February 1818, created a stamp tax on all notes issued by banks “not chartered by the legislature,” ranging from ten cents to twenty dollars, depending on the value of the note. The tax could be avoided only by an annual payment of \$15,000 by the affected bank. The statute, which went into effect in May, was immediately challenged by the Baltimore branch of the Bank of the United States; a case was arranged in which James McCulloch, cashier for the Baltimore branch, circulated a bank note and refused to pay the tax; and the Supreme Court, on a writ of error from a June 1818 decision by the highest court of Maryland, set the case on its docket on September 18, 1818.

The great significance of the *McCulloch* case was evident from the lawyers selected to argue it. Webster, fresh from his performance in the *Dartmouth College* case, Wirt, who according to Albert Beveridge “had arrived at the fullness of his powers,”<sup>200</sup> and the legendary Pinkney represented the Bank; Martin, arguing his last important case, Joseph Hopkinson, and the ubiquitous Walter Jones represented Maryland.

The arguments of counsel in *McCulloch* made it clear that both principal issues in the case were sovereignty issues. The first issue, the constitutionality of the Bank itself, tested the ability of Congress to exercise powers that the Constitution had not expressly delegated to it.

<sup>197</sup> The language of one of the judges in *Bulow v. City of Charleston*, 1 Nott and McCord 527 (1821).

<sup>198</sup> Brutus in the *Philadelphia General Advertiser*, Mar. 26, 1819, reacting to the *McCulloch* decision.

<sup>199</sup> On the origins of the First and Second Banks of the United States, see

B. Hammond, *Banks and Politics in America* (1957); on antibank legislation between 1816 and 1820, see C. Warren, *The Supreme Court in United States History* (3 vols., 1922), I, 505–507.

<sup>200</sup> Beveridge, *John Marshall*, IV, 284.