The United States government does not have the power to make its obligations a legal tender

In the case of *Julliard v. Greenman* (110 U.S. 421) **[Footnote 1]**, the United States Supreme Court held that the power of Congress to emit bills of credit was a power incident to the power of borrowing money on the credit of the United States:

" . . . The States are prohibited from emitting bills of credit; but Congress, which is neither expressly authorized nor expressly forbidden to do so, has, as we have already seen, been held to have the power of emitting bills of credit. . . .

It appears to us to follow, as a logical and necessary consequence, that Congress has the power to issue the obligations of the United States in such form, and to impress upon them such qualities (such as legal tender) as currency for the purchase of merchandise and the payment of debts. . . . The power, [is] incident to the power of borrowing money and issuing bills or notes of the government for money borrowed." Julliard v. Greenman: 110 U.S. 421, at 447 (1884).

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The Court came to this conclusion from the case of *McCulloch v. Maryland*.

'To make 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.'

By the settled construction and the only reasonable interpretation of this clause, the words 'necessary and proper' are not limited to such measures as are absolutely and indispensably necessary, without which the powers granted must fail of execution; but they include all appropriate means which are conducive or adapted to the end to be accomplished, and which in the judgment of Congress will most advantageously effect it.

In (*United States v. Fisher*, 2 Cranch, 358), Chief Justice Marshall expounded (on

this) clause giving Congress power to make all necessary and proper laws, as follow: 'In construing this clause, it would be incorrect, and would produce endless difficulties, if the opinion should be maintained that no law was authorized which was not indispensably necessary to give effect to a specified power. Where various systems might be adopted that purpose, it might be said with respect to each, that it was not necessary, because the end might be obtained by other means. Congress must possess the choice of means, and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the Constitution. The government is to pay the debt of the Union, and must be authorized to use the means which appear to itself the most eligible to effect that object.' 2 Cranch, 396.

In *McCulloch v. Maryland*, he more fully developed the same view, concluding thus: 'We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But 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.' 4 Wheat, 421.

The rule of interpretation thus laid down has been constantly adhered to and acted on by this court, and was accepted as expressing the true test by all the judges who took part in the former discussions of the power of Congress to make the treasury notes of the United States a legal tender in payment of private debts.

The other judgments delivered by Chief Justice Marshall contain nothing adverse to the power of Congress to issue legal tender notes." Julliard v. Greenman: 110 U.S. 421, at 440 thru 441 (1884).

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Thus, the Court concluded that: 1) Congress had the power to make its obligations a legal tender in the payment of private debts, and 2) that this power was an implied power under the Constitution based on the case of *McCulloch v. State of Maryland*. The Court determined that this implied power of making the obligations of the United States a legal tender in payment of private debts was a means (incident) to the power (expressly) given to Congress to borrow money on the credit of the United States.

However, the case of *McCulloch v. State of Maryland* was wrongly decided. **[Footnote 2]** The concept of implied powers does not exist in the Constitution. In

fact, such a concept, if a doctrine would be in conflict with the doctrine that the Congress is a government of enumerated powers. **[Footnote 3]** As such, Congress does not have the power to make its obligations a legal tender in payment of debts, since the concept of implied powers does not exist in the Constitution. Since the power is not granted (expressly) to Congress, the power to make its obligations a legal tender in payment of private debts is not given to Congress under the Constitution of the United States of America.

Footnotes:

1. See also *Knox v. Lee* (79 U.S. [Wall. 12] 457).

2. See my work "Blunders of the Supreme Court of the United States, Part 2". In this work the case of *McCulloch v. State of Maryland* (17 U.S. [Wheat. 4] 316, 1819) is examined. The blunder made by the Supreme Court of the United States is that Congress under the 'necessary and proper' clause has implied powers. Reference is made to the Federalist Papers #33 (Alexander Hamilton) to show that Congress does not have implied powers under this provision, however, that the provision only authorizes Congress to pass necessary and proper laws for executing the powers granted to it under the Constitution:

"(3rd para) What is a power, but the ability or faculty of doing a thing? What is the ability to do a thing, but the power of employing the means necessary to its execution? What is a legislative power, but a power of making laws? What are the means to execute a legislative power but laws? What is the power of laying and collecting taxes, but a legislative power, or a power of making laws to lay and collect taxes? What are the proper means of executing such a power but necessary and proper laws? This simple train of inquiry furnishes us at once with a test by which to judge of the true nature of the clause . . . . It conducts us to this palpable truth, that a power to lay and collect taxes must be a power to pass all laws necessary and proper for the execution of that power; and what does [this] provision in question do more than declare the same truth, to wit, that the national legislature to whom the power of laying and collecting taxes had been previously given, might, in the execution of that power, pass all laws necessary and proper to carry it into effect? . . . [T]he same process will lead to the same result, in relation to all other powers declared in the Constitution. ***And it is expressly to execute these powers that the sweeping clause, as it has been affectedly called, authorizes the national legislature to pass all necessary and proper laws***.

(2nd para) . . . [I]t may be affirmed with perfect confidence that the constitutional operation of the intended government would be precisely the same, if [the] clause was entirely obliterated as if [it] were repeated in every article. [It] is only declaratory of a truth which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government and vesting it with certain specified powers.

(5th para) . . . Who is to judge of ***the necessity and propriety of the laws to be passed for executing the powers of the Union***? I answer, first, that this question arises as well and as fully upon the simple grant of those powers as upon the declaratory clause; and I answer, in the second place, that the national government, like every other, must judge, in the first instance, of the proper exercise of its powers, and its constituents in the last."

http://www.foundingfathers.info/federalistpapers/fed33.htm

This also explains why the word "expressly" is not used in the Tenth Amendment to the Constitution of the United States of America.

3. ". . . [T]he proposition that there are legislative powers affecting the Nation as a whole which belong to, although not expressed in the grant of powers, is in direct conflict with ***the doctrine that this is a government of enumerated powers***. That this is such a government clearly appears from the Constitution, independently of the Amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the Tenth Amendment. This amendment, which was seemingly adopted with prescience of just such contention as the present, disclosed the widespread fear that the National Government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted. With equal determination, the framers intended that no such assumption should ever find justification in the organic act, and that if, in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act. It reads:

> 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.'

The argument of counsel ignores the principal factor in this article, to-wit, 'the

people.' Its principal purpose was not the distribution of power between the United States and the States, but a reservation to the people of all powers not granted. The preamble of the Constitution declares who framed it – 'we the people of the United States,' not the people of one State, but the people of all the States, and ***Article X reserves to the people of all the States the powers not delegated to the United States.*** The powers affecting the internal affairs of the States not granted to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, and all powers of a national character which are not delegated to the National Government by the Constitution are reserved to the people of the United States. ***The people who adopted the Constitution knew that in the nature of things they could not foresee all the questions which might arise in the future, all the circumstances which might call for the exercise of further national powers than those granted to the United States, and, after making provision for an amendment to the Constitution by which any needed additional powers would be granted, they reserved to themselves all powers not so delegated***. State of Kansas v. State of Colorado: 206 U.S. 46, 89 thru 90 (1907).

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