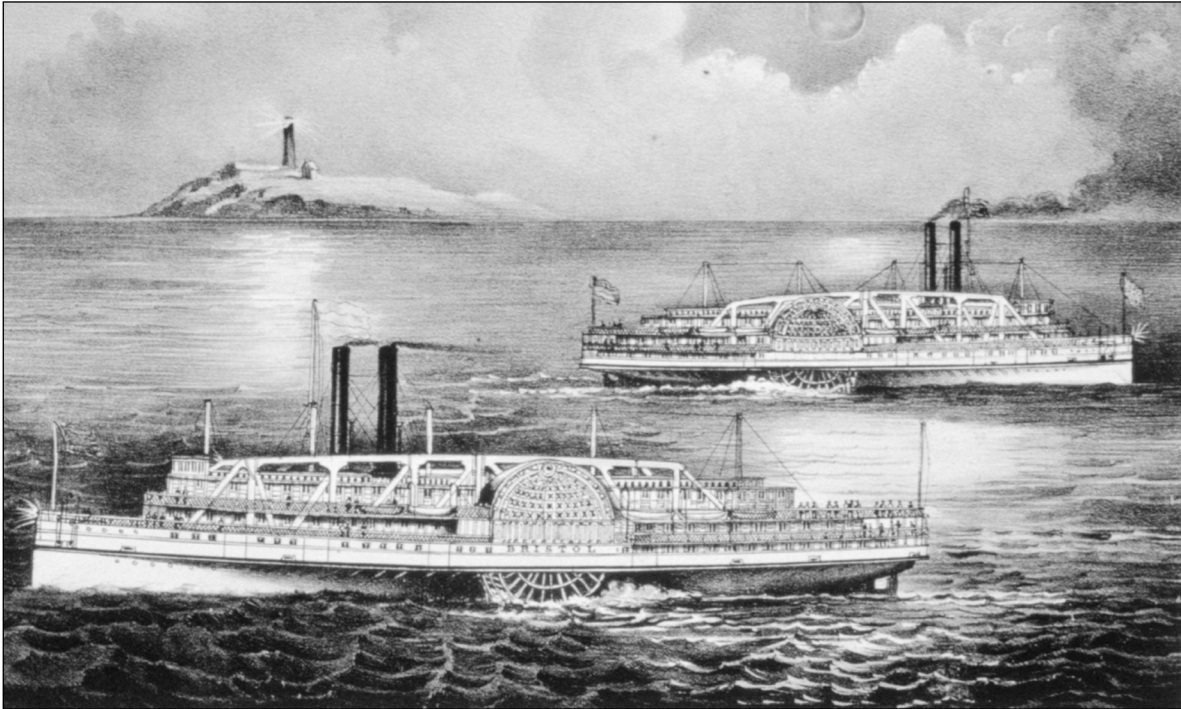


Gibbons v. Ogden (1824)

The Meaning of the Commerce Clause



The case of *Gibbons v. Ogden* involved a dispute over who had the right to transport passengers on steamboats between New York and New Jersey.

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

—Commerce Clause, Article I, Section 8, U.S. Constitution

In 1808, the state of New York granted a monopoly to operate steamboats on the state's waters, including the waters between New York and its neighboring states. The federal government, however, had issued a federal coasting license to Thomas Gibbons. This license allowed him to operate steamboats between the states of New York and New Jersey. The federal license conflicted with the license held by Aaron Ogden under the New York monopoly. Ogden filed a complaint asking the New York Court of Chancery to shut down Gibbons' operation between New York and New Jersey.

The Court of Chancery found in favor of Ogden. It issued an injunction forcing Gibbons to stop operating his steamboats in the waters between New York and New Jersey. Gibbons appealed the case to the Court of Errors of New York. The Court of Errors affirmed the lower court decision. Gibbons then appealed to the U.S. Supreme Court.

The case involved the meaning of the commerce clause of the U.S. Constitution. Found in Article I, Section 8, the clause reads:

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

The first government of the United States did not give Congress this power. Created by the Articles of Confederation during the American Revolution, the articles severely limited the power of the central government. The power to regulate trade was left to the individual states. This grant of power to the states led to confusion and problems in transactions between states and with other nations. These problems, among others, led to the drafting of the Constitution.

Ogden's attorney made two arguments. First, he argued that the Constitution's commerce clause did not give Congress exclusive power over interstate commerce. He contended that states also had this power. He pointed out the federal and the state governments shared powers in many areas, such as the ability to levy taxes.

Second, Odgen's attorney argued that Congress did not have power under the commerce clause to regulate Gibbons' boats because he was not engaged in commerce. He was transporting passengers, not goods or "trade."

The Supreme Court's Decision

Chief Justice John Marshall delivered the opinion of the Supreme Court. His decision rejected Ogden's arguments and ruled in favor of Gibbons. Marshall's opinion effectively spoke on the greater issue of Congress' power over the national economy.

First, he addressed Odgen's argument that he was not engaged in commerce. Marshall defined the term "commerce" as used in the Constitution. He found that commerce includes navigation because that is the common understanding of the word. He went on to state that commerce encompasses anything that is "commercial

intercourse." Therefore, although the ferry was only carrying passengers instead of commercial goods, it was still involved in commerce. This broad definition has helped justify subsequent congressional acts that may seem outside the traditional view of commerce.

Marshall went on to define the phrase "among the several states." He concluded that commerce among the states meant anything that was not fully contained within a single state. That meant the federal government could regulate any good unless it was entirely made, sold, and used within one state. Therefore, regulation could extend to the interior of the state and was not confined to transactions at the state's borders.

Next, Marshall's decision dealt with whether Congress shared the power to regulate interstate commerce with the states. Marshall concluded that the framers of the Constitution intended Congress to establish uniform regulation of trade. Therefore, the states did not share the power to regulate interstate commerce. Marshall noted that the only limits to the congressional power to regulate commerce are those prescribed by the Constitution itself.

The primary motive of Marshall's decision was to establish the Constitution as a functional document. He believed that strictly interpreting the powers vested in Congress would make the Constitution "unfit for use." Marshall could have written a brief decision holding for Gibbons and allowing him to operate his steamboats. Instead, he took this opportunity to broadly define the powers of Congress and ultimately vest the federal government with the ability to create a strong and efficient economy. Marshall's ability to foresee the benefits of an economy centrally controlled by the Congress rather than by the competing economic policies of the states is one of the most enduring principles from his time on the Supreme Court.

Commerce Clause Interpretation Since *Gibbons v. Ogden*

The Marshall court's expansive interpretation of the commerce clause did not end the debates over its meaning. In different eras, Congress has tried to pass various legislation, using the commerce clause as a justification for the legislation. Its efforts have often been challenged in court, and the Supreme Court has ruled on the commerce clause. The court's rulings have depended on the changing philosophies of the justices, the politics of the era, and the circumstances of the cases.

The next major test of the commerce clause came in 1895. It involved a lawsuit brought under the Sherman Antitrust Act. Passed in 1890, this act made it illegal for businesses to monopolize or restrain interstate commerce. The federal government filed an injunction to prevent the merger of five sugar manufacturing companies. Combined, the companies would account for 98 percent of the nation's sugar refineries. In *U.S. v. E.C. Knight Company*, the Supreme Court ruled 8-1 against the government. The court held that manufacturing was a local activity, and therefore Congress had no power under the commerce clause to regulate it. The court concluded that only the states, not the federal government, could regulate manufacturing. The lone dissenter argued that inflated prices would affect interstate commerce, but the majority contended that it was merely an "indirect" effect and would exceed the scope of the power granted to Congress in the Constitution.

The Supreme Court further restricted the commerce clause with its 1918 5-4 decision in *Hammer v. Dagenhart*. This case challenged the Federal Child Labor Act, which barred shipping across state lines any goods made with child labor. The court held that Congress was overreaching its powers since the goods were produced using child labor within the state and posed no threat to the nation's economy after their production.

After the Great Depression shattered the U.S. economy in the 1930s, President Franklin D. Roosevelt moved many bills through Congress in

an attempt to aid national recovery. These bills required an expansive interpretation of the commerce clause, and the Supreme Court upheld many of these acts. But two important initiatives were successfully challenged in court.

The Supreme Court struck down the National Industry Recovery Act in *Schechter Poultry v. U.S.* (1935). The act authorized the president to approve codes of fair competition developed by industry boards. In this case, the court declared unconstitutional the Live Poultry Code, which mandated wages, hours, and industry trade practices. The court considered the plight of the national economy in its decision, but stated that "extraordinary circumstances do not create or enlarge constitutional power." The court held that the code's regulations went beyond interstate commerce and encompassed practices concerning even the sale and slaughter of the chicken in local slaughterhouses.

The next important piece of legislation the court struck down was the Coal Conservation Act. The act set up a system of local coal boards with the power to set minimum prices and granted employees the right to organize and bargain collectively. The Supreme Court by a 5-4 vote in *Carter v. Carter Coal Co.* (1936) determined that the labor provisions in the statute overstepped the power granted to Congress in the commerce clause. The court stated that the word "commerce" meant "intercourse for the purposes of trade." It concluded that the mining of coal did not fit this definition. "The employment of men, the fixing of their wages, hours of labor and working conditions, the bargaining in respect of these things . . . constitute intercourse for the purposes of production, not of trade."

These Supreme Court decisions angered President Roosevelt. Re-elected in a landslide victory in 1936, Roosevelt proposed new legislation granting him the power to appoint more judges to the Supreme Court. Such a law would have allowed him to pack the court with justices who supported him. Before Congress acted on the legislation, one justice switched sides in the commerce clause debate. In *NLRB v. Jones & Laughlin Steel Corp.*



The legislative program of Franklin Delano Roosevelt, U.S. president from 1933–1945, depended on an expansive view of the U.S. Constitution’s commerce clause.

(1937), the court upheld the National Labor Relations Act, which granted employees the right to organize and collectively bargain. This historic case later came to be known as “the switch in time that saved nine,” referring to the number of justices sitting on the Supreme Court. (After this decision, Roosevelt’s court-packing legislation died in the Senate.) The decision noted that laws protecting employees had proven to have positive results on interstate commerce. The court concluded that even activities “intrastate in character when separately considered” may be regulated “if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions”

After this decision, the Supreme Court continued to take an expansive view of the commerce clause. Congress often used the commerce clause as a basis for important social initiatives. For example, the Civil Rights Act of 1964 was based on the commerce clause. The act prohibited

businesses from discriminating against customers on the basis of race, color, religion, sex, or national origin. The law was challenged and brought before the Supreme Court in *Heart of Atlanta Motel v. U.S.* (1964). A unanimous court upheld the law. (Two justices filed concurring opinions.) The court connected a hotel serving primarily local customers to interstate commerce by emphasizing the role hotels have in allowing people to be mobile and travel across state lines. The court further cited the hotel’s advertisements in other locations as evidence of its place outside the local community. The court acknowledged that Congress was primarily addressing a moral issue with the statute, but evidence also showed that interstate commerce was disrupted by discriminatory policies practiced by hotels. In *Katzenbach v. McClung* (1964), the court further expanded the scope of interstate commerce. It upheld applying the Civil Rights Act to a local restaurant because it served food previously transported over state lines. The court pointed out that the business of this single restaurant may not significantly impact interstate commerce, but the court stated that the impact of all restaurants in similar circumstances had to be considered.

These and other cases seemed to indicate the Supreme Court’s full support of the increasing congressional authority claimed under the commerce clause. No major challenges were heard by the court until 1995. By that time, however, another political shift had occurred. In two major decisions, a 5–4 court majority signaled a movement toward a more restrictive interpretation of the commerce clause. First, in *U.S. v. Lopez* (1995), the court struck down the Gun-Free School Zones Act. This law imposed strict penalties for possession of firearms within 1,000 feet of a school zone. The court stated that Congress only had the power to regulate three broad areas: (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce or persons and things in interstate commerce, and (3) activities with a substantial relation to or that substantially affect interstate commerce. The

court further clarified its position in *U.S. v. Morrison* (2000) by holding the Violence Against Women Act, establishing civil remedies for victims of gender-motivated crime, unconstitutional. Chief Justice Rehnquist writing for the majority stated that for Congress to regulate an intrastate activity, it must be economic in nature. He argued that if this type of statute were allowed, then Congress could regulate any crime as long as the national impact of the crime substantially affected employment, production, transit, or consumption.

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The commerce clause grants power to Congress to regulate many aspects of the national economy. This power is checked by the Supreme Court's interpretation of the Constitution. Beginning with the landmark *Gibbons v. Ogden* decision, the court has struggled to balance the interests of the federal system of government with the desire of Congress to enact nationwide solutions to both economic and social challenges faced by the country. In some eras, the court has taken an expansive view of the commerce clause. In others, it has taken a more restrictive view.

For Discussion

1. How is the Constitution's commerce clause different from the power given by the Articles of Confederation? Why do you think the framers of the Constitution made it different?
2. What were the facts of the case in *Gibbons v. Ogden*? What two arguments did Ogden's attorney make in the case? What was the decision of the Supreme Court? What were the court's reasons for its decision?
3. The Supreme Court in *Gibbons v. Ogden* gave an expansive reading of the commerce clause. Other courts have given it a more restrictive reading. Why do you think this has happened? Which reading do you think is correct? Why?

ACTIVITY

Revisiting Commerce Cases

Imagine that you are members of John Marshall's Supreme Court, and you are going to decide one of the commerce clause cases decided by subsequent courts. Your teacher will assign your group one (or more) of the cases below:

- a. *U.S. v. E.C. Knight Company*
- b. *Hammer v. Dagenhart*
- c. *Schechter Poultry v. U.S.*
- d. *Carter v. Carter Coal Co.*
- e. *NLRB v. Jones & Laughlin Steel Corp.*
- f. *Heart of Atlanta Motel v. U.S.*
- g. *Katzenbach v. McClung*
- h. *U.S. v. Lopez*
- i. *U.S. v. Morrison*

As a group, do the following:

1. Read and discuss the commerce clause and the *Gibbons v. Ogden* decision described in the article. You will base your decision in the other case on this decision.
2. Read and discuss your assigned case.
3. Decide this case on the principles announced in *Gibbons v. Ogden*.
4. Discuss and decide what you think the decision of the court should have been in this case.
5. Be prepared to announce your decisions and your reasons for them to the whole class.