

Gibbons v. Ogden (1824)

" . . . Few things were better known, than the immediate causes which led to the adoption of the present constitution . . . that the prevailing motive was to regulate commerce; to rescue it from the embarrassing and destructive consequences, resulting from the legislation of so many different States, and to place it under the protection of a uniform law."

— Chief Justice John Marshall



View of The Bay and Harbour of New York, From the Battery.

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About landmarkcases.org

This site was developed to provide teachers with a full range of resources and activities to support the teaching of landmark Supreme Court cases, helping students explore the key issues of each case. The “Resources” section features basic building blocks such as background summaries and excerpts of opinions that can be used in multiple ways. The “Activities” section contains a range of short activities and in-depth lessons that can be completed with students. While these activities are online, many of them can be adapted for use in a one-computer classroom or a classroom with no computer.

Depending upon the amount of time you have to teach the case, you may want to use one or more of the “Resources” or “Activities” in conjunction with one or more of the general teaching strategies. These general teaching strategies include moot court activities, political cartoon analysis, continuum exercises, and Web site evaluation.

If you have time constraints, look at the Teaching Recommendations on page 3.

Feel free to experiment with these materials!

Teaching Recommendations Based on Your Time

If you have one day . . .

- Read the background summary and answer the questions.
- Show students the diagram of how the case moved through the court system.
- Complete the activity titled “[Classifying Arguments in the Case](#)”. Discuss which arguments the students find most convincing.
- For homework, have students read the excerpt from the opinion and answer the questions. Follow-up the next day by reviewing the questions with students

If you have two days . . .

- Complete all activities for the first day.
- On the second day, go over the decision and questions with students to clarify any misunderstandings.
- Have students complete the activity titled “ [What Does That Law Have to Do with Interstate Commerce](#)”? so they can see how expansive the powers of Congress have become under the Commerce Clause.
- For homework, have students complete the activity titled “[Chief Justice John Marshall's Legacy](#)”.

If you have three days . . .

- Complete all activities described for the first day.
- On the second and third day, conduct a mini-moot court hearing on the *U.S. v. Lopez* case, using the materials for that case in “[Modern Debate Over the Commerce Clause: The Case of U.S. v. Lopez](#)” and the description accessible from the home page.

If you have four days . . .

- Complete all activities listed for the first two days.
- On the third and fourth day, conduct a mini-moot court hearing on the *U.S. v. Lopez* case, using the materials for that case in “[Modern Debate Over the Commerce Clause: The Case of U.S. v. Lopez](#)” and the description accessible from the home page.

Background Summary and Questions • • •

The case of *Gibbons v. Ogden* (1824), decided 35 years after the ratification of the Constitution, was a key turning point for the expansion of federal power to address national problems.

Under the Articles of Confederation, the national government was virtually powerless to enact policies to rationalize the actions of states. One problem that emerged during this time was the way in which state policies tended to restrict commerce within and beyond their borders, making market exchanges inefficient and costly. In the Constitution, the framers included the Commerce Clause in Article I, Section 8 to address this issue. The Commerce Clause states that Congress has the power “[t]o regulate Commerce with foreign Nations, and among the several States. . . .” The hope was that giving Congress such a power would help to unify commerce policies thereby making market exchanges more efficient and less costly.

Though the clause clearly gave Congress some power over commerce, it was unclear just how much. It was also unclear what constituted commerce. The *Gibbons* case clarified some of these issues under a decision issued by Chief Justice John Marshall, who had nationalist intentions.

In 1808, Robert Fulton and Robert Livingston acquired a monopoly from the New York state legislature to operate steamboats on the state’s waters. This monopoly extended to interstate waterways, those areas of water that stretch between states. Aaron Ogden held a Fulton-Livingston license to operate steamboats under this monopoly. However, Thomas Gibbons held a federal coasting license, granted under a 1793 Act of Congress, and operated steamboats between New Jersey and New York that competed with Ogden’s.



Aaron Ogden



Thomas Gibbons

Ogden filed a complaint in the Court of Chancery of New York asking the court to restrain Gibbons from operating his boats. Ogden’s lawyer contended that states often passed laws on issues regarding interstate matters and that states should have fully concurrent power with Congress on matters concerning interstate commerce. The monopoly, therefore, should be upheld.

Gibbons’ lawyer, Daniel Webster, argued that Congress had exclusive national power over interstate commerce according to Article I, Section 8 of the Constitution and that to argue otherwise would result in confusing and contradictory local regulatory policies.

Gibbons v. Ogden

The Court of Chancery of New York found in favor of Ogden and issued an injunction to restrict Gibbons from operating his boats. Gibbons appealed the case to the Court of Errors of New York, which affirmed the decision. Gibbons appealed the case to the Supreme Court of the United States.

Background Summary and Questions • • •

Questions to Consider:

1. Under what authority, state or federal, did Ogden operate his steamboats? Gibbons?
2. What argument did Ogden use to support his license to operate steamboats? Gibbons?
3. The background information states that Gibbons relied on the Commerce Clause of Article I, Section 8 of the U.S. Constitution to justify his case. If Ogden wanted to use the U.S. Constitution to back up his case, what section or amendment might he use?
4. The Commerce Clause was meant to clarify who had authority over interstate commerce; however, like most of the U.S. Constitution, the clause is stated in general terms that leaves open the possibility for interpretation. For instance, in this case there was a question about whether the transport of people constituted commerce. Try to think of another circumstance where the application of this clause would be unclear.
5. This case appears to be a local dispute between two businessmen. However, the decision in this case is one of the most important in constitutional history. Please explain.

Background Summary and Questions ••

One of the enduring issues in American government is the proper balance of power between the national government and the state governments. This struggle for power was evident from the earliest days of American government and is the underlying issue in the case of *Gibbons v. Ogden*.

In 1808, Robert Fulton and Robert Livingston were granted a monopoly from the New York state government to operate steamboats on the state's waters. This meant that only their steamboats could operate on the waterways of New York, including those bodies of water that stretched between states, called interstate waterways. This monopoly was very important because steamboat traffic, which carried both people and goods, was very profitable.

Aaron Ogden held a Fulton-Livingston license to operate steamboats under this monopoly. He operated steamboats between New Jersey and New York. However, another man named Thomas Gibbons competed with Aaron Ogden on this same route. Gibbons did not have a Fulton-Livingston license, but instead had a federal (national) coasting license, granted under a 1793 act of Congress.



Aaron Ogden



Thomas Gibbons

Naturally, Aaron Ogden was upset about this competition because according to New York law, he should be the only person operating steamboats on this route. Ogden filed a complaint in the Court of Chancery of New York asking the court to stop Gibbons from operating his boats. Ogden claimed that the monopoly granted by New York was legal even though he operated on shared, interstate waters between New Jersey and New York. Ogden's lawyer said that states often passed laws on issues regarding interstate matters and that states should be able to share power with the national government on matters concerning interstate commerce or business. New York's monopoly, therefore, should be upheld.

Gibbons' lawyer disagreed. He argued that the U.S. Constitution gave the national government, specifically Congress, the sole power over interstate commerce. Article I, Section 8 of the Constitution states that Congress has the power "[t]o regulate Commerce with foreign Nations, and among the several States. . . ." Gibbons' lawyer claimed that if the power over interstate commerce were shared between the national government and state governments, the result would be contradictory laws made by both governments that would harm business in the nation as a whole.

Gibbons v. Ogden

The Court of Chancery of New York found in favor of Ogden and issued an order to restrict Gibbons from operating his boats. Gibbons appealed the case to the Court of Errors of New York, which affirmed the lower court's decision. Gibbons appealed the case to the Supreme Court of the United States.

The key question in this case is who should have power to determine how interstate commerce is conducted: the state governments, the national government, or both. This was no small matter, as the nation's economic health was at stake. Before the U.S. Constitution was written, the states had most of the power to regulate commerce. Often they passed laws that harmed other states and the economy of the nation as a whole. For instance, many states taxed goods moving across state borders. Though many people acknowledged that these were destructive policies, they were reluctant to give too much power over commerce to the national government. The trick was to find a proper balance.

Chief Justice John Marshall's decision in this case was a precedent for determining what that balance should be and has far-ranging effects to this day.

Background Summary and Questions ••

Questions to Consider:

1. Under what authority, state or federal, did Ogden operate his steamboats? Gibbons?
2. What argument did Ogden use to support his license to operate steamboats? Gibbons?
3. Why might New Jersey object to New York's grant of a monopoly on steamboat operations on its waterways?
4. The background information states that Gibbons relied on the Commerce Clause of Article I, Section 8 of the U.S. Constitution to justify his case. Ogden could have used the Tenth Amendment of the U.S. Constitution to back up his side of the case. What does the Tenth Amendment state and how could it be applied to this case?
5. This case appears to be a local dispute between two businessmen. However, the decision in this case is one of the most important in constitutional history. Please explain.

Background Summary and Questions •

Vocabulary

interstate commerce

Define:

Use in a sentence:

intrastate commerce

Define:

Use in a sentence:

monopoly

Define:

Use in a sentence:

license

Define:

Use in a sentence:

appealed (to appeal)

Define:

Use in a sentence:

Gibbons v. Ogden

One conflict has been over which level of government, state or national should control *interstate commerce*. Interstate commerce is the buying and selling of goods across state borders. This is different from *intrastate commerce*, which is the buying and selling of goods within state borders.

An early case in the Supreme Court of the United States, *Gibbons v. Ogden*, helped to determine who had power over interstate commerce, the states or the national government.

In 1808, Robert Fulton and Robert Livingston had a *monopoly* to operate steamboats on the waterways of New York state. This meant that only their steamboats could operate on the waterways of New York. This monopoly was given to them by the New York state government. This monopoly was very important because steamboats carried both people and goods and was very profitable.

Aaron Ogden had a Fulton-Livingston *license* to operate steamboats under this monopoly. He operated steamboats between New Jersey and New York. However, another man named Thomas Gibbons competed with Aaron Ogden on this same route. Gibbons did not have a Fulton-Livingston license, but instead had a federal (national) coasting license, granted under a 1793 act of Congress.

The problem was that the waterway between New Jersey and New York was an interstate waterway. The business on this waterway was interstate commerce. The question was who had the right to issue a license to operate boats on this interstate waterway, the state of New York or Congress (the national government)?

Aaron Ogden was upset about the competition and asked the Court of Chancery of New York to stop Gibbons from operating his boats. Ogden said that New York should have control over this interstate waterway.

Gibbons disagreed. He said that the United States Constitution gave the national government, Congress, the only power over interstate commerce. Article I, Section 8 of the Constitution states that Congress has the power “[t]o regulate Commerce with foreign Nations, and among the several States.” Gibbons said that if each state made laws regarding interstate commerce, there would be chaos.

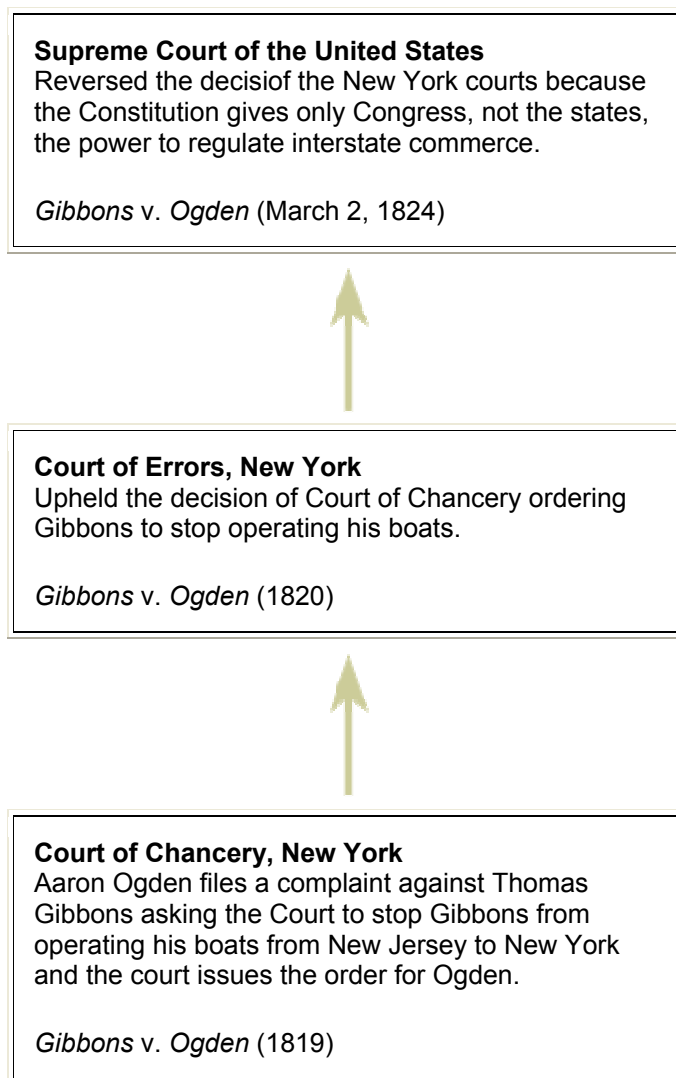
The Court of Chancery of New York found in favor of Ogden and ordered Gibbons to stop his boats. Gibbons *appealed* the case to the Court of Errors of New York, which agreed with the lower court’s decision. Gibbons appealed the case to the Supreme Court of the United States.

Background Summary and Questions •

Questions to Consider:

1. Under what authority, state or federal, did Ogden operate his steamboats? Gibbons?
2. What argument did Ogden use to support his license to operate steamboats? Gibbons?
3. Why might New Jersey object to New York's grant of a monopoly on steamboat operations on its waterways?
4. This case is one of the most important cases in U.S. history. Why is interstate commerce so important to the development of the country and its economy?

Diagram of How the Case Moved Through the Court System



Key Excerpts from the Opinion

Chief Justice John Marshall delivered the unanimous decision of the Court.

. . . Rivers and bays, in many cases, form the divisions between States; and thence it was obvious, that if the States should make regulations for the navigation of these waters, and such regulations should be repugnant and hostile, embarrassment would necessarily happen to the general intercourse of the community. Such events had actually occurred, and had created the existing state of things.

By the law of New-York, no one can navigate the bay of New-York, the North River, the Sound, the lakes, or any of the waters of that State, by steam vessels, *without a license from the grantees of New-York*, under penalty of forfeiture of the vessel.

By the law of the neighbouring State of Connecticut, no one can enter her waters with a steam vessel *having such license*.

By the law of New-Jersey, if any citizen of that State shall be *restrained*, under the New-York law, from using steam boats between the ancient shores of New-Jersey and New-York, he shall be entitled to an action for damages, *in New-Jersey*, with treble costs against the party who thus restrains or impedes him *under the law of New-York!*

It would hardly be contended, that all these acts were consistent with the laws and constitution of the United States. If there were no power in the general government, to control this extreme belligerent legislation of the States, the powers of the government were essentially deficient. . . .

Few things were better known, than the immediate causes which led to the adoption of the present constitution . . . that the prevailing motive was *to regulate commerce*; to rescue it from the embarrassing and destructive consequences, resulting from the legislation of so many different States, and to place it under the protection of a uniform law.

. . . The entire purpose for which the delegates assembled at Annapolis, was to devise means for the uniform regulation of trade. They found no means, but in a general government.

We do not find, in the history of the formation and adoption of the constitution, that any man speaks of a general *concurrent power*, in the regulation of foreign and domestic trade, as still residing in the States. The very object intended, more than any other, was to take away such power. If it had not so provided, the constitution would not have been worth accepting.

. . . What is it that is to be regulated? Not the commerce of the several States, respectively, but the commerce of the United States. Henceforth, the commerce of the States was to be an *unit*; and the system by which it was to exist and be governed, must necessarily be complete, entire, and uniform. Its character was to be described in the flag which waved over it, E PLURIBUS UNUM.

The subject to be regulated is commerce; . . . it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. . . . Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. . . . The mind can scarcely conceive a system for regulating commerce between nations, which shall exclude all laws concerning navigation. . . .

The subject to which the power is . . . applied, is to commerce “among the several States.” The word “among” means intermingled with. A thing which is among others, is intermingled with them. Commerce

Gibbons v. Ogden

among the States, cannot stop at the external boundary line of each State, but may be introduced into the interior.

It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary.

Comprehensive as the word among is, it may very properly be restricted to that commerce which concerns more States than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a State, because it is not an apt phrase for that purpose. . . . The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a State, then, may be considered as reserved for the State itself.

Key Excerpts from the Opinion

Questions to Consider:

1. According to Chief Justice John Marshall, what was the main motive for adopting a new constitution in the United States?
2. What does the Latin phrase E PLURIBUS UNUM have to do with Marshall's argument?
3. How does Marshall define "among the States?" Why is this definition important for the case? What limits does he place on the definition?
4. In the last sentence of the excerpt, Chief Justice Marshall states, "The completely internal commerce of a State, then, may be considered as reserved for the State itself." Try to imagine an example of completely internal commerce within a state. In modern times, how much commerce do you think is completely internal to a state? What implications might this have for the powers granted to Congress through the Commerce Clause?
5. Some people believe that the decision in *Gibbons v. Ogden* did more to pull the American people into a nation than any other event in the country's history except war. Explain this assertion.
6. How could the logic used in Chief Justice Marshall's opinion be used to explain why nations have found it advantageous to form economic unions like the European Union or the North American Free Trade Agreement?

Classifying Arguments in the Case

The following is a list of arguments in the *Gibbons v. Ogden* court case. Read through each argument and decide whether it supports Gibbons' side in favor of Congress's regulation of commerce (G), Ogden's side in favor of New York's regulation of commerce (O), both sides (BOTH), or neither side (N).

1. Article I, Section 8 of the U.S. Constitution states:

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

The license issued to Gibbons by Congress gave him permission to be "employed in carrying on the coasting trade." The boats operated by Gibbons were used to transport passengers, not goods, so Congress should not be able to regulate that movement.

2. The Tenth Amendment to the U.S. Constitution states:

"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."

3. There are many areas in which the national government and state governments have concurrent power (shared power). For instance, both levels of government can levy taxes.
4. In the case of *McCulloch v. Maryland* (1819), the Supreme Court of the United States ruled that when state and federal laws conflict, the federal law is supreme.
5. Under the U.S. Constitution, states are able to pass inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state.
6. Under the Articles of Confederation, states were free to pass laws regarding interstate as well as intrastate commerce. This resulted in some laws that inhibited the free flow of commerce in the United States as a whole. For instance, some states levied import duties on goods coming from other states.

What Does that Law Have to Do with Interstate Commerce?

Among the powers granted to Congress in Article I, Section 8 of the U.S. Constitution is the power to regulate interstate commerce. Over time, legislators, lawyers, politicians, and business people have argued over just what the commerce power means. For instance, it may be clear that the commerce power would give Congress the ability to make laws regarding transportation networks, such as train lines and highways, that cross state lines. However, would the commerce power give Congress the ability to establish regulations on the *production* of goods and services that will *eventually* cross state lines? These and other questions regarding the commerce power have been answered by numerous cases heard by the Supreme Court of the United States (see activity titled “How Interpretation of the Commerce Power Has Changed Over Time”). However, the question of what the Commerce Clause entitles Congress to do and legislate on is still a very open question.

Since the mid-1930s, Congress and the Supreme Court of the United States have tended to view the commerce power rather expansively. In other words, the commerce power is used to justify a wide range of powers and legislation, some of which have only a marginal link to interstate commerce. For an idea of how Congress views the link between its lawmaking and commerce, you can go to the [Library of Congress](#) Web site and click on the “Thomas: Legislative Information” link. If you search for legislation by typing in the word “commerce” you can find what bills have somehow been linked to commerce. Some of them might surprise you!

Below is a brief list of bills that the 107th Congress was considering in the first half of 2001 that have some connection to commerce. After reading the description of each bill, discuss or make a note of the connection that legislation may have to interstate commerce. Then rate that connection on a scale of one to five, one being a weak connection to interstate commerce and five being a strong connection to interstate commerce. Compare your ratings to those of other students.

| PROPOSED LAW | LINK TO COMMERCE? | HOW STRONG A LINK? (1-5) |
|--|-------------------|-----------------------------|
| Children’s Protection from Violent Programming Act (Introduced in the Senate) S. 341 Requires “that violent video programming is limited” to hours in the day when children are not likely to watch, unless the program is specifically rated so that parents can block it on the television using electronic measures. | | |
| Small Business Assistance Act of 2001 (Introduced in the Senate) S. 286 A bill directing “the Secretary of Commerce to establish a program to make no-interest loans to eligible small” businesses to make up for the economic harm that has resulted “from increases in the prices of electricity and natural gas.” | | |
| Anti-Gunrunning Act of 2001 (Introduced in the House) H. R. 225 A bill making it illegal “for any licensed importer, licensed manufacturer, or licensed dealer to . . . sell, deliver or transfer 2 or more handguns to any single person. . . .” In addition, it would be illegal “for any person (other than a licensed importer, licensed manufacturer, or licensed dealer) to receive more than one handgun within any 30-day period.” | | |

| | | |
|--|--|--|
| To end the use of steel-jawed leg-hold traps on animals in the United States (Introduced in the House) H. R. 1187 Makes it illegal “to import, export, or transport in interstate commerce an article of fur, if any part or portion of such article is derived from an animal that was trapped in a conventional steel-jawed leghold trap.” The law also makes it illegal to “import, export, deliver, carry, or transport . . . in interstate commerce any conventional steel-jawed leghold trap.” | | |
| Seabed Protection Act (Introduced in the House) H. R. 108 The bill bans bottom trawling or the use of other mobile fishing gear on the seabed in certain areas until a study is completed determining the effects of bottom trawling and any necessary actions are taken to preserve marine diversity. | | |
| H. R. 284 (Introduced in the House) The law states that an employer whose business is in or affects interstate or foreign commerce and whose negligent conduct results in a person committing a crime of violence motivated by gender against another person on premises under the control of the employer shall be liable for damages. | | |
| Made in America Information Act (Introduced in the House) H.R. 725 Establishes a toll free number under the Federal Trade Commission to assist consumers in determining if products are made in America. | | |
| Infant Crib Safety Act (Introduced in the Senate) S. 538 Makes it unlawful “to manufacture, sell, or contract” to sell, resell, lease, sublet, or otherwise place in the stream of commerce any full-size crib or nonfull-size crib that is unsafe for any infant using it. The bill also makes it illegal “for any hotel, motel, or similar transient lodging facility to offer any . . . full-size crib or nonfull-size crib that is unsafe for any infant using it.” | | |

How Interpretation of the Commerce Power Has Changed Over Time

Since the decision in *Gibbons v. Ogden*, there have been many cases before the Court that have dealt with the Commerce Clause. Over time, the Congress has used its commerce power to justify many pieces of legislation that may seem only marginally related to commerce. The Supreme Court of the United States has, at various points in history, been more or less sympathetic to the use of the Commerce Clause to justify congressional legislation.

Listed below are brief descriptions of some important cases that have come before the Court that deal with the Commerce Clause. They are listed in chronological order.

Read each summary and complete items one through four below:

1. Discuss whether you think the Commerce Clause can be used to allow Congress to make the law or take the action in question.
2. Read the decision excerpt.
3. Decide whether the Court's decision has increased Congress's power or held Congress's power in check.
4. Write a brief summary of any trend you notice in the willingness of the Supreme Court of the United States to allow Congress to use the Commerce Clause to justify new powers not explicitly granted in the Constitution.

United States v. E.C. Knight Company (1895)

In 1890, Congress passed the Sherman Antitrust Act, which made it illegal to monopolize or restrain (or attempt to do so) interstate commerce. On the basis of this Act, the United States filed a suit against five sugar manufacturing companies to keep them from merging after one firm purchased the stock of the other four (E.C. Knight Co. was one of the four firms bought out). The American Sugar Refining Company had gained control over 98 percent of the sugar refining business in the United States in this way and was considered a monopoly.

Case Question: Could the Sherman Antitrust Act suppress a monopoly in the *manufacture* of a good, as well as its *distribution*?

Hammer v. Dagenhart (1918)

In 1916, Congress passed the Federal Child Labor Act in an attempt to reduce the abuse of child labor. The Act barred interstate shipment of products that were made by children under the ages of 14 or that were made by those between the age of 14 and 16 who worked more than eight hours a day, more than six days a week, or at night.

Case Question: Did Congress have the power under the Commerce Clause to pass the Federal Child Labor Act?

National Labor Relations Board v. Jones & Laughlin Steel Corp. (1937)

Congress passed the National Labor Relations Act (Wagner Act) in 1935 in an attempt to stop unfair labor practices by businesses that affected commerce. The idea behind the law was that unfair actions by businesses caused strikes and other actions by workers that hindered the flow of interstate commerce. Union workers started proceedings before the National Labor Relations Board (NLRB) against the Jones & Laughlin Steel Corporation, accusing the business of discouraging employees from joining the union and firing some men because of their union activities. The NLRB ordered the corporation to re-employ the men, but it refused saying that the Wagner Act was unconstitutional because it regulated labor relations, not commerce.

Case Question: Did Congress have the power under the Commerce Clause to regulate labor-business relations in the Wagner Act?

United States v. Darby (1941)

In 1938, Congress passed the Fair Labor Standards Act, which banned the interstate shipment of goods produced by employees who were paid less than a minimum wage or who had worked over 44 hours a week without overtime pay. Fred Darby, who operated a lumber business in Georgia, was indicted for violating the Fair Labor Standards Act. A federal district court threw out the indictment, stating that the act was unconstitutional because the manufacturing activity in question was not a part of interstate commerce.

Case Question: Did Congress have the power under the Commerce Clause to regulate wages as it did in the Fair Labor Standards Act?

Heart of Atlanta Motel, Inc. v. United States et al. (1964)

This suit challenged Title II of the Civil Rights Act of 1964, which banned racial discrimination in public accommodations. A motel owner in Atlanta, Georgia who mostly served interstate travelers refused to allow African Americans to stay at the hotel in violation of the act. He claimed that Congress lacked the authority under the Commerce Clause to regulate his private business.

Case Question: Did Congress have the power under the Commerce Clause to ban discrimination as it did in the Civil Rights Act of 1964?

United States v. Lopez (1995)

In 1990, the U.S. Congress passed a crime bill that included the Gun-Free School Zones Act of 1990. The Act forbids “any individual knowingly to possess a firearm at a place that [he] knows . . . is a school zone,” 18 U.S.C. 922(q)(1)(A). A student named Lopez was arrested for carrying a gun to a school in San Antonio, Texas and was charged with violating the Gun-Free School Zones Act of 1990. Lopez tried to get the case dismissed on the basis that the Gun-Free School Zones Act of 1990 violated the U.S. Constitution because Congress did not have the power to pass such a law.

Case Question: Did Congress have the power under the Commerce Clause to pass the Gun-Free School Zones Act?

How Interpretation of the Commerce Power Has Changed Over Time Decision Excerpts

United States v. E.C. Knight Company (1895)

The fundamental question is whether, conceding that the existence of a monopoly in manufacture is established by the evidence, that monopoly can be directly suppressed under the act of Congress in the mode attempted by this bill. It cannot be denied that the power of a State to protect the lives, health, and property of its citizens, and to preserve good order and the public morals, "the power to govern men and things within the limits of its dominion," is a power originally and always belonging to the States, not surrendered by them to the general government. . . . The relief of the citizens of each State from the burden of monopoly and the evils resulting from the restraint of trade among such citizens was left with the States to deal with . . . On the other hand, the power of Congress to regulate commerce among the several States is also exclusive. . . . That which belongs to commerce is within the jurisdiction of the United States, but that which does not belong to commerce is within the jurisdiction of the police power of the State.

. . . Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense . . . Commerce succeeds manufacture, and is not a part of it. . . .

Contracts to buy, sell, or exchange goods to be transported among the several States, the transportation and its instrumentalities, and articles bought, sold, or exchanged for the purposes of such transit among the States, or put in the way of transit, may be regulated, but this is because they form part of interstate trade or commerce. The fact that an article is manufactured for export to another state does not of itself make it an article of interstate commerce. . . .

. . . There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce, and the fact, as we have seen, that trade or commerce might be indirectly affected, was not enough to entitle complainants [United States] to a decree [to cancel the sugar refiner's agreements].

Has the Court's decision in this case increased Congress's power or held it in check?

Hammer v. Dagenhart (1918)

The power essential to the passage of this act, the Government contends, is found in the commerce clause of the Constitution which authorizes Congress to regulate commerce with foreign nations and among the states. In *Gibbons v. Ogden* . . . Chief Justice Marshall, speaking for this court, and defining the extent and nature of the commerce power, said, "It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed." In other words, the power is one to control the means by which commerce is carried on, which is directly the contrary of the assumed right to forbid commerce from moving and thus destroy it as to particular commodities.

. . . The thing intended to be accomplished by this statute [Federal Child Labor Act] is the denial of the facilities of interstate commerce to those manufacturers in the States who employ children within the prohibited ages. The act in its effect does not regulate transportation among the States, but aims to standardize the ages at which children may be employed in mining and manufacturing within the States. Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation.

That there should be limitations upon the right to employ children in mines and factories in the interest of their own and the public welfare, all will admit. It may be desirable that such laws be uniform, but our Federal Government is one of enumerated powers. . . .

. . . The control by Congress over interstate commerce cannot authorize the exercise of authority not entrusted to it by the Constitution. . . . The maintenance of the authority of the states over matters purely local is as essential to the preservation of our institutions as is the conservation of the supremacy of the federal power in all matters entrusted to the Nation by the Federal Constitution. For these reasons we hold that this law exceeds the constitutional authority of Congress.

Has the Court's decision in this case increased Congress's power or held it in check?

National Labor Relations Board v. Jones & Laughlin Steel Corp. (1937)

... The act [Wagner Act] is challenged in its entirety as an attempt to regulate all industry, thus invading the reserved powers of the States over their local concerns. It is asserted that ... the Act is not a true regulation of such commerce or of matters which directly affect it, but on the contrary has the fundamental object of placing under the compulsory supervision of the federal government all industrial labor relations within the nation.

We think it clear that the National Labor Relations Act [Wagner Act] may be construed so as to operate within the sphere of constitutional authority. ... It [Wagner Act] purports to reach only what may be deemed to burden or obstruct commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds. It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power. Acts having that effect are not rendered immune because they grow out of labor disputes.

... Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. ... The question is necessarily one of degree. Our conclusion is that the order of the [National Labor Relations] Board was within its competency and that the act [Wagner Act] is valid as here applied.

Has the Court's decision in this case increased Congress's power or held it in check?

United States v. Darby (1941)

While manufacture is not of itself interstate commerce, the shipment of manufactured goods interstate is such commerce and the prohibition of such shipment by Congress is indubitably a regulation of the commerce. The power to regulate commerce is the power "to prescribe the rule by which commerce is governed" [*Gibbons v. Ogden*].

But it is said that ... under the guise of a regulation of interstate commerce, it [the Act] undertakes to regulate wages and hours within the state [of Georgia] ... which has elected to leave them unregulated. The motive and purpose of the present regulation are plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions. ... [W]e conclude that the prohibition of the shipment interstate of goods produced under the forbidden substandard labor conditions is within the constitutional authority of Congress.

In the more than a century which has elapsed since the decision of *Gibbons v. Ogden*, these principles of constitutional interpretation have been so long and repeatedly recognized by this Court as applicable to the Commerce Clause, that there would be little occasion for repeating them now were it not for the decision of this Court twentytwo years ago in *Hammer v. Dagenhart*. ... In that case it was held by a bare majority of the Court over the powerful and now classic dissent of Mr. Justice Holmes setting forth the fundamental issues involved, that Congress was without power to exclude the products of child labor from interstate commerce. The reasoning and conclusion of the Court's opinion there cannot be reconciled with the conclusion which we have reached, that the power of Congress under the Commerce Clause is plenary to exclude any article from interstate commerce subject only to the specific prohibitions of the Constitution. The conclusion is inescapable that *Hammer v. Dagenhart*, was a departure from the principles which have prevailed in the interpretation of the Commerce Clause both before and since the decision. ... It should be and now is overruled.

Has the Court's decision in this case increased Congress's power or held it in check?

Heart of Atlanta Hotel, Inc. v. United States et al. (1964)

The Senate Commerce Committee made it quite clear that the fundamental object of Title II was to vindicate "the deprivation of personal dignity that surely accompanies denials of equal access to public establishments." At the same time, however, it noted that such an objective has been and could be readily achieved "by congressional action based on the commerce power of the Constitution." ... Our study of the legislative record, made in the light of prior cases, has brought us to the conclusion that Congress possessed ample power in this regard. ...

... [There is ample] evidence of the burdens that discrimination by race or color places upon interstate commerce. . . . [O]ur people have become increasingly mobile with millions of people of all races traveling from State to State; . . . Negroes in particular have been the subject of discrimination in transient accommodations, having to travel great distances to secure the same; . . . often they have been unable to obtain accommodations and have had to call upon friends to put them up overnight, and . . . these conditions had become so acute as to require the listing of available lodging for Negroes in a special guidebook. . . . [T]here was evidence that this uncertainty stemming from racial discrimination had the effect of discouraging travel on the part of a substantial portion of the Negro community.

That Congress was legislating against moral wrongs in many . . . areas rendered its enactments no less valid. In framing Title II of this Act Congress was also dealing with what it considered a moral problem. But that fact does not detract from the overwhelming evidence of the disruptive effect that racial discrimination has had on commercial intercourse.

... [T]he power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce. We, therefore, conclude that the action of the Congress in the adoption of the Act as applied here to a motel which concededly serves interstate travelers is within the power granted it by the Commerce Clause of the Constitution, as interpreted by this Court for 140 years.

Has the Court's decision in this case increased Congress's power or held it in check?

United States v. Lopez (1995)

Jones & Laughlin Steel [and other cases] ushered in an era of Commerce Clause jurisprudence that greatly expanded the previously defined authority of Congress under that Clause. In part, this was a recognition of the great changes that had occurred in the way business was carried on in this country. Enterprises that had once been local or at most regional in nature had become national in scope. But the doctrinal change also reflected a view that earlier Commerce Clause cases artificially had constrained the authority of Congress to regulate interstate commerce.

But even these modern-era precedents which have expanded congressional power under the Commerce Clause confirm that this power is subject to outer limits. In *Jones & Laughlin Steel*, the Court warned that the scope of the interstate commerce power "must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government."

... [W]e have identified three broad categories of activity that Congress may regulate under its commerce power. . . . First, Congress may regulate the use of the channels of interstate commerce. . . . Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. . . . Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce. . . . i.e., those activities that substantially affect interstate commerce. . . .

We now turn to consider the power of Congress, in the light of this framework, to enact [the Gun-Free School Zones Act]. The first two categories of authority may be quickly disposed of. . . . Thus, if [the Act] is to be sustained, it must be under the third category as a regulation of an activity that substantially affects interstate commerce.

The Government's essential contention, *in fine*, is that we may determine here that [the Act] is valid because possession of a firearm in a local school zone does indeed substantially affect interstate commerce. . . . The Government argues that possession of a firearm in a school zone may result in violent crime and that violent crime can be expected to affect the functioning of the national economy in two ways. First, the costs of violent crime are substantial, and, through the mechanism of insurance, those costs are spread throughout the population. . . . Second, violent crime reduces the willingness of individuals to travel to areas within the country that are perceived to be unsafe. . . . The Government also argues that the presence of guns in schools poses a substantial threat to the educational process by threatening the learning environment. A handicapped educational process, in turn, will result in a less productive citizenry. That, in turn, would have an adverse effect on the Nation's economic well-being. As

Gibbons v. Ogden

a result, the Government argues that Congress could rationally have concluded that [the Act] substantially affects interstate commerce.

. . . Under the theories that the Government presents in support of [the Act], it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate.

. . . [This] rationale lacks any real limits because, depending on the level of generality, any activity can be looked upon as commercial. Under the dissent's rationale, Congress could just as easily look at child rearing as "fall[ing] on the commercial side of the line" because it provides a "valuable service - namely, to equip [children] with the skills they need to survive in life and, more specifically, in the workplace." . . . We do not doubt that Congress has authority under the Commerce Clause to regulate numerous commercial activities that substantially affect interstate commerce and also affect the educational process. That authority, though broad, does not include the authority to regulate each and every aspect of local schools. . . . The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States.

Has the Court's decision in this case increased Congress's power or held it in check?

**Modern Debate Over the Commerce Clause:
The Case of *United States v. Lopez* (1995)**

Note to teachers: This case could be used as a mini-moot court to assess students understanding of the issues in Gibbons v. Ogden. Need instructions on how to conduct mini-moot court hearings? Go to www.landmarkcases.org to download instructions. The text below can be used as background for the case.

In 1990, the U.S. Congress passed a major crime bill, which featured a section called the Gun-Free School Zones Act of 1990, forbidding “any individual knowingly to possess a firearm at a place that [he] knows . . . is a school zone,” 18 U.S.C. 922(q)(1)(A). The act was passed amid concerns about violence, particularly gun violence, in the nation’s schools.

When considering whether a new law should be passed, Congress not only has to consider whether the law is a good idea, but also whether the law is constitutional. When we say that the law is constitutional, we mean not only that the law itself is allowed by the U.S. Constitution, but also that Congress has the power to pass that law.

Most people certainly agreed that the Gun-Free School Zones Act of 1990 was a good idea. Guns in a school zone increase the likelihood that a young person will be seriously hurt or even killed. However, soon after the Gun-Free School Zones Act of 1990 was passed, there was a constitutional challenge to this law. On March 10, 1992, a twelfth-grade student named Lopez arrived at Edison High School in San Antonio, Texas with a concealed .38 caliber handgun and five bullets. After receiving an anonymous tip, school authorities confronted Lopez, who admitted that he was carrying the weapon. The next day, he was charged by federal prosecutors with violating the Gun-Free School Zones Act of 1990.

Lopez tried to get the case dismissed on the basis that the Gun-Free School Zones Act of 1990 violated the U.S. Constitution because Congress did not have the power under the Commerce Clause to pass such a law. The District Court denied his motion, stating that the Act was a constitutional exercise of Congress’s power to regulate interstate commerce. Lopez was found guilty in the District Court and was sentenced to six months’ imprisonment and two years of supervised release. The case was appealed to the Fifth Circuit Court of Appeals, which reversed the District Court’s decision. The Court of Appeals held that the Gun-Free School Zones Act of 1990 was beyond Congress’ power to regulate interstate commerce. The case was then appealed to the Supreme Court of the United States.

Considering Chief Justice Marshall’s decision in the *Gibbons v. Ogden* case, as well as previous laws that have been passed relying on the Commerce Clause as their basis, what arguments could be made in favor of Lopez (the act is unconstitutional)? What arguments could be made in favor of the United States (the act is constitutional)?

**Modern Debate Over the Commerce Clause:
The Case of *United States v. Lopez* (1995)
Excerpt From the Decision**

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS joined. KENNEDY filed a concurring opinion, in which O'CONNOR joined. THOMAS filed a concurring opinion. STEVENS and SOUTER filed dissenting opinions. BREYER filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG joined.

We start with first principles. The Constitution creates a Federal Government of enumerated powers. See Art. I, Section 8. As James Madison wrote: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite."

The Constitution delegates to Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, Section 8, cl. 3. The Court, through Chief Justice Marshall, first defined the nature of Congress' commerce power in *Gibbons v. Ogden*, 9 Wheat. 1, 189-190 (1824):

"Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

The commerce power "is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *Id.*, at 196. The *Gibbons* Court, however, acknowledged that limitations on the commerce power are inherent in the very language of the Commerce Clause.

"It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary.

"Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one. . . . The enumeration presupposes something not enumerated; and that something, if we regard the language, or the subject of the sentence, must be the exclusively internal commerce of a State." *Id.*, at 194-195.

Jones & Laughlin Steel [and other cases] ushered in an era of Commerce Clause jurisprudence that greatly expanded the previously defined authority of Congress under that Clause. In part, this was a recognition of the great changes that had occurred in the way business was carried on in this country. Enterprises that had once been local or at most regional in nature had become national in scope. But the doctrinal change also reflected a view that earlier Commerce Clause cases artificially had constrained the authority of Congress to regulate interstate commerce.

But even these modern-era precedents which have expanded congressional power under the Commerce Clause confirm that this power is subject to outer limits. In *Jones & Laughlin Steel*, the Court warned that the scope of the interstate commerce power "must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government."

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... [W]e have identified three broad categories of activity that Congress may regulate under its commerce power. First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce i.e., those activities that substantially affect interstate commerce.

We now turn to consider the power of Congress, in the light of this framework, to enact [the Gun-Free School Zones Act of 1990]. The first two categories of authority may be quickly disposed of. Thus, if [the Act] is to be sustained, it must be under the third category as a regulation of an activity that substantially affects interstate commerce.

The Government's essential contention, *in fine*, is that we may determine here that [the Act] is valid because possession of a firearm in a local school zone does indeed substantially affect interstate commerce. The Government argues that possession of a firearm in a school zone may result in violent crime and that violent crime can be expected to affect the functioning of the national economy in two ways. First, the costs of violent crime are substantial, and, through the mechanism of insurance, those costs are spread throughout the population. Second, violent crime reduces the willingness of individuals to travel to areas within the country that are perceived to be unsafe. The Government also argues that the presence of guns in schools poses a substantial threat to the educational process by threatening the learning environment. A handicapped educational process, in turn, will result in a less productive citizenry. That, in turn, would have an adverse effect on the Nation's economic well-being. As a result, the Government argues that Congress could rationally have concluded that [the Act] substantially affects interstate commerce.

... Under the theories that the Government presents in support of [the Act], it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate.

For instance, if Congress can, pursuant to its Commerce Clause power, regulate activities that adversely affect the learning environment, then, *a fortiori*, it also can regulate the educational process directly. Congress could determine that a school's curriculum has a "significant" effect on the extent of classroom learning. As a result, Congress could mandate a federal curriculum for local elementary and secondary schools because what is taught in local schools has a significant "effect on classroom learning" and that, in turn, has a substantial effect on interstate commerce.

... [This] rationale lacks any real limits because, depending on the level of generality, any activity can be looked upon as commercial. Under the dissent's rationale, Congress could just as easily look at child rearing as "fall[ing] on the commercial side of the line" because it provides a "valuable service - namely, to equip [children] with the skills they need to survive in life and, more specifically, in the workplace." ... We do not doubt that Congress has authority under the Commerce Clause to regulate numerous commercial activities that substantially affect interstate commerce and also affect the educational process. That authority, though broad, does not include the authority to regulate each and every aspect of local schools.

... The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States.

**Modern Debate Over the Commerce Clause:
The Case of *United States v. Lopez* (1995)**

Questions to consider:

1. Justice Rehnquist cites three important first principles on which the decision in this case is based. What are they?
2. Justice Rehnquist says that the Jones case ushered in an era where Congress's power has greatly expanded. According to Rehnquist, what accounts for this expansion of power?
3. What limits are there on Congress's authority, according to Rehnquist?
4. What argument does the United States make to support their case that the Gun-Free School Zones Act substantially affects interstate commerce? Would you characterize this argument as a strict or a loose interpretation of the Commerce Clause power?
5. In challenging the argument of the United States, Justice Rehnquist uses the slippery slope rationale. What does Justice Rehnquist contend? Do you agree or disagree? Explain.
6. If the Supreme Court of the United States doesn't uphold the Gun-Free School Zones Act, who still has the authority to pass laws restricting gun possession in school zones?

Chief Justice John Marshall's Legacy

Throughout our history, many individuals have left a legacy, or something for which they will be remembered. For instance, Dr. Martin Luther King, Jr. is known for his advocacy of civil rights for African Americans. John Marshall is remembered for the decisions he made while Chief Justice of the United States.



Marbury v. Madison was the first case that was heard by the Supreme Court of the United States after John Marshall became Chief Justice of the United States. In the opinion he wrote for that case, Marshall foreshadowed the views he would express in later decisions. Among these cases are *McCulloch v. Maryland*, *Cohens v. Virginia*, and *Gibbons v. Ogden*.

Read the synopsis of each of these cases. As you read, look for commonalities in each of the decisions. When you are finished reading, respond to the questions that follow.

Marbury v. Madison (1803)

At the end of his term, Federalist President John Adams appointed William Marbury as justice of the peace for the District of Columbia. The Secretary of State, John Marshall (yes - the same person who later became Chief Justice) failed to deliver the commission to Marbury and left that task to the new Secretary of State, James Madison. Upon his inauguration, Thomas Jefferson told Madison not to deliver the commissions. Marbury filed suit and asked the Supreme Court to issue a *writ of mandamus*, or a court order which would require Madison to deliver the commission.

In his opinion, Chief Justice Marshall said that while Marbury was entitled to the commission, the Supreme Court did not have the power to issue the *writ of mandamus*. This was because the Judiciary Act of 1789, the act written by Congress which authorized the Supreme Court to issue such *writs*, was unconstitutional. Thus, the Court gave up the power to issue *writs*, but affirmed their power of judicial review, saying that if a law written by the legislature conflicts with the Constitution, the law is "null and void."

McCulloch v. Maryland (1819)

Many state banks did not like the competition and the conservative practices of the Bank of the United States. As a way to restrict the Bank's operations, the state of Maryland imposed a tax on it. After the Bank refused to pay the tax, the case went to court. Maryland argued that the federal government did not have the authority to establish a bank, because that power was not delegated to them in the Constitution.

The Supreme Court reached a unanimous decision that upheld the authority of Congress to establish a national bank. In the opinion, Chief Justice John Marshall conceded that the Constitution does not explicitly grant Congress the right to establish a national bank, but noted that the "necessary and proper" clause of the Constitution gives Congress the authority to do that which is required to exercise its enumerated powers. Thus, the Court affirmed the existence of implied powers.

On the issue of the authority of Maryland to tax the national bank, the Court also ruled in the Bank's favor. The Court found that "the power to tax involves the power to destroy . . . If the states may tax one instrument [of the Federal Government] they may tax any and every other instrument . . . the mail . . . the mint . . . patent rights . . . judicial process? This was not intended by the American people. They did not design to make their government dependent on the States." Furthermore, he said, "The Constitution and the laws made in pursuance thereof are supreme; they control the Constitution and laws of the respective states and cannot be controlled by them."

Gibbons v. Ogden

***Cohens v. Virginia* (1821)**

The Cohen brothers sold D.C. lottery tickets in Virginia, which was a violation of Virginia state law. They argued that it was legal because the U.S. Congress had enacted a statute that allowed the lottery to be established. When the brothers were convicted and fined in a Virginia court, they appealed the decision. In determining the outcome, the Supreme Court of Virginia said that in disputes that involved the national and state government, the state had the final say.

The Supreme Court upheld the conviction. It answered the larger question of whether or not the Supreme Court could review decisions of the highest state courts, including those in which the state was a party, by saying, "When we consider the situation of the government of the Union and of a State in relation to each other; the nature of our Constitution; the subordination of the State governments to that Constitution; the great purpose for which jurisdiction over all cases arising under the Constitution and laws of the United States is confided to the judicial department are we at liberty to insert in this general grant an exception of those cases in which a State may be a party? . . . We think . . . not. We think a case arising under the Constitution or laws of the United States is cognizable in the Courts of the Union whoever may be the parties to that case."

***Gibbons v. Ogden* (1824)**

Aaron Ogden held a Fulton-Livingston license to operate a steamboat on the well-traveled route between New York and New Jersey. The State of New York gave him the license as a part of a monopoly granted to Robert Livingston and Robert Fulton. The route was so successful financially that competitors secured a license from the U.S. Congress to operate a ferry service along the same route. Thomas Gibbons held such a license from Congress. At issue in this case is whether New York's monopoly over steamboat passage in the waters between New York and New Jersey conflicted with Congress' constitutional power to regulate interstate commerce.

Ogden argued that the New York monopoly was not in conflict with Congress' regulation of commerce because the boats only carried passengers between the states and were not really engaged in commerce. Justice Marshall, who wrote the decision, disagreed. He ruled that the concept of commerce included not only the exchange of products, but also navigation and commercial intercourse generally. Since navigation on interstate waterways came under Congress', not the states', power to regulate, the New York monopoly was illegal. Marshall essentially expanded the meaning of commerce and asserted Congress' power over it. In fact, the commerce power now extends to almost every kind of movement of persons, things, ideas, and communication, for commercial purposes or not, across state lines.

Chief Justice John Marshall's Legacy

Questions to Consider

1. What were Marshall's beliefs regarding the power of the federal government? In your answer, cite evidence from the cases.

2. What were Marshall's beliefs regarding the power of the judicial branch? In your answer, cite evidence from the cases.

3. What is Marshall's legacy? In other words, what long-term impact did his decisions have on future cases and on the United States as a whole?

4. Who would have liked Marshall's decisions? Who would have disliked them?

5. Create a poster in which you commemorate Chief Justice John Marshall as a "National Hero" or a "Wanted" Man. If you choose to do a National Hero poster, list at least two reasons why he is a national hero. On the poster, include the name of the organization that is "honoring" him. If you choose to do a "Wanted" poster, list at least two reasons why he is "wanted." Include the name of the organization that is "looking" for him.