

Gibbons v. Ogden / Excerpts from the Unanimous Opinion—Answer Key

The following are excerpts from Chief Justice Marshall's 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 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.

Questions to Consider

1. According to Chief Justice Marshall, what was the main motive for adopting a new constitution in the United States?
Chief Justice Marshall states that the main motive was to regulate commerce, to create a uniform law to prevent the destructive consequences of differing and conflicting state laws.
2. What does the Latin phrase *e pluribus unum* have to do with Chief Justice Marshall’s argument?
E pluribus unum means from many, one. The idea is that each state would be sovereign over certain powers, but that together they must act to form a nation. This means that they must give up some powers so that the country can be unified and conduct its affairs to best achieve growth, prosperity, and security.

3. How does Chief Justice Marshall define “among the States?” Why is this definition important for the case? What limits does he place on the definition?
He says that "among" means "intermingled with." He then says that commerce that is "intermingled with" more than one state will occur, to some extent, within a state. This is important for the case because Justice Marshall is trying to demonstrate that the Framers intended that the federal government should have jurisdiction over commerce that moves from state to state, and this necessarily means that the federal power will sometimes reach inside a state's borders.
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?
Student answers will vary. One example of commerce that might stay within a state is a small farmer who plants strawberries from seed cultivated on his farm. He then sells the strawberries on a pick-your-own basis to people in his community who eat the strawberries in their own community. These days, finding commercial activity that occurs strictly within state boundaries is quite difficult. More often than not, some element of a commercial transaction will cross state borders. This has enormous consequences for the powers of Congress. If we say that commercial activity that crosses state borders can come under the jurisdiction of Congress, then the growth in such activity means that Congress' powers can also grow.
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.
Because the decision in *Gibbons v. Ogden*, the United States became one economy, not several. It forced a nation of disparate people in different states to fully acknowledge the power of the federal government over a very important activity, commerce. Trade and commerce had always been a way for people to communicate and establish contacts with one another. Formulating a uniform set of laws to enable such communication and contact to increase would likely help the different states see themselves more as a nation.