Inquiry Question: During this period, how did the definition of “interstate commerce” expand?

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Introduction: The Commerce Clause

The Congress shall have power ...

To regulate commerce with foreign nations, and among the several states, and
with the Indian tribes;

U. S. Constitution Article 1, Section 8, Clause 3

Among the enumerated (listed) powers granted to Congress in Article 1 of the U.S. Constitution is the power to regulate commerce “among the several states.” Article 1, Section 8, Clause 3 is known as the “Interstate Commerce Clause” or simply the “Commerce Clause.” But what is the exact definition of “commerce”? Commerce is generally defined as the buying and selling of goods. Interstate commerce is the buying and selling of goods across state borders.

Legislators, lawyers, politicians, and businesspeople have argued over the scope and limits of the commerce power granted to Congress in the Constitution. For instance, it may be clear that Congress is given the power to make laws regarding goods that are manufactured in one state and transported and sold in another state. However, could Congress regulate transportation networks, such as railroad lines and highways, that cross state lines? Does the commerce power give Congress the ability to establish regulations on the production of goods and services that may eventually cross state lines? What about services provided to people within one state who may be travelling from another state? These and other questions regarding the commerce power have been answered by numerous cases heard by the Supreme Court of the United States.

Since the mid-1930s, Congress and the Supreme Court tended to view the commerce power expansively. In other words, the commerce power was used to justify a wide range of powers and legislation, some of which have only a weak connection to interstate commerce. As the definition of interstate commerce became more expansive, the involvement of the federal government in what was once considered state functions increased.

Of the many Supreme Court cases that helped to define interstate commerce, several stand out as establishing important distinctions. The 1824 case of Gibbons v. Ogden centered around whether the act of transporting people and goods on steamboats on the Hudson River, which is bordered by two states, was interstate commerce. The case of Wickard v. Filburn (1942) considered whether regulations about the local production of wheat fell under the commerce power of Congress. Heart of Atlanta Motel v. United States (1964) decided whether the Civil Rights Act, which prohibited discrimination in places like hotels and restaurants, exceeded Congress’ commerce power.

What the Commerce Clause gives Congress the authority to do and legislate on is still an open question. Since the 1990s, the Supreme Court has decided several cases that narrowed the definition of interstate commerce, limiting the areas in which the U.S. Congress could legislate. In one of the most important cases, United States v. Lopez (1995), the Supreme Court ruled that Congress exceeded its commerce power when it created gun-free zones around schools because there was no interstate commerce involved. This period became known as the “Devolution Revolution.” (Learn more in the Devolution Inquiry Pack.)
Is Transportation on Interstate Waterways Interstate Commerce?

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 to their business because steamboat traffic, which carried both people and goods, was very profitable. Aaron Ogden held a Fulton-Livingston license to operate steamboats between New Jersey and New York under this monopoly. However, another person, 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 an act of Congress.

The key question in *Gibbons v. Ogden* is who should have the power to determine how interstate commerce is conducted: the state governments, the national government, or both? To help decide this question, the Supreme Court had to first decide if transportation on interstate waterways was interstate commerce.

**Source A:** First Trip of Fulton’s Steamboat to Albany, 1807

**Source A Information:** The use of steamboats to transport people and goods along the Hudson River was a profitable business. This drawing depicts the first trip of Fulton’s steamboat up the Hudson River from New York City to Albany, New York, in 1807. At places along this trip, the Hudson River serves as the border between the states of New York and New Jersey.
Source B: Unanimous Opinion in *Gibbons v. Ogden* (1824)²

The subject to be regulated is commerce; and our constitution being, as was aptly said at the bar, one of enumeration, and not of definition, to ascertain the extent of the power, 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. This would restrict a general term, applicable to many objects, to one of its significations. 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 mind can scarcely conceive a system for regulating commerce between nations, which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals, in the actual employment of buying and selling, or of barter.

Source B Information: This source is an excerpt from the unanimous opinion in *Gibbons v. Ogden*. The Supreme Court publishes written explanations of the reasoning behind their decisions, called opinions. Chief Justice John Marshall wrote the opinion in this case, which found unanimously for Gibbons.

Glossary of terms from the source:
- **Appellee**: the person who won at the lower level, in this case Ogden
- **Ascertain**: figure out
- **“at the bar”**: in court
- **Enumeration**: listing
- **Intercourse**: exchange or dealings between persons or groups
- **Navigation**: ship traffic
Questions to Consider for Sources A and B:

1. **Observe:** What do you notice first about each source? What objects do you see in Source A? What words do you notice first in Source B?

2. **Reflect:** How are these two sources related? What does the image show you about the use of steamboats? Who do you think is the intended audience for Source B? Do you agree with the Supreme Court's decision in *Gibbons v. Ogden*? Why or why not? How did *Gibbons v. Ogden* expand the definition of commerce?

3. **Question:** What questions do you have about these sources?
Is Production Interstate Commerce?

In 1938, Congress passed the Agricultural Adjustment Act (AAA), which put limits on how much wheat farmers could harvest each year. Roscoe Filburn was a small Ohio farmer who harvested almost 12 more acres of wheat than his limit, for which he was fined. He claimed that he intended to use the wheat grown on the 12 acres for his own use and to feed his animals. He argued that he did not sell or trade it; therefore, he should not be penalized because growing the wheat would not impact interstate commerce. Filburn challenged the law as an overreach of Congress’ commerce power. Claude Wickard was the secretary of agriculture and defended the AAA as constitutional.

Source C: “Wheat Quota Excess Penalty Is Debated in Supreme Court” in The Evening Star (Washington), 1942³
**Source C Transcription:**

**WHEAT QUOTA EXCESS PENALTY IS DEBATED IN SUPREME COURT**

**Ohio Farmers Challenge Constitutionality of Increased Levies**

Constitutionality of provisions of the Agricultural Adjustment Act authorizing the Secretary of Agriculture to fix quotas restricting the marketing of wheat was at issue today in arguments before the Supreme Court.

The litigation was brought by a group of Montgomery County (Ohio) farmers, challenging legislation increasing from 15 cents to 49 cents a bushel the penalty on wheat marketed in excess of AAA quotas for 1941.

Solicitor General Charles Fahy contended in a brief that the wheat quota program was “a lawful exercise of the commerce power of Congress as applied to the entire wheat supply, including the wheat which may be consumed on the farm.”

Mr. Fahy was the Government’s spokesman while the wheat farmers were represented by Webb R. Clark and Harry Routzohn, Dayton attorneys.

Counsel for the farmers contended it was unconstitutional to increase the penalty for overproduction when the crop was almost ready for harvesting and only five days before a referendum was held at which wheat farmers approved the quotas.

The also have accused Secretary of Agriculture Wickard of having “encouraged farmers to exceed their acreage quotas,” due to war needs, before Congress voted the increase.

Secretary Wickard appealed the case the Supreme Court from a ruling by three-judge Federal Court at Dayton holding invalid the increased penalty and enjoining collection of more than 15 cents a bushel.

The Supreme Court heard arguments on the controversy last term but ordered a reargument.

**Source C Information:** This source is an article from a Washington, DC, newspaper that routinely covered important cases being argued before the Supreme Court. It gave readers an overview of the *Willard v. Filburn* case.
Source D: Opinion in Wickard v. Filburn (1942)⁴

“indirect.” The present Chief Justice has said in summary of the present state of the law: “The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce. . . . The power of Congress over interstate commerce is plenary and complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. . . . It follows that no form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress. Hence the reach of that power extends to those intrastate activities which in a substantial way interfere with or obstruct the exercise of the granted power.” United States v. Wrightwood Dairy Co., 315 U.S. 110, 119.

Source D Information: In Wickard v. Filburn, the Supreme Court decided unanimously for Secretary of Agriculture Wickard that the AAA was not an overreach of Congress’ commerce power. This source is an excerpt from Justice Jackson who wrote the majority opinion.

Glossary of terms from the source:
- Intrastate: within one state
- Interstate: across state borders
- Plenary: absolute
- Thwart: prevent, hinder

Questions to Consider for Sources C and D:
1. **Observe:** What do you notice first about each source? What do you know about these sources just from looking at them?
2. **Reflect:** How are these two sources related? What do you learn about the controversy over wheat quotas in Source C? What does Source D tell you about how the Supreme Court resolved that controversy? Do you agree with the Supreme Court’s reasoning in Wickard v. Filburn? Why or why not? How did Wickard v. Filburn expand the definition of commerce?
3. **Question:** What questions do you have about these sources?
**Are Public Accommodations Provided by Private Businesses Interstate Commerce?**

The Civil Rights Act of 1964 prohibited discrimination in public accommodations, like restaurants and motels. The Heart of Atlanta Motel in Georgia refused to rent rooms to Black travelers, which violated the Act. The owner of the motel challenged the requirements of the Act. He argued that the Civil Rights Act was unconstitutional because Congress had exceeded its commerce power, as motels and restaurants are stationary and do not engage in interstate commerce. The United States maintained that travelers from out of state were the most likely customers buying the services, which made public accommodations interstate commerce.

**Source E: The Negro Travelers’ Green Book (1958)**

**Source E Information:** This source shows the title page and introduction to *The Negro Travelers’ Green Book* also known simply as *The Green Book*. This book was published yearly beginning in 1936 throughout the era of Jim Crow laws by Victor Hugo Green, an African American postal worker from Harlem. Because many hotels, motels, and restaurants refused services to Black travelers, it was necessary to have information about safe and welcoming places to eat and stay. *The Green Book* was last published in 1966.
**Source F: Majority Opinion in Heart of Atlanta Motel v. United States (1964)**

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. It may be argued that Congress could have pursued other methods to eliminate the obstructions it found in interstate commerce caused by racial discrimination. But this is a matter of policy that rests entirely with the Congress not with the courts. How obstructions in commerce may be removed—what means are to be employed—is within the sound and exclusive discretion of the Congress. It is subject only to one caveat—that the means chosen by it must be reasonably adapted to the end permitted by the Constitution. We cannot say that its choice here was not so adapted. The Constitution requires no more.

**Source F Information:** The Supreme Court decided unanimously for the United States in *Heart of Atlanta Motel v. United States*. Justice Clark wrote the majority opinion, which explained that since the motel was close to major interstate roads and received most of its business from travelers outside of Georgia, their refusal to serve Black travelers had an impact on interstate commerce. Therefore, the use of the commerce clause was justified.

**Glossary of terms from the source:**
- **Caveat:** condition
- **Discretion:** freedom to decide
- **Obstructions:** barriers

**Questions to Consider for Sources E and F:**

1. **Observe:** What do you notice first about each source? What images and words do you see in Source E?

2. **Reflect:** How are these two sources related? Does Source E suggest that staying in a motel or eating in a restaurant is interstate commerce? Why or why not? Do you agree with the Supreme Court’s reasoning in *Heart of Atlanta Motel v. United States*? Why or why not? How did *Heart of Atlanta Motel v. United States* expand the definition of commerce?

3. **Question:** What questions do you have about these sources?
Inquiry Question

During this period, how did the definition of “interstate commerce” expand?

In your answer, use the timeline and the available sources to support your definition.
Extension Inquiry Question

What is the proper use of Congress’ commerce power?

If a cancer patient who lives in a state in which medicinal marijuana is legal grows marijuana strictly for their own consumption, does that meet the definition of interstate commerce based on the cases in this inquiry and others found on the timeline? Should the federal government have the power to outlaw this activity?

Suggested Resources:

- The Commerce Clause, Interactive Constitution, National Constitution Center
- Gonzalez v. Raich (2005), Real life case on which this scenario is loosely based
- For an idea of how Congress views the link between its lawmaking and commerce, go to Congress.gov. Search for legislation by typing in the word “commerce.” You will find bills that have somehow been linked to commerce.
Notes


