

Gibbons v. Ogden **March 2, 1824**

Mr. Chief Justice MARSHALL delivered the opinion of the Court, and, after stating the case, proceeded as follows:

The appellant contends that this decree is erroneous because the laws which purport to give the exclusive privilege it sustains are repugnant to the Constitution and laws of the United States. They are said to be repugnant: first, to that clause in the Constitution which authorizes Congress to regulate commerce; second, to that which authorizes Congress to promote the progress of science and useful arts.

As preliminary to the very able discussions of the Constitution which we have heard from the bar, and as having some influence on its construction, reference has been made to the political situation of these states, anterior to its formation. It has been said that they were sovereign, were completely independent, and were connected with each other only by a league. This is true. But, when these allied sovereigns converted their league into a government, when they converted their congress of ambassadors, deputed to deliberate on their common concerns, and to recommend measures of general utility, into a legislature, empowered to enact laws on the most interesting subjects, the whole character in which the states appear underwent a change, the extent of which must be determined by a fair consideration of the instrument by which that change was effected.

This instrument contains an enumeration of powers expressly granted by the people to their government. It has been said that these powers ought to be construed strictly. But why ought they to be so construed? Is there one sentence in the Constitution which gives countenance to this rule? In the last of the enumerated powers, that which grants, expressly, the means for carrying all others into execution, Congress is authorized *to make all laws which shall be necessary and proper* for the purpose. But this limitation on the means which may be used is not extended to the powers which are conferred; nor is there one sentence in the Constitution, which has been pointed out by the gentlemen of the bar, or which we have been able to discern, that prescribes this rule. We do not, therefore, think ourselves justified in adopting it.

What do gentlemen mean by a strict construction? If they contend only against that enlarged construction which would extend words beyond their natural and obvious import, we might question the application of the term, but should not controvert the principle. If they contend for that narrow construction which, in support of some theory not to be found in the Constitution, would deny to the government those powers which the words of the grant, as usually understood, import, and which are consistent with the general views and objects of the instrument; for that narrow construction, which would cripple the government, and render it unequal to the objects for which it is declared to be instituted, and to which the powers given, as fairly understood, render it competent; then we cannot perceive the propriety of this strict construction, nor adopt it as the rule by

which the Constitution is to be expounded. As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they in tend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said.

If, from the imperfection of human language, there should be serious doubts respecting the extent of any given power, it is a well-settled rule that the objects for which it was given, especially when those objects are expressed in the instrument itself, should have great influence in the construction. We know of no reason for excluding this rule from the present case. The grant does not convey power which might be beneficial to the grantor, if retained by himself, or which can inure solely to the benefit of the grantee, but is an investment of power for the general advantage in the hands of agents selected for that purpose; which power can never be exercised by the people themselves, but must be placed in the hands of agents, or lie dormant. We know of no rule for construing the extent of such powers other than is given by the language of the instrument which confers them, taken in connection with the purposes for which they were conferred.

The words are: *Congress shall have power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.* 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.

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. If commerce does not include navigation, the government of the Union has no direct power over that subject, and can make no law prescribing what shall constitute American vessels, or requiring that they shall be navigated by American seamen.

Yet this power has been exercised from the commencement of the government, has been exercised with the consent of all, and has been understood by all to be a commercial regulation. All America understands, and has uniformly understood, the word *commerce* to comprehend navigation.

The word used in the Constitution, then, comprehends, and has been always understood to comprehend, navigation within its meaning; and a power to regulate navigation is as expressly granted as if that term had been added to the word *commerce*. To what commerce does this power extend? The Constitution informs us to commerce *with foreign nations, and among the several states, and with the Indian tribes.* It has, we believe, been universally admitted that these words comprehend every species of

commercial intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other to which this power does not extend. It has been truly said that commerce, as the word is used in the Constitution, is a unit, every part of which is indicated by the term. If this be the admitted meaning of the word in its application to foreign nations, it must carry the same meaning throughout the sentence and remain a unit, unless there be some plain intelligible cause which alters it.

The subject to which the power is next 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; and the enumeration of the particular classes of commerce to which the power was to be extended would not have been made had the intention been to extend the power to every description. 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.

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.

But, in regulating commerce with foreign nations, the power of Congress does not stop at the jurisdictional lines of the several states. It would be a very useless power if it could not pass those lines. The commerce of the United States with foreign nations is that of the whole United States. Every district has a right to participate in it. The deep streams which penetrate our country in every direction pass through the interior of almost every state in the Union, and furnish the means of exercising this right. If Congress has the power to regulate it, that power must be exercised whenever the subject exists. If it exists within the states, if a foreign voyage may commence or terminate at a port within a state, then the power of Congress may be exercised within a state.

This principle is, if possible, still more clear, when applied to commerce *among the several states*. They either join each other, in which case they are separated by a mathematical line, or they are remote from each other, in which case other states lie between them. What is commerce *among* them, and how is it to be conducted? Can a trading expedition between two adjoining states commence and terminate outside of

each? And if the trading intercourse be between two states remote from each other, must it not commence in one, terminate in the other, and probably pass through a third? Commerce among the states must, of necessity, be commerce with the states. In the regulation of trade with the Indian tribes, the action of the law, especially, when the Constitution was made, was chiefly within a state.

The power of Congress, then, whatever it may be, must be exercised within the territorial jurisdiction of the several states. The sense of the nation on this subject is unequivocally manifested by the provisions made in the laws for transporting goods by land between Baltimore and Providence, between New York and Philadelphia, and between Philadelphia and Baltimore.

We are now arrived at the inquiry - What is this power? It 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. These are expressed in plain terms and do not affect the questions which arise in this case, or which have been discussed at the bar. If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several states is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.

The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections are, in this as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied to secure them from its abuse. They are the restraints on which the people must often rely solely in all representative governments. The power of Congress, then, comprehends navigation within the limits of every state in the Union so far as that navigation may be, in any manner, connected with *commerce with foreign nations, or among the several States, or with the Indian tribes*. It may, of consequence, pass the jurisdiction line of New York, and act upon the very waters to which the prohibition now under consideration applies.

But it has been urged with great earnestness that, although the power of Congress to regulate commerce with foreign nations and among the several states be coextensive with the subject itself, and have no other limits than are prescribed in the Constitution, yet the states may severally exercise the same power within their respective jurisdictions. In support of this argument, it is said that they possessed it as an inseparable attribute of sovereignty before the formation of the Constitution, and still retain it, except so far as they have surrendered it by that instrument; that this principle results from the nature of the government, and is secured by the Tenth Amendment; that an affirmative grant of power is not exclusive, unless in its own nature it be such that the continued exercise of it by the former possessor is inconsistent with the grant, and that this is not of that description.

The appellant, conceding these postulates except the last, contends that full power to regulate a particular subject implies the whole power .and leaves no residuum; that a grant of the whole is incompatible with the existence of a right in another to any part of it. Both parties have appealed to the Constitution, to legislative acts, and judicial decisions; and have drawn arguments from all these sources to support and illustrate the propositions they respectively maintain.

In discussing the question, whether this power is still in the states, in the case under consideration, we may dismiss from it the inquiry, whether it is surrendered by the mere grant to Congress, or is retained until Congress shall exercise the power. We may dismiss that inquiry because it has been exercised, and the regulations which Congress deemed it proper to make are now in full operation. The sole question is - Can a state regulate commerce with foreign nations and among the states while Congress is regulating it?

The counsel for the respondent answer this question in the affirmative, and rely very much on the restrictions in the 10th Section as supporting their opinion. They say, very truly, that limitations of a power furnish a strong argument in favor of the existence of that power, and that the section which prohibits the states from laying duties on imports or exports proves that this power might have been exercised had it not been expressly forbidden; and, consequently. that any other commercial regulation, not expressly forbidden, to which the original power of the state was competent, may still be made

That this restriction shows the opinion of the Convention, that a state might impose duties on exports and imports, if not expressly forbidden, will be conceded; but that it follows, as a consequence from this concession, that a state may regulate commerce with foreign nations and among the states cannot be admitted.

It has been contended by the counsel for the appellant that, as the word *to regulate* implies in its nature full power over the thing to be regulated, it excludes, necessarily, the action of all others that would perform the same operation on the same thing. That regulation is designed for the entire result, applying to those parts which remain as they were, as well as to those which are altered. It produces a uniform whole, which is as much disturbed and deranged by changing what the regulating power designs to leave untouched as that on which it has operated. There is great force in this argument, and the court is not satisfied that it has been refuted.

Since, however, in exercising the power of regulating their own purely internal affairs, whether of trading or police, the states may sometimes enact laws, the validity of which depends on their interfering with, and being contrary to, an act of Congress passed in pursuance of the Constitution, the court will enter upon the inquiry, whether the laws of New York, as expounded by the highest tribunal of that state, have, in their application to this case, come into collision with an act of Congress, and deprived a citizen of a right to which that act entitles him. Should this collision exist, it will be immaterial whether those laws were passed in virtue of a concurrent power *to regulate commerce with foreign nations and among the several states*, or in virtue of a power to regulate their domestic trade and police.

In one case and the other the acts of New York must yield to the law of Congress; and the decision sustaining the privilege they confer against a right given by a law of the Union must be erroneous. This opinion has been frequently expressed in this court, and is founded as well on the nature of the government as on the words of the Constitution. In argument, however, it has been contended that, if a law passed by a state in the exercise of its acknowledged sovereignty comes into conflict with a law passed by Congress in pursuance of the Constitution, they affect the subject and each other like equal opposing powers.

But the framers of our Constitution foresaw this state of things and provided for it by declaring the supremacy not only of itself but of the laws made in pursuance of it. The nullity of any act inconsistent with the Constitution is produced by the declaration that the Constitution is supreme law. The appropriate application of that part of the clause which confers the same supremacy on laws and treaties is to such acts of the state legislatures as do not transcend their powers, but though enacted in the execution of acknowledged state powers, interfere with, or are contrary to, the laws of Congress, made in pursuance of the Constitution or some treaty made under the authority of the United States. In every such case, the act of Congress or the treaty is supreme; and the law of the state, though enacted in the exercise of powers not controverted, must yield to it.

Decree

This court is of opinion that so much of the several laws of the state of New York as prohibits vessels, licensed according to the laws of the United States, from navigating the waters of the state of New York, by means of fire or steam, is repugnant to the said Constitution and void. This court is, therefore, of opinion that the decree of the court of New York for the trial of impeachments and the correction of errors, affirming the decree of the chancellor of that state is erroneous and ought to be reversed, and the same is hereby reversed and annulled. And this court doth further direct, order, and decree that the bill of the said Aaron Ogden be dismissed, and the same is hereby dismissed accordingly.

Name: _____ Class Period: _____ Date: _____

Analyzing a Document, Speech, Treaty, Letter, or other Historical Items

1. Name of the item: _____

2. Who is the author? _____

3. What was the purpose of the item? _____

4. Date the item was ratified, sent, entered into, issued, or accepted _____

5. Describe the item; was it a letter, a treaty, a speech? _____

6. Brief background of the item (purpose of the item)

7. List what you think the author was trying to convey to the reader or listener.

8. List some of the things the item tells you about life in the United States at the time it was written; or project as to how it is applicable to the United States. .

9. What questions has the author/item left unanswered?

:

10. How would you respond to the document, speech, or letter if you were the intended recipient or audience?
