

Name(s):

Period:

Date:

The Commerce Clause

Excerpts from the Constitution

Article 1, Section 8, Clause 3, and 18, and Amendment X



Previewing and Predicting:

Read the excerpts from the Constitution below. Circle any words which are unfamiliar. Pay close attention to the use of “among” and “with” in the text.

To access the complete Constitution: http://www.archives.gov/exhibits/charters/constitution_transcript.html

Article 1, Section 8, Clause 3

The Congress shall have the power...

...to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes...

Article 1, Section 8, Clause 18

...to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this

Constitution in the Government of the United States, or in any Department or Officer thereof.

Amendment X

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.

Name(s):

Period:

Date:

The Commerce Clause



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Critical Concepts

Use the table below to understand the words or concepts you circled in the excerpts above. As a class, discuss the distinctions between the words “with” and “among”.

Critical Concept	Part of Speech	Synonym/Easier English	Visual Representation
with			
among			

Continue as needed.

Answer the following question:

1. The Commerce Clause states, “...to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes...”
What does this tell you about how Congress viewed Indian Tribes?

Name(s):

Period:

Date:

The Commerce Clause



Context

After reading the Context information below, answer the question. As a class, discuss your predictions.

Essential Questions:

How much power over the states is granted to Congress by the Commerce Clause?

Can the U.S. Congress regulate commercial activity in other countries?

The United States of America is in a constant state of balance between federal power and states' rights. The Commerce Clause has been used by Congress to create laws which regulate interstate economic activities. A number of those laws have been challenged in the Supreme Court. With the expansion of global trade, which can reach state and local economies, there are new constitutional challenges.

The Supreme Court was established in 1789. Since then, it has been charged with determining if a law passed by Congress is constitutional. Sitting justices may be "originalists" – those who believe the Constitution should be interpreted as it was written (original intent). Or, they may view the Constitution as a "living document" and interpret laws with consideration for changes in society. The current sitting justices and their beliefs (original intent or living document) determine the outcomes of court cases. Decision on cases by the Supreme Court may set a precedent and be used as evidence by the Court (as well as the lower courts) in future cases. The Court may also decide a case where the outcome may "reverse" a previous decision.

1. How do you predict the expansion of global trade will affect Congress, the Supreme Court, and the states?

Name(s):

Period:

Date:

The Commerce Clause



Key Cases

As you read the two cases below, use the Critical Concepts strategy to identify and define the words or phrases you do not understand.

Gibbons v. Ogden (1824)

Facts of the case

A New York state law gave to individuals the exclusive right to operate steamboats on waters within state jurisdiction. Laws like this one were duplicated elsewhere which led to friction as some states would require foreign (out-of-state) boats to pay substantial fees for navigation privileges. In this case Thomas Gibbons -- a steamboat owner who did business between New York and New Jersey under a federal coastal license -- challenged the monopoly license granted by New York to Aaron Ogden. New York courts consistently upheld the state monopoly.

Question

Did the State of New York exercise authority in a realm reserved exclusively to Congress, namely, the regulation of interstate commerce?

Conclusion

The unanimous Court found that New York's licensing requirement for out-of-state operators was inconsistent with a congressional act regulating the coasting trade. The New York law was invalid by virtue of the Supremacy Clause. In his opinion, Chief Justice John Marshall developed a clear definition of the word commerce, which included navigation on interstate waterways. He also gave meaning to the phrase "among the several states" in the Commerce Clause. Marshall's was one of the earliest and most influential opinions concerning this important clause. He concluded that regulation of navigation by steamboat operators and others for purposes of conducting interstate commerce was a power reserved to and exercised by the Congress.

In a concurring opinion, Justice William Johnson argued a much stronger position: that the national government had exclusive power over interstate commerce, negating state laws interfering with the exercise of that power.

from <https://www.oyez.org/cases/1789-1850/22us1>

Japan Line Ltd v. County of Los Angeles (1979)

Syllabus

Appellant Japanese shipping companies' vessels carry cargo containers which, like the ships, are owned by appellants, are based, registered, and subjected to property tax in Japan, and are used exclusively in foreign commerce. A number of appellants' containers were temporarily present in appellee county and cities in California, and appellees levied property taxes on the containers. The California Supreme Court upheld the tax as applied.

Held:

1. This Court has appellate jurisdiction under 28 U.S.C. § 1257(2), since the California Supreme Court sustained the tax, as applied, as against the contention that such application would violate the Commerce Clause and various treaties.
2. It is unnecessary to decide the broad proposition whether mere use of international routes is enough, under the "home port doctrine," to render an instrumentality immune from tax in a nondomiciliary State. The question here is a more narrow one, namely, whether instrumentalities of commerce that are owned, based, and registered abroad, and that are used exclusively in international commerce, may be subjected to apportioned ad valorem property taxation by a State.

from <https://supreme.justia.com/cases/federal/us/441/434/>

Name(s):

Period:

Date:

The Commerce Clause



Questions for Key Cases

As you read the two cases below, use the Critical Concepts strategy to identify and define the words or phrases

The two cases above are precedent setting. Answer the questions below to deepen your understanding of their application in future cases.

1. In *Gibbons v. Ogden*, the court set a precedent, upholding Supremacy. Which words or phrases in the conclusion could be used as evidence for future cases which pit States' Rights against Supremacy?

At the time of this court decision, how many states made up the nation?

Now that we are a much larger nation, have instant worldwide communication, and we can travel worldwide in a matter of hours, should the federal government still hold Supremacy? Why or why not?

2. In *Japan Line, Ltd v. County of Los Angeles*, who is the *appellant*?

Who is the *appellee*?

What right was granted to Los Angeles county based on the decision in this case?

How does the decision support States' Rights?

The Commerce Clause



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Does the Constitution allow the state to make that law?

Test Case

Because of acknowledged human rights violations in country Nobuy, along with manufacturing processes which degrade the environment, the state of New Orezona, has legislated selective purchasing* laws which discriminate against companies that do business in the country of Nobuy. There is a case before the Supreme Court challenging the law's constitutionality.

1. Use your knowledge of the Constitution to determine if New Orezona's law is constitutional. List evidence to support your **legal** opinion:

Now, discuss in a group of three your evidence. Has your legal opinion changed based on your colleagues' arguments? Why or why not?

2. These selective purchasing laws would allow state and local governments within the United States to make it illegal to purchase from U.S. and foreign companies which do business in Nobuy. In your opinion, is this an effective form of influence on the human rights and manufacturing policies in Nobuy? Why or why not?
3. Given the interconnectedness of the 21st century, how can individual consumers impact human rights or environmental policies in other countries? (Think about companies from which you regularly purchase.)

Should the federal government have more control over what you are allowed to purchase? Should state and local governments have the right to limit trade? Why or why not?

*Selective Purchasing vs. Boycott

Selective purchasing is a step along the continuum of private sector advocacy to influence behavior. It also can be seen as an individual or organizational commitment to use their financial resources in a manner consistent with their faith and ethics. Decisions based in this manner may be seen as positive choices rather than punishment for bad behavior.

from http://download.elca.org/ELCA%20Resource%20Repository/Selective_Purshasing_policy_guide.docx

College & Career Connections

Visit Big Future at CollegeBoard.com to explore degree programs. You can filter your results by location, type of school, and degree programs.

<https://bigfuture.collegeboard.org/?navid=gh-cp>

Career Spotlight	College Connections	
Purchasing Agent	Business Administration	Business Management
<p>Purchasing Agents (also known as Buyers) ensure that orders are delivered on time and at cost. They resolve billing and shipping problems and provide information to suppliers. In addition, they may identify suppliers, select merchandise and negotiate bills of sale for a business.</p>	<p>Study in this area explores the theories, history, principles, skills, practices, laws, ethics, technologies, techniques, policies, procedures, and processes governing the increasingly global business environment.</p>	<p>Graduates with an associate degree are qualified for entry- and intermediate-level managerial positions in service, industry, manufacturing, government and nonprofit organizations. Specific career options include department manager, human resource manager, banking manager and marketing manager.</p>
<p>Median Annual Salary: \$50,452</p> <p>EDUCATION: Bachelor Degree in Business Administration or Management or Associates Degree with industry</p>	<p>Southwestern Community College</p>	<p>SDSU San Diego Mesa College</p>

References

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<http://arweb.sdsu.edu/es/catalog/2012-13/parts/Management.pdf>

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<https://bigfuture.collegeboard.org/?navid=gh-cp>