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Commerce Clause: Rulings and comparisons

The United States Supreme Court has interpreted the Commerce Clause and declared its position in *Gibbons v Ogden* is that the United States Congress is the sole agency tasked with the that regulation and administration of trade among the states. The paper seeks to examine two decisions of the Supreme Court, *United States v Lopez* and *United States v Darby*, and proffer that *Lopez* is the most similar decision to *Gibbons* on the point that both *Lopez* and *Gibbons* place an emphasis that Congress alone is the agency tasked with regulating interstate trade, and *Lopez* goes further by stating that Congress also has the right and mandate to regulate the avenues by which that trade is conducted.

In defining to set the parameters for the term “commerce”, Chief Justice Marshall ruled that:

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. If commerce does not include navigation, the government of the Union has not 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[however], all America understands, and uniformly understood that the word commerce to comprehend navigation (C. R 43).

In a unanimous vote, the High Court ruled that the law enacted by New York was in violation of the tenets of the Constitution regarding the power to

regulate interstate trade. In the opinion given by the High Court, Chief Justice John Marshall gave a definition for the term “commerce”, which was inclusive of the nation’s waterways. In addition, Marshall defined “among the several states to mean “intermingled”; trade between states cannot stop at the border of the states, but “may be introduced to the interior of the state” (CR 44).

In the years after the decision given by the Court in Gibbons, these concepts of interpreting the tenets of the Constitution have been frequently and long held as implementable to the Commerce Clause (CR 91).

Here, Marshall, states this activity encompasses “every species of commercial intercourse between nations and the United States”. The word “among” is defined to be “intermingled”; trade between states cannot stop at the border of the states, but “may be introduced to the interior of the state” (CR 44).

Simply stated, Marshall poses these arguments in Gibbons on the power of Congress to regulate interstate trade. One, the term “commerce” is to include navigation, not only land borders; two, the powers given to the states and to the Federal government via Congress must be interoperated in a very strict manner, and three, that the power of Congress to regulate trade and commerce between the United States and foreign nations be understood also as the power to regulate trade between the states (CR 45).

However, Marshall queries on the need to interpret these tenets in a strict manner. In effect, Marshall asks what would comprise a strict interpretation of the Clause. A narrow essay of the Clause in this regard would, in the opinion rendered by Marshall, “cripple the government and render it

unequal to the objects for which it is declared to be instituted, and these powers, as given, would render the government as competent". The Constitution is a document that is drafted as one of enumeration, and not one of definition. Here the application can be construed to refer to the acts of " buying, trading, selling and the traffic of goods" (CR 43).

In the decision, Marshall concluded that the regulation of steam boat operators as well as others using the waterways was a " power that was exclusively reserved for the use of Congress" (CR43). The decision of the Marshall Court was one of the initial decisions, as well as one of the most prominent, rulings given by the High Court that sought to define and give legal direction to matters concerning the Commerce Clause (IIT Chicago-Kent College of Law 1).

Here, Justice Marshall surmised that interstate trade, if taken in the context of the Commerce Clause, cannot be usurped by the states. This is the point taken by Marshall in establishing the primacy of the powers of Congress, as cited in the Constitution, over that of the states, as the actions of the state alone cannot be considered as legal.

In the ensuing decisions of the High Court regarding the Commerce Clause, there have been several directions taken by the court members. These decisions have addressed many aspects of the Commerce Clause; however, for the purposes of the paper, the decisions of the High Court as noted in United States vs. Darby Lumber and United States vs. Lopez shall be taken and evaluated as which is most similar in essence to the ruling in Gibbons. In the hearing of the High Court, the query was for the determination of whether the law was a legal exercise of the powers given to Congress to

administer interstate trade. In the decision of the Hughes Court, and drawing heavily from the judicial direction given by the High Bench in *Gibbons*, Justice Harlan Stone digressed from the canon of the primacy of Congress in regulating interstate trade.

Though Stone confirmed the prerogative of Congress to be able to exercise “to its most utmost extent” the mandates accorded to it in the Commerce Clause, Stone focused more on the “motive and purpose of the regulation of interstate trade [as] matters for legislative judgment [italics mine] over which the courts have no control” (IIT Chicago-Kent College of Law 1).

The premise in the ruling in *Darby* was to evidence the fact that interstate trade should not be made into a tool of competition in the distribution of manufactures processed under substandard conditions. However these may be interpreted, the rules impacting interstate trade which do not violate constitutional restrictions are within the ambit of the powers of Congress given by the Constitution to Congress by virtue of the Commerce Clause (CR 91).

(Here lies the difference between the decisions in *Gibbons* and *Darby*. In *Gibbons*, the intent of the ruling is to display the primacy of Congress and the mandate given to the body over the exercises of the states. In *Darby*, the ruling addressed the question of which agency had the right to establish rules on interstate trade. In its essence, *Gibbons* dealt with assigning the parameters by which the states can rule on a matter; *Darby* lays down the responsibility as to which agency has the task of “making the rules”).

Chief Justice Rehnquist, in *Lopez*, rebuffed the position that possible acts of violence can be used as an excuse to maintain policies under the Commerce

Clause, and maintained the long held canon that Congress alone has the power to regulate “ channels of commerce”, the tools by which commerce is conducted and activities that would ultimately impact interstate trade (CR 103).

Though the decision in *Darby* relied heavily on the canons and the philosophies given by Chief Justice Marshall in *Gibbons*, the High Court rendered the most similar ruling to that of Justice Marshall’s in *Lopez*.

Together with the decision of the Court in *Morrison v United States*, where the Court rejected the Violence against Women Act for its dependence on the Commerce Clause, the two decisions have clearly defined and established that the High Court willing to recognize a wider analysis of the Commerce Clause.

If the Court does not discover any actions significant enough to be regarded as interstate trade, the Court will be highly resistant to accept the justifications of Congress to regulate trade on a Federal level (Cornell University Law School 1). In conclusion, though *Darby* drew heavily from the precedents in *Gibbons*, *Lopez* proved to be more akin to the essence of *Gibbons* and the tenets given by Justice Marshall.

These are seen in the points that *Gibbons* stated that Congress has the sole authority to regulate interstate commerce, a point also seen in *Lopez*.

Second, given that *Gibbons* stated that Congress is given the power to monitor the conduct of interstate trade, *Lopez* went further in that is ruled that Congress has the power to monitor the avenues by which that trade is conducted. It is then concluded that among the cases given for comparison, the case of *United States v Lopez* is most similar to *Gibbons v Ogden*.

In conclusion, the holding of the Court, those assertions in the Constitution does not affect the relationship of the government to the states. Here, it can be said that the premise does not affect the premise that there has been changes in that relationship; the association of the states and the government has not changed since the formulation and enactment of the Constitution. Hence, it is stated that the mandate of Congress, as the agency of the government, is still placed as one of supremacy over that of the states (CR 91).

Works Cited

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