between the two states and were thus not engaged in traffic or "commerce" in the constitutional sense.

"The subject to be regulated is commerce," the Chief Justice wrote. "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."[676] The term, therefore, included navigation, a conclusion that Marshall also supported by appeal to the general understanding of the term; by reference to the use of the term in Article I, § 9, which prohibits preference being given "by any regulation of commerce or revenue, to the ports of one State over those of another"; and to the admitted and demonstrated power of Congress to impose embargoes with other countries.[677]

In *Gibbons*, Marshall did qualify the word "intercourse" with the word "commercial," thus retaining the element of monetary transactions.[678] But, today, "commerce" in the constitutional sense, and hence "interstate commerce," covers every species of movement of persons and things, whether for profit or not, across state lines;[679] every species of communication or transmission of intelligence, whether for commercial purposes or otherwise;[680] and every species of commercial negotiation that will involve sooner or later either transporot of persons or things, or the flow of services or power, across state lines.[681]

There was a long period in the Court's history when a majority of Justices, seeking to curb the regulatory powers of the Federal Government, held that certain things were not encompassed by the Commerce Clause because they were neither interstate commerce nor bore a sufficient nexus to interstate commerce. Thus, for instance, the Court held that mining or manufacturing, even when the product thereof would move in interstate commerce, was not

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[676] Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 189 (1824).

[677] 22 U.S. at 190–94.

[678] 22 U.S. at 193.

[679] As we will see, however, in many later formulations the crossing of state lines is no longer the *sine qua non*; wholly intrastate transactions with substantial effects on interstate commerce may suffice.

[680] *E.g.*, United States v. Simpson, 252 U.S. 465 (1920); Caminetti v. United States, 242 U.S. 470 (1917).

[681] "Not only, then, may transactions be commerce though non-commercial; they may be commerce though illegal and sporadic, and though they do not utilize common carriers or concern the flow of anything more tangible than electrons and information." United States v. South-Eastern Underwriters Ass'n, 322 U.S. 533, 549–50 (1944).