It has been evidently of little importance to the Court to explain. "Whether or not this long recognized distribution of power between the national and state governments is predicated upon the implications of the commerce clause itself . . . or upon the presumed intention of Congress, where Congress has not spoken . . . the result is the same." [1018] Thus, "[f]or a hundred years it has been accepted constitutional doctrine . . . that . . . where Congress has not acted, this Court, and not the state legislature, is under the commerce clause the final arbiter of the competing demands of state and national interests." [1019]

Various justifications can be found throughout the Court's decisions, but they do not explain why the Court is empowered under this textual grant of power to Congress to police state regulatory and taxing decisions. For instance, it has been frequently noted that the Commerce Clause was motivated by the Framers' apprehensions about state protectionism.[1020] But in *Welton v. Missouri*,[1021] although the statute under review was clearly discriminatory as between in-state and interstate commerce, this point was not sharply drawn as the constitutional fault of the law. A different theme has been that the Framers desired to create a national area of free trade, so that any unreasonable burdens on interstate commerce violate the clause in and of themselves.[1022]

Nonetheless, the power of the Court under the "dormant" Commerce Clause is well established and freely exercised. No reserva-

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Court in Graves v. New York ex rel. O'Keefe, 306 U.S. 466, 479 n.1 (1939). "The failure of Congress to regulate interstate commerce has generally been taken to signify a Congressional purpose to leave undisturbed the authority of the states to make regulations affecting the commerce in matters of peculiarly local concern, but to withhold from them authority to make regulations affecting those phases of it which, because of the need of a national uniformity, demand that their regulation, if any, be prescribed by a single authority." The fullest development of the "silence" rationale was not by the Court but by a renowned academic, Professor Dowling. *Interstate Commerce and State Power*, 29 VA. L. REV. 1 (1940); *Interstate Commerce and State Power: Revisited Version*, 47 COLUM. L. REV. 546 (1947).

[1018] Southern Pacific Co. v. Arizona, 325 U.S. 761, 768 (1945).

[1019] 325 U.S. at 769. *See also* California v. Zook, 336 U.S. 725, 728 (1949).

[1020] 91 U.S. at 280–81; Brown v. Maryland, 25 U.S. (12 Wheat.) 419, 446 (1827) (Chief Justice Marshall); Guy v. City of Baltimore, 100 U.S. 434, 440 (1879); Baldwin v. G.A.F. Seelig, Inc., 294 U.S. 550, 552 (1935); Maryland v. Louisiana, 451 U.S. 725, 754 (1981).

[1021] 91 U.S. 275, 277, 278, 279, 280, 281, 282 (1876).

[1022] *E.g.*, Gwin, White & Prince, Inc. v. Henneford, 305 U.S. 434, 440 (1939); McLeod v. J. E. Dilworth Co., 322 U.S. 327, 330–31 (1944); Freeman v. Hewit, 329 U.S. 249, 252, 256 (1946); H. P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 538, 539 (1949); Dennis v. Higgins, 498 U.S. 439, 447–50 (1991). "[W]e have steadfastly adhered to the central tenet that the Commerce Clause 'by its own force created an area of trade free from interference by the States.'" American Trucking Ass'ns v. Scheiner, 483 U.S. 266, 280 (1987) (quoting Boston Stock Exchange v. State Tax Comm'n, 429 U.S. 318, 328 (1977)).