company transporting freight within the state, with certain exceptions, to pay a tax at specified rates on each ton of freight carried. Opining that a tax upon freight, or any other article of commerce, transported from state to state is a regulation of commerce among the states and, further, that the transportation of merchandise or passengers through a state or from state to state was a subject that required uniform regulation, the Court held the tax in issue to be repugnant to the Commerce Clause.

Whether exclusive or partially exclusive, however, the Commerce Clause as a restraint upon state exercises of power even absent congressional action received no sustained justification or explanation. Often, as in *Cooley* and in later cases, the Court stated or implied that the rule was imposed by the Commerce Clause.[1015] In *Welton v. Missouri*,[1016] the Court attempted to suggest a somewhat different justification. The case involved a challenge to a state statute that required a "peddler's" license for merchants selling goods that came from other states, but that required no license if the goods were produced in the state. Declaring that uniformity of commercial regulation is necessary to protect articles of commerce from hostile legislation and that the power asserted by the state belonged exclusively to Congress, the Court observed that "[t]he fact that Congress has not seen fit to prescribe any specific rules to govern inter-State commerce does not affect the question. Its inaction on this subject . . . is equivalent to a declaration that inter-State commerce shall be free and untrammeled." [1017]

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73 U.S. (6 Wall.) 31 (1867); Woodruff v. Parham, 75 U.S. (8 Wall.) 123 (1868). Chief Justice Marshall, in Brown v. Maryland, 25 U.S. (12 Wheat.) 419, 488–89 (1827), indicated, in dicta, that a state tax might violate the Commerce Clause.

[1015] "Where the subject matter requires a uniform system as between the States, the power controlling it is vested exclusively in Congress, and cannot be encroached upon by the States." Leisy v. Hardin, 135 U.S. 100, 108–09 (1890). The Commerce Clause "remains in the Constitution as a grant of power to Congress . . . and as a diminution *pro tanto* of absolute state sovereignty over the same subject matter." Carter v. Virginia, 321 U.S. 131, 137 (1944). The Commerce Clause, the Court has said, "does not say what the states may or may not do in the absence of congressional action, nor how to draw the line between what is and what is not commerce among the states. Perhaps even more than by interpretation of its written word, this Court has advanced the solidarity and prosperity of this Nation by the meaning it has given these great silences of the Constitution." H. P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 534–35 (1949). Subsequently, the Court stated that the Commerce Clause "has long been recognized as a *self-executing limitation* on the power of the States to enact laws imposing substantial burdens on such commerce." Dennis v. Higgins, 498 U.S. 439, 447 (1991) (quoting South-Central Timber Dev., Inc. v. Wunnicke, 467 U.S. 82, 87 (1984) (emphasis added)).

[1016] 91 U.S. 275 (1876).

[1017] 91 U.S. at 282. In Steamship Co. v. Portwardens, 73 U.S. (6 Wall.) 31, 33 (1867), the Court suggested that congressional silence with regard to matters of "local" concern may in some circumstances signify a willingness that the states regulate. These principles were further explained by Chief Justice Stone, writing for the