Supplementary Material

Chapter 8: The New Deal/Great Society Era—Equality/Race/The Fall of Jim Crow

Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964)

The Heart of Atlanta Motel was a large motel located near downtown Atlanta, Georgia, that catered primarily to out of state guests and did not rent rooms to blacks. Shortly after the Civil Rights Act of 1964 was passed, the owners of the motel sought a declaratory judgment that the ban on discrimination in places of public accommodation was unconstitutional. The motel owners argued that Congress had exceeded its authority under the interstate commerce clause in trying to reach a business such as the motel, violated the due process and takings clauses of the Fifth Amendment by attempting to direct the operation of their business, and violated the Thirteenth Amendment by forcing them against their will to rent their room to blacks. A three-judge panel for the local district court declared that the Civil Rights Act was constitutional. The Heart of Atlanta Motel appealed to the Supreme Court of the United States.

The Supreme Court unanimously sustained the Civil Rights Act of 1964. Justice Clark's opinion for the Court declared that Congress had the power to prohibit private racial discrimination that had an adverse effect on interstate commerce. Why did Justice Clark think that racial segregation was having an adverse effect on interstate commerce? Could Congress require segregation under the commerce clause if studies concluded most whites in the 1960s preferred white-only accommodations? Justice Douglas and Goldberg insisted that the justices should have upheld the Civil Rights Act under the Fourteenth Amendment. Would this have required overruling the Civil Rights Cases *(1883)? Should the court have overruled the* Civil Rights Cases*? Why did the justices prefer to rely solely on the commerce clause? Was that decision correct?*

JUSTICE CLARK delivered the opinion of the Court.

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The sole question posed is, therefore, the constitutionality of the Civil Rights Act of 1964 as applied to these facts. The legislative history of the Act indicates that Congress based the Act on § 5 and the Equal Protection Clause of the Fourteenth Amendment as well as its power to regulate interstate commerce under Art. I, § 8, cl. 3, of the Constitution.

The Senate Commerce Committee made it quite clear that the fundamental object of Title II was to vindicate "the deprivation of personal dignity that surely accompanies denials of equal access to public establishments." At the same time, however, it noted that such an objective has been and could be readily achieved "by congressional action based on the commerce power of the Constitution." S. Rep. No. 872, at 16-17. Our study of the legislative record, made in the light of prior cases, has brought us to the conclusion that Congress possessed ample power in this regard, and we have therefore not considered the other grounds relied upon. This is not to say that the remaining authority upon which it acted was not adequate, a question upon which we do not pass, but merely that since the commerce power is sufficient for our decision here we have considered it alone.

5. *The Civil Rights Cases (1883), and their Application*.

In light of our ground for decision, it might be well at the outset to discuss the *Civil Rights Cases*, which declared provisions of the Civil Rights Act of 1875 unconstitutional. We think that decision inapposite, and without precedential value in determining the constitutionality of the present Act. Unlike

Title II of the present legislation, the 1875 Act broadly proscribed discrimination in "inns, public conveyances on land or water, theaters, and other places of public amusement," without limiting the categories of affected businesses to those impinging upon interstate commerce. In contrast, the applicability of Title II is carefully limited to enterprises having a direct and substantial relation to the interstate flow of goods and people, except where state action is involved. Further, the fact that certain kinds of businesses may not in 1875 have been sufficiently involved in interstate commerce to warrant bringing them within the ambit of the commerce power is not necessarily dispositive of the same question today. Our populace had not reached its present mobility, nor were facilities, goods and services circulating as readily in interstate commerce as they are today. Although the principles which we apply today are those first formulated by Chief Justice Marshall in *Gibbons* v. *Ogden* (1824), the conditions of transportation and commerce have changed dramatically, and we must apply those principles to the present state of commerce. The sheer increase in volume of interstate traffic alone would give discriminatory practices which inhibit travel a far larger impact upon the Nation's commerce than such practices had on the economy of another day. Finally, there is language in the *Civil Rights Cases* which indicates that the Court did not fully consider whether the 1875 Act could be sustained as an exercise of the commerce power. Though the Court observed that "no one will contend that the power to pass it was contained in the Constitution before the adoption of the last three amendments [Thirteenth, Fourteenth, and Fifteenth]," the Court went on specifically to note that the Act was not "conceived" in terms of the commerce power and expressly pointed out:

> "Of course, these remarks [as to lack of congressional power] do not apply to those cases in which Congress is clothed with direct and plenary powers of legislation over the whole subject, accompanied with an express or implied denial of such power to the States, as in the regulation of commerce with foreign nations, among the several States, and with the Indian tribes . . . . In these cases Congress has power to pass laws for regulating the subjects specified in every detail, and the conduct and transactions of individuals in respect thereof."

Since the commerce power was not relied on by the Government and was without support in the record it is understandable that the Court narrowed its inquiry and excluded the Commerce Clause as a possible source of power. In any event, it is clear that such a limitation renders the opinion devoid of authority for the proposition that the Commerce Clause gives no power to Congress to regulate discriminatory practices now found substantially to affect interstate commerce.

We, therefore, conclude that the *Civil Rights Cases* have no relevance to the basis of decision here where the Act explicitly relies upon the commerce power, and where the record is filled with testimony of obstructions and restraints resulting from the discriminations found to be existing. We now pass to that phase of the case.

6. *The Basis of Congressional Action*.

While the Act as adopted carried no congressional findings the record of its passage through each house is replete with evidence of the burdens that discrimination by race or color places upon interstate commerce. . . . This testimony included the fact that our people have become increasingly mobile with millions of people of all races traveling from State to State; that Negroes in particular have been the subject of discrimination in transient accommodations, having to travel great distances to secure the same; that often they have been unable to obtain accommodations and have had to call upon friends to put them up overnight . . . . These exclusionary practices were found to be nationwide, the Under Secretary of Commerce testifying that there is "no question that this discrimination in the North still exists to a large degree" and in the West and Midwest as well. . . .

7. *The Power of Congress Over Interstate Travel*.

The power of Congress to deal with these obstructions depends on the meaning of the Commerce

Clause. Its meaning was first enunciated 140 years ago by the great Chief Justice John Marshall in *Gibbons* v. *Ogden*, in these words:

> . . . . "It has, we believe, been universally admitted, that these words comprehend every species of commercial intercourse . . . . No sort of trade can be carried on . . . to which this power does not extend. . . . It may very properly be restricted to that commerce which concerns more States than one. . . . The genius and character of the whole government seem to be, that its action is to be applied to all the . . . internal concerns [of the Nation] which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. . . . It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution. . . . If, as has always been understood, the sovereignty of Congress . . . is plenary as to those objects [specified in the Constitution], the power over commerce . . . is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments.

In short, the determinative test of the exercise of power by the Congress under the Commerce Clause is simply whether the activity sought to be regulated is "commerce which concerns more States than one" and has a real and substantial relation to the national interest. Let us now turn to this facet of the problem.

That the "intercourse" of which the Chief Justice spoke included the movement of persons through more States than one was settled as early as 1849, in the *Passenger Cases*, where Justice McLean stated: "That the transportation of passengers is a part of commerce is not now an open question." Again in 1913 Justice McKenna, speaking for the Court, said: "Commerce among the States, we have said, consists of intercourse and traffic between their citizens, and includes the transportation of persons and property." *Hoke* v. *United States*, . . . Nor does it make any difference whether the transportation is commercial in character.

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That Congress was legislating against moral wrongs in many of these areas rendered its enactments no less valid. In framing Title II of this Act Congress was also dealing with what it considered a moral problem. But that fact does not detract from the overwhelming evidence of the disruptive effect that racial discrimination has had on commercial intercourse. It was this burden which empowered Congress to enact appropriate legislation, and, given this basis for the exercise of its power, Congress was not restricted by the fact that the particular obstruction to interstate commerce with which it was dealing was also deemed a moral and social wrong.

It is said that the operation of the motel here is of a purely local character. But, assuming this to be true, "if it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze." As Chief Justice Stone put it in *United States* v. *Darby* (1941):

> "The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce. See *McCulloch* v.

Maryland (1819)."

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Nor does the Act deprive appellant of liberty or property under the Fifth Amendment. The commerce power invoked here by the Congress is a specific and plenary one authorized by the Constitution itself. The only questions are: (1) whether Congress had a rational basis for finding that racial discrimination by motels affected commerce, and (2) if it had such a basis, whether the means it selected to eliminate that evil are reasonable and appropriate. If they are, appellant has no "right" to select its guests as it sees fit, free from governmental regulation.

There is nothing novel about such legislation. Thirty-two States now have it on their books either by statute or executive order and many cities provide such regulation. Some of these Acts go back fourscore years. It has been repeatedly held by this Court that such laws do not violate the Due Process Clause of the Fourteenth Amendment. Perhaps the first such holding was in the *Civil Rights Cases* themselves, where Justice Bradley for the Court inferentially found that innkeepers, "by the laws of all the States, so far as we are aware, are bound, to the extent of their facilities, to furnish proper accommodation to all unobjectionable persons who in good faith apply for them."

. . . Neither do we find any merit in the claim that the Act is a taking of property without just compensation. The cases are to the contrary. See *Legal Tender Cases* (1870). . . .

We find no merit in the remainder of appellant's contentions, including that of "involuntary servitude." . . . .

JUSTICE DOUGLAS, concurring.

Though I join the Court's opinions, I am somewhat reluctant here, as I was in *Edwards* v. *California* (1941), to rest solely on the Commerce Clause. My reluctance is not due to any conviction that Congress lacks power to regulate commerce in the interests of human rights. It is rather my belief that the right of people to be free of state action that discriminates against them because of race, like the "right of persons to move freely from State to State" (*Edwards*), "occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel and coal across state lines." Moreover, when we come to the problem of abatement in *Hamm* v. *City of Rock Hill* (1964), decided this day, the result reached by the Court is for me much more obvious as a protective measure under the Fourteenth Amendment than under the Commerce Clause. For the former deals with the constitutional status of the individual not with the impact on commerce of local activities or vice versa.

Hence I would prefer to rest on the assertion of legislative power contained in § 5 of the Fourteenth Amendment which states: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article"—a power which the Court concedes was exercised at least in part in this Act.

A decision based on the Fourteenth Amendment would have a more settling effect, making unnecessary litigation over whether a particular restaurant or inn is within the commerce definitions of the Act or whether a particular customer is an interstate traveler. Under my construction, the Act would apply to all customers in all the enumerated places of public accommodation. And that construction would put an end to all obstructionist strategies and finally close one door on a bitter chapter in American history.

My opinion last Term in *Bell* v. *Maryland* (1964), makes clear my position that the right to be free of discriminatory treatment (based on race) in places of public accommodation—whether intrastate or interstate—is a right guaranteed against state action by the Fourteenth Amendment and that state enforcement of the kind of trespass laws which Maryland had in that case was state action within the meaning of the Amendment.

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JUSTICE GOLDBERG, concurring.

I join in the opinions and judgments of the Court, since I agree "that the action of the Congress in the adoption of the Act as applied here . . . is within the power granted it by the Commerce Clause of the Constitution, as interpreted by this Court for 140 years.".

The primary purpose of the Civil Rights Act of 1964, however, as the Court recognizes, and as I would underscore, is the vindication of human dignity and not mere economics. The Senate Commerce Committee made this quite clear:

> "The primary purpose of . . . [the Civil Rights Act], then, is to solve this problem, the deprivation of personal dignity that surely accompanies denials of equal access to public establishments. Discrimination is not simply dollars and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because of his race or color. It is equally the inability to explain to a child that regardless of education, civility, courtesy, and morality he will be denied the right to enjoy equal treatment, even though he be a citizen of the United States and may well be called upon to lay down his life to assure this Nation continues." S. Rep. No. 872, 88th Cong., 2d Sess., 16.

Moreover, that this is the primary purpose of the Act is emphasized by the fact that while § 201 (c) speaks only in terms of establishments which "affect commerce," it is clear that Congress based this section not only on its power under the Commerce Clause but also on § 5 of the Fourteenth Amendment. . . .