Supplementary Material

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

Morgan v. Virginia, 328 U.S. 373 (1946)

Irene Morgan, an African-American woman, took a bus from ride from Gloucester County, Virginia to Baltimore, Maryland. While in Virginia, she refused to move to the back of the bus when asked to do so by the driver. Her refusal violated a Virginia law that mandated racial segregation on all buses travelling in the state. Morgan was tried, convicted, and filed ten dollars. That conviction was sustained by the Supreme Court of Appeals of Virginia. Morgan appealed to the Supreme Court of the United States. Rather than call on the justices to overrule the decision in Plessy v. Ferguson *(1896) that state segregation laws did not violate the equal protection clause, civil rights lawyers suggested that state laws requiring segregation were unconstitutional burdens on interstate commerce.*

The Supreme Court by a 7-1 vote declared the Virginia bus segregation law unconstitutional. Justice Reed's majority opinion held that state segregation laws that requiring passengers to change seats whenever buses or trains crossed state lines were unconstitutional because this was a matter that required a uniform standard. Compare Morgan to such dormant commerce clause cases as South Carolina State Highway Department *v. Barnwell Bros (1938) and* Southern Pacific Co. v. Arizona *(1945). Was* Morgan *a straightforward application of early New Deal dormant commerce clause doctrine? Did the increasing judicial concern with racial equality influence the decision, even though the case was not explicitly decided on equal protection grounds?*

Superficially, Morgan *did not seem that great a victory for racial equality. The justices rested their decision on* Hall v. DeCuir *(1877), a case holding that state laws forbidding segregation unduly burdened commerce. Moreover,* Morgan *still permitted segregation by private carriers. That aspect of* Morgan*, however, was dramatically limited four years later in* Henderson v. United States *(1950). The justices in that case unanimously interpreted the provision in the Interstate Commerce Act of 1887 prohibiting "undue or unreasonable prejudice or disadvantage in any respect whatsoever" on common carriers as outlawing many accepted forms of segregation on the railroads. The Court did not declare that trains could not practice any form of segregation and rejected an invitation from Truman Administration officials to overrule* Plessy *explicitly. Still, they demonstrated an increased judicial resolve to use a variety of tools to weaken Jim Crow in the South.*

JUSTICE REED delivered the opinion of the Court.

This Court frequently must determine the validity of state statutes that are attacked as unconstitutional interferences with the national power over interstate commerce. This appeal presents that question as to a statute that compels racial segregation of interstate passengers in vehicles moving interstate.

The precise degree of a permissible restriction on state power cannot be fixed generally or indeed not even for one kind of state legislation, such as taxation or health or safety. There is a recognized abstract principle, however, that may be taken as a postulate for testing whether particular state legislation in the absence of action by Congress is beyond state power. This is that the state legislation is invalid if it unduly burdens that commerce in matters where uniformity is necessary—necessary in the constitutional sense of useful in accomplishing a permitted purpose. Where uniformity is essential for the functioning of commerce, a state may not interpose its local regulation. . . .

In the field of transportation, there has been a series of decisions which hold that where Congress has not acted and although the state statute affects interstate commerce, a state may validly

enact legislation which has predominantly only a local influence on the course of commerce. It is equally well settled that, even where Congress has not acted, state legislation or a final court order is invalid which materially affects interstate commerce. Because the Constitution puts the ultimate power to regulate commerce in Congress, rather than the states, the degree of state legislation's interference with that commerce may be weighed by federal courts to determine whether the burden makes the statute unconstitutional. . . .

This statute is attacked on the ground that it imposes undue burdens on interstate commerce. It is said by the Court of Appeals to have been passed in the exercise of the state's police power to avoid friction between the races. But this Court pointed out years ago "that a State cannot avoid the operation of this rule by simply invoking the convenient apologetics of the police power." Burdens upon commerce are those actions of a state which directly "impair the usefulness of its facilities for such traffic." . . . A burden may arise from a state statute which requires interstate passengers to order their movements on the vehicle in accordance with local rather than national requirements.

On appellant's journey, this statute required that she sit in designated seats in Virginia. Changes in seat designation might be made "at any time" during the journey when "necessary or proper for the comfort and convenience of passengers." This occurred in this instance. Upon such change of designation, the statute authorizes the operator of the vehicle to require, as he did here, "any passenger to change his or her seat as it may be necessary or proper." An interstate passenger must if necessary repeatedly shift seats while moving in Virginia to meet the seating requirements of the changing passenger group. On arrival at the District of Columbia line, the appellant would have had freedom to occupy any available seat and so to the end of her journey.

. . .

The interferences to interstate commerce which arise from state regulation of racial association on interstate vehicles has long been recognized. Such regulation hampers freedom of choice in selecting accommodations. The recent changes in transportation brought about by the coming of automobiles does not seem of great significance in the problem. People of all races travel today more extensively than in 1878 when this Court first passed upon state regulation of racial segregation in commerce. The factual situation set out in preceding paragraphs emphasizes the soundness of this Court's early conclusion in *Hall* v. *DeCuir*. . . .

The *DeCuir* case arose under a statute of Louisiana interpreted by the courts of that state and this Court to require public carriers "to give all persons traveling in that State, upon the public conveyances employed in such business, equal rights and privileges in all parts of the conveyance, without distinction or discrimination on account of race or color." . . . Damages were awarded against Hall, the representative of the operator of a Mississippi river steamboat that traversed that river interstate from New Orleans to Vicksburg, for excluding in Louisiana the defendant in error, a colored person, from a cabin reserved for whites. This Court reversed for reasons well stated in the words of Mr. Chief Justice Waite. As our previous discussion demonstrates, the transportation difficulties arising from a statute that requires commingling of the races, as in the *DeCuir* case, are increased by one that requires separation, as here.

In weighing the factors that enter into our conclusion as to whether this statute so burdens interstate commerce or so infringes the requirements of national uniformity as to be invalid, we are mindful of the fact that conditions vary between northern or western states such as Maine or Montana, with practically no colored population; industrial states such as Illinois, Ohio, New Jersey and Pennsylvania with a small, although appreciable, percentage of colored citizens; and the states of the deep south with percentages of from twenty-five to nearly fifty per cent colored, all with varying densities of the white and colored races in certain localities. Local efforts to promote amicable relations in difficult areas by legislative segregation in interstate transportation emerge from the latter racial distribution. As no state law can reach beyond its own border nor bar transportation of passengers across its boundaries, diverse seating requirements for the races in interstate journeys result. As there is no federal act dealing with the separation of races in interstate transportation, we must decide the validity of this Virginia statute on the challenge that it interferes with commerce, as a matter of balance between the exercise of the local police power and the need for national uniformity in the regulations for interstate travel. It seems clear to us that seating arrangements for the different races in interstate motor travel

require a single, uniform rule to promote and protect national travel. Consequently, we hold the Virginia statute in controversy invalid.

JUSTICE RUTLEDGE, concurring.

JUSTICE JACKSON took no part in the decision of this case.

JUSTICE BLACK, concurring.

. . . I think that whether state legislation imposes an "undue burden" on interstate commerce raises pure questions of policy, which the Constitution intended should be resolved by the Congress.

. . .

So long as the Court remains committed to the "undue burden on commerce formula," I must make decisions under it. The "burden on commerce" imposed by the Virginia law here under consideration seems to me to be of a far more serious nature than those of the *Nippert* or *Southern Pacific Company* cases. The *Southern Pacific Company* opinion, moreover, relied in part on the rule announced in *Hall* v. *DeCuir*, ... which case held that the Commerce Clause prohibits a state from passing laws which require that "on one side of a State line . . . passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate." The Court further said that "uniformity in the regulations by which . . . [a carrier] is to be governed from one end to the other of his route is a necessity in his business" and that it was the responsibility of Congress, not the states, to determine "what such regulations shall be." The "undue burden on commerce formula" consequently requires the majority's decision. In view of the Court's present disposition to apply that formula, I acquiesce.

JUSTICE FRANKFURTER, concurring.

The imposition upon national systems of transportation of a crazy-quilt of State laws would operate to burden commerce unreasonably, whether such contradictory and confusing State laws concern racial commingling or racial segregation. This does not imply the necessity for a nationally uniform regulation of arrangements for passengers on interstate carriers. . . . Congress may devise a national policy with due regard to varying interests of different regions. . . . The States cannot impose diversity of treatment when such diverse treatment would result in unreasonable burdens on commerce. But Congress may effectively exercise its power under the Commerce Clause without the necessity of a blanket rule for the country.

JUSTICE BURTON, dissenting.

. . .

The Court makes its own further assumption that the question of racial separation of interstate passengers in motor vehicle carriers requires national uniformity of treatment rather than diversity of treatment at this time. The inaction of Congress is an important indication that, in the opinion of Congress, this issue is better met without nationally uniform affirmative regulation than with it. Legislation raising the issue long has been, and is now, pending before Congress but has not reached the floor of either House. The fact that 18 states have prohibited in some degree racial separation in public carriers is important progress in the direction of uniformity. The fact, however, that 10 contiguous states in some degree require, by state law, some racial separation of passengers on motor carriers indicates a different appraisal by them of the needs and conditions in those areas than in others. The remaining 20 states have not gone equally far in either direction. This recital of existing legislative diversity is evidence against the validity of the assumption by this Court that there exists today a requirement of a single uniform national rule on the subject.