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## Court Finally Ends Race Discrimination in Public Accommodations

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Racial discrimination in southern hotels and restaurants throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries, Congress determined in 1964 through hearings and studies, had created for Black Americans great challenges and difficulties in their desire to travel from state to state. The Supreme Court had held a century before that Americans enjoyed a constitutional right to travel, but how could Blacks realistically exercise that right without access to lodgings and places to eat?

Congress sought in 1964, in the context of the historic civil rights movement, a legislative remedy against the widespread racism throughout the South, but where in the Constitution could they find the necessary assistance? The Court, after all, in the Civil Rights Cases of 1883, had declared unconstitutional the Civil Rights Act of 1875, by which Congress, acting under the 14<sup>th</sup> Amendment, had attempted to prohibit discrimination by private businesses, including hotels, restaurants, carriage services, and theaters. The Court ruled that Congress possessed authority to regulate state action but lacked power to prevent private acts of race discrimination.

In the post-World War II years, as the Court rolled back discrimination in public schools, parks, and other public accommodations, legal scholars felt increasingly optimistic that the High Bench might overturn its decision in the Civil Rights Cases, paving

the way for Congress to prohibit private discrimination. But members of Congress, sitting in committee in 1964, feared the possibility that the Court might uphold its 19<sup>th</sup> Century ruling, which many regarded as punitive, thus stifling the efforts of the national legislature to expand civil rights.

What to do? Congress, behind the leadership of President Lyndon Johnson, enacted the 1964 Civil Rights Act which, in Title II of the landmark legislation, declared that "all persons shall be entitled to the full and equal enjoyment" of public accommodations, without "discrimination or segregation on the ground of race, color, religion, or national origin."

Given the Court's ruling in the 1883 Civil Rights Cases, what constitutional ground could Congress invoke to justify the 1964 Civil Rights Act? Answer: the authority to regulate interstate commerce under Article I, Section 8, Clause 3.

By the end of the year, in a pair of cases—Heart of Atlanta Hotel v. United States and Katzenbach v. McClung—the Court unanimously upheld Title 2 of the Civil Rights Act as a lawful exercise of congressional control over interstate commerce. Justice Tom Clark delivered the opinions for the Court, declaring that the "record is replete with evidence of the burdens that discrimination by race or color places upon interstate commerce." Clark noted the increased mobility of Americans in the post-war era and observed that Blacks were particularly affected by the discrimination, "having to travel great distances to secure" lodgings, "and often they have been unable to obtain accommodations and have to call upon friends to put them up overnight."

The Heart of Atlanta Hotel, like Ollie's Barbecue, the subject of Katzenbach v. McClung, maintained that it was of a "purely local character"

and thus subject to state control and not congressional regulation under the interstate commerce power. Justice Clark, writing for the Court, said, "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." To the Court, the "squeeze" was obvious. Denial of hotel accommodations would deter Blacks from traveling from state to state and region to state. In the case of Ollie's Barbecue, some of the products that it served were purchased from other states, a clear example of interstate commerce.

Congress utilized the Commerce Clause to respond to the pervasive practice of race discrimination, one of the nation's most serious moral concerns. Heart of Atlanta and Katzenbach were not the first cases in American history that involved use of the commerce power to address social justice issues. Congress, for example, has at various times invoked the Commerce Clause to discourage practices which it deems evil, dangerous or unwise, including the interstate sale of lottery tickets, white slave trafficking, the transportation of intoxicating liquors, and child labor.

The purposes and rationales behind the exercise of the commerce power, the Court has said, are beyond judicial contemplation. In *United States v. Darby* (1941), Justice Harlan Fiske Stone spoke for generations of Justices: "The motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the Constitution places no restriction and over which the courts are given no control."

1964 was a pivotal year in the history of the American civil rights movement. It represented one of the few years in which all three branches of government pulled on the same oar to promote human dignity and

civil rights. We could use more governmental synergy in addressing the great challenges in our time.

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