SUPREME COURT OF THE UNITED STATES

No. 515.—October Term, 1964.

Heart of Atlanta Motel, Inc., Appellant, v. United States et al.	On Appeal From the United States District Court for the Northern District of Georgia.

[December —, 1964.]

Mr. Justice Goldberg, concurring.

I agree fully with the Court "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," *ante*, at 19. I also agree that there is no occasion here to define either the constitutional or statutory scope of the "state action" provision of § 201 (d), since this provision has not been invoked by the Government in support of its claim, which has been asserted solely under § 201 (c).[1]

However, in my view, the fact that the grand design of the Civil Rights Act of 1964 is not economic, but is the elimination of racial discrimination cannot be ignored. The Senate Commerce Committee made it quite clear that the basic object of the Act is to vindicate human dignity:

> 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

[1] See my concurring opinion in *Bell* v. *Maryland*, 378 U. S. 226, 286, where I set forth my views on the scope of the Fourteenth Amendment.

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.[2] [S. Rep. No. 872, 88th Cong., 2d Sess., 16.]

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[2] Moreover, that this is the primary purpose of the Act is emphasized by the fact that while § 201 (c) speaks only in terms of "affecting 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. Hearings in Congress as well as statements by administration spokesmen show that the original bill, presented by the administration, was so based even though it contained no clause which resembled § 201 (d) or which even mentioned "state action." See, *e. g.*, Hearings before Senate Committees on Commerce on S. 1732, 88th Cong., 1st Sess., 203, 23, 27–28, 57, 74, 132–134, 145–168, 230, 247–248, 250, 252, 253, 256, 259; Hearings before Senate Judiciary Committee on S. 1731, 88th Cong., 1st Sess., 151, 152, 187; Hearings before House Committee on the Judiciary on H. R. 7152, 88th Cong., 1st Sess., 1396, 1410, 2693, 2699–2700; S. Rep. No. 872, 88th Cong., 1st Sess., 2. The later addition of § 201 (d) did not remove the dual Commerce Clause-Fourteenth Amendment support from the rest of the bill, for those who added this clause did not intend thereby to bifurcate its constitutional basis. Section 201 (d) was added, first, in order to make certain that the Act would cover all or almost all of the situations as to which this Court might hold that § 1 of the Fourteenth Amendment applied. Senator Hart stated that not to do so would "embarrass Congress because . . . the reach of the administration bill would be less inclusive than the Court-established right." Hearings before Senate Commerce Committee, *supra*, at 256. See also *id.*, at 259–262. Second, the sponsors of § 201 (d) were trying to make more clear the Fourteenth Amendment basis of Title II. See, *e. g.*, Hearings before the House Committee, *supra.*, at 1413–1416. There is no indication that they thought the inclusion of § 201 (d) would remove the Fourteenth Amendment foundation of the rest of the title. Third, the history of the bill after provisions similar to

The cases cited in the Court's opinion, *ante*, at 14, 15, 18, make it clear that Congress could exercise its powers under the Commerce Clause, or any other appropriate power, to accomplish this purpose. In passing this Civil Rights Act, Congress, while in part invoking its Commerce Clause power, was furthering the great aim of the Thirteenth, Fourteenth, and Fifteenth Amendments—the elimination of racial discrimination.[3]

Moreover, the Thirteenth, Fourteenth, and Fifteenth Amendments are relevant in yet another way to this exercise of congressional power under the Commerce Clause. Prior to the Civil War, it was an "admitted axiom" of American constitutional law that slavery in the slave States was a purely domestic concern of those States.[4] The Constitution explicitly recognized that slavery existed as a state institution.[5] As was universally acknowledged, this constitutional recognition prevented Congress from interfering with slavery within the slave

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§ 201 (d) were added contains references to the dual foundation of all Title II provisions before us. See *id.*, at 1396, 1410, 2693, 2699–2700; Cong. Rec., Feb. 4, 1964, 1846–1848.

As § 201 (c) is undoubtedly a valid exercise of the Commerce Clause power for the reasons stated in the opinion of the Court, it is unnecessary to consider whether it is additionally supportable by Congress' exertion of its power under § 5 of the Fourteenth Amendment.

[3] *Slaughter Houses Cases*, 16 Wall. 36, 71; *Strauder* v. *West Virginia*, 100 U. S. 303, 307–308.

[4] See Cong. Globe, 38th Cong., 1st Sess., 1314; Randall, Constitutional Problems Under Lincoln, 343 (1926).

[5] The Constitution specifically recognized slavery in three places. Article I, § 2, provided that in determining the population of each State for the purposes of ascertaining its representation in the House of Representatives and for apportioning direct taxes, there shall be added "to the whole number of free persons . . . three fifths of all other persons." Article 4, § 2, guaranteed that States will be obliged to deliver up fugitive slaves. Article I, § 9, stated that Congress could not prohibit the importation of slaves before 1808.

States under any federal peacetime power.[6] It follows that before the Civil War Amendments, Congress could not enact a public accommodations law which would have required the slave States to provide equal treatment for slaves. The Civil War Amendments, however, removed any constitutional bar to the adoption of congressional legislation under the commerce power, or any other power where appropriate, in order to guarantee equal access to public accommodations for all men regardless of their previous condition of servitude. While I agree with the Court's discussion of the *Civil Rights Cases*, 109 U. S. 3, I believe in addition that the removal of this constitutional obstacle might well explain Mr. Justice Bradley's observation in those cases, 109 U. S., at 18, that "no one will contend that the power to pass . . . [The Civil Rights Act of 1875, 18 Stat. 335, 336] was contained in the Constitution before the adoption of the . . . [Thirteenth, Fourteenth, and Fifteenth] Amendments." Following these Amendments, Congress is free to use all its delegated powers as means to achieve the enduring constitutional purpose of freedom and equality for all regardless of "race, color, or previous condition of servitude." *United States* v. *Reese*, 92 U. S. 214, 218.

While I am in complete agreement with the Court and join both its opinion and judgment, I add these remarks to point out what is an inescapable fact: that there is a vital historical and legal relation between the Civil War Amendments and this Civil Rights Act—a relation recognized and emphasized by Congress.

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[6] See Randall, *op. cit. supra*, at 343, 373–376; Cong. Globe, 38th Cong., 1st Sess., 1314; Cong. Globe, 31st Cong., 1st Sess., 117. It should be noted that the Emancipation Proclamation was issued under a special wartime power. See Randall, *op. cit., supra*, at 342–351; Cong. Globe, 38th Cong., 1st Sess, 1313; cf. *The Slaughterhouse Cases, supra*, at 68.