

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

gressional power to prohibit interstate commerce is limited to articles which in themselves have some harmful or deleterious property—a distinction which was novel when made and unsupported by any provision of the Constitution—has long since been abandoned. . . . The thesis of the opinion that the motive of the prohibition or its effect to control in some measure the use or production within the States of the article thus excluded from the commerce can operate to deprive the regulation of its constitutional authority has long since ceased to have force. . . . The conclusion is inescapable that *Hammer v. Dagenhart*, was a departure from the principles which have prevailed in the interpretation of the Commerce Clause both before and since the decision and that such vitality, as a precedent, as it then had has long since been exhausted. It should be and now is overruled.”⁹⁸¹

Congressional Regulation of Civil Rights

It had been generally established some time ago that Congress had power under the Commerce Clause to prohibit racial discrimination in the use of the channels of commerce.⁹⁸² The power under the clause to forbid discrimination within the states was firmly and unanimously sustained by the Court when Congress in 1964 enacted a comprehensive measure outlawing discrimination because of race or color in access to public accommodations with a requisite connection to interstate commerce.⁹⁸³ Hotels and motels were declared covered—that is, declared to “affect commerce”—if they provided lodging to transient guests; restaurants, cafeterias, and the like, were covered only if they served or offered to serve interstate travelers or if a substantial portion of the food they served had moved in commerce.⁹⁸⁴ The Court sustained the act as applied to a downtown Atlanta motel that did serve interstate travelers,⁹⁸⁵ to an out-of-the-way restaurant in Birmingham that catered to a local clientele but had spent 46 percent of its previous year’s out-go on meat from a local supplier who had procured it from out of state,⁹⁸⁶ and to a rural amusement area operating a snack bar and other facili-

⁹⁸¹ 312 U.S. at 116–17.

⁹⁸² *Boynton v. Virginia*, 364 U.S. 454 (1960); *Henderson v. United States*, 339 U.S. 816 (1950); *Mitchell v. United States*, 313 U.S. 80 (1941); *Morgan v. Virginia*, 328 U.S. 373 (1946).

⁹⁸³ Civil Rights Act of 1964, Title II, 78 Stat. 241, 243, 42 U.S.C. §§ 2000a *et seq.*

⁹⁸⁴ 42 U.S.C. § 2000a(b).

⁹⁸⁵ *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964).

⁹⁸⁶ *Katzenbach v. McClung*, 379 U.S. 294 (1964).