

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

ties, which advertised in a manner likely to attract an interstate clientele and which served food a substantial portion of which came from outside the state.⁹⁸⁷

Writing for the Court in *Heart of Atlanta Motel* and *McClung*, Justice Clark denied that Congress was disabled from regulating the operations of motels or restaurants because those operations may be, or may appear to be, “local” in character. “[T]he power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce.”⁹⁸⁸

But, it was objected, Congress was regulating on the basis of moral judgments and not to facilitate commercial intercourse. “That Congress [may legislate] . . . against moral wrongs . . . 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.”⁹⁸⁹ The evidence did, in fact, noted the Justice, support Congress’ conclusion that racial discrimination impeded interstate travel by more than 20 million black citizens, which was an impairment Congress could legislate to remove.⁹⁹⁰

The Commerce Clause basis for civil rights legislation prohibiting private discrimination was important because of the understanding that Congress’ power to act under the Fourteenth and Fifteenth Amendments was limited to official discrimination.⁹⁹¹ The

⁹⁸⁷ *Daniel v. Paul*, 395 U.S. 298 (1969).

⁹⁸⁸ *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 258 (1964); *Katzenbach v. McClung*, 379 U.S. 294, 301–04 (1964).

⁹⁸⁹ *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 257 (1964).

⁹⁹⁰ 379 U.S. at 252–53; *Katzenbach v. McClung*, 379 U.S. 294, 299–301 (1964).

⁹⁹¹ *Civil Rights Cases*, 109 U.S. 3 (1883); *United States v. Reese*, 92 U.S. 214 (1876); *Collins v. Hardyman*, 341 U.S. 651 (1951).