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Segregation in Transportation: Substantive and Remedial Problem

SEGREGATION IN TRANSPORTATION: SUBSTANTIVE AND REMEDIAL PROBLEMS

Ironically, transportation, where the separate but equal doctrine originated, now looms as the last foothold[1] of this dying "Jim Crow" device. Granted Supreme Court recognition sixty years ago,[2] the doctrine is basic to all existing segregation laws. Thus, a review of the separate but equal philosophy is necessary in determining the present status of the Negro's rights in transportation, and in examining the remedies available to redress a violation of those rights.

The Civil War destroyed the traditional forms of control which had developed under the slave regime and left most of the Negroes ill-equipped to adjust to their new station in the community. The new citizens were poorly educated, unaccustomed to freedom, and generally incapable of their own support.[3] To control the newly emancipated masses the southern states enacted the New Black Codes which, despite the argument that chaotic conditions warranted special legislation, were clearly attempts to return, at least partially, to slavery.[4] Congress, now under the control of the Radical Republicans,[5] countered with the first of the civil rights legislation, the Civil Rights Act of 1866, which gave the Negro citizenship, property rights, and the right to full and equal benefit of all laws and proceedings.[6]

Before the validity of the act was tested,[7] it was superseded by the fourteenth amendment which guaranteed citizenship, equal protection of

1. The Supreme Court recently discredited the doctrine in both public educational and recreational facilities. See The School Segregation cases, 347 U.S. 483 (1954); Dawson v. Mayor and City Council of Baltimore, 24 U.S.L. WEEK 3128 (U.S. Nov. 8, 1955), *affirming* 220 F.2d 386 (4th Cir. 1955).

2. Plessy v. Ferguson, 163 U.S. 537 (1896).

3. See FRAZIER, THE NEGRO IN THE UNITED STATES 126 (1949), for a general description of the problems existing immediately after the Civil War.

4. Mississippi practically re-enacted its slave code when it declared "that all the penal and criminal laws now in force in this State, defining offenses, and prescribing the mode of punishment for crimes and misdemeanors committed by slaves, free Negroes or mulattoes, be and the same are hereby re-enacted, and declared to be in full force and effect, against freedmen, free Negroes, and mulattoes, except so far as the mode and manner of trial and punishment have been changed or altered by law." Quoted in DUBOIS, BLACK RECONSTRUCTION IN AMERICA 177 (1935). Other southern states followed the example of Mississippi in limiting the movement and rights of the freedmen. See I FLEMING, DOCUMENTARY HISTORY OF RECONSTRUCTION 243-312 (1906).

5. For a detailed treatment of legislation under the Radicals, see WARSOFF, EQUALITY AND THE LAW 50-148 (1938).

6. 14 STAT. 27 (1866), 42 U.S.C. §§ 1981, 1983 (1952).

7. There was some disagreement in the lower courts as to the validity of the act. Although Bowlin v. Commonwealth, 65 KY. 5 (1867), held the act was unauthorized, most of the lower courts seemed to admit that the act was valid. See, *e.g.*, Frasher v.

the law, and the right to due process.[8] Additional measures designed to secure to the colored race the full rights of citizenship were: The fifteenth amendment, safeguarding the right to vote;[9] the Civil Rights Act of 1870 in which the statute of 1866 was re-enacted to provide a sanction for the fourteenth amendment;[10] and the Ku Klux Klan Act, to control an organization that had become a major problem.[11]

All the prior legislation proving ineffective, Congress passed the Civil Rights Act of 1875[12] which sought to secure to all persons the "full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement."[13] While the lower courts were in conflict over the constitutionality of this act,[14] the Supreme Court held it invalid in 1883 and, practically, ended attempts by Congress to settle the Negro problem.[15]

The constitutionality of state regulation of segregation in transportation was first litigated in 1877, when a Negro woman brought an action under a Louisana Reconstruction statute which forbade discrimination in transportation on account of race.[16] Chief Justice Waite, speaking for the Court, accepted the interpretation of the state's highest court that the

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State, 3 TEX. APP. 263 (1877); Hart v. Hoss & Elder, 26 LA. ANN. 90 (1874); State v. Hairston, 63 N.C. 451 (1869); Ellis v. State, 42 ALA. 525 (1868).

8. U.S. CONST. amend. XIV, § 1.

9. U.S. CONST. amend. XV.

10. 16 STAT. 144 (1870).

11. 17 STAT. 13 (1871).

12. 18 STAT. 335 (1875). See Cocke, *The Constitutionality of the Civil Rights Law*, 1 N.S. So. L. REV. 193 (1875), where a contemporary southerner gives his reasons for believing the act to be invalid.

13. 18 STAT. 335, 336 (1875).

14. See MANGUM, THE LEGAL STATUS OF THE NEGRO 28-29 (1940), for a discussion of the cases for and against the act.

15. The *Civil Rights* cases, 109 U.S. 3 (1883). These were five cases arising under the act of 1875. Two were indictments for denying accommodations in a hotel; two were for denying accommodations in a theater; and one was for denying accommodations in a railroad car. The validity of the act was defended under the power of Congress to enforce, by appropriate legislation, the thirteenth and fourteenth amendments. The Court held the act not to be justified by either, the thirteenth amendment prohibiting only slavery and the fourteenth amendment dealing with the acts of states, not with the private actions of individuals regulated by the law in question. These cases did not decide whether Congress could pass similar legislation regulating only public conveyances in interstate commerce. However, in Butts v. Merchants and Miners Transp. Co., 230 U.S. 126 (1913), where a Negro sought to apply the act to segregation on an interstate vessel, the Court held that the *Civil Rights* cases declared the law. The act showed on its face that it was not based on the commerce clause, so it could not be justified thereby.

16. Hall v. DeCuir, 95 U.S. 485 (1877). The statute involved provided that all persons engaged within the state as common carriers should have the right to refuse to admit any person, provided that its rules made no discrimination on account of race or color. LA. REV. STAT. p. 93 (1870).

law included interstate carriers traveling through Louisiana and ruled it unconstitutional as state interference with the commerce power of Congress.[17] This ruling cleared the way for states to pass valid segregation laws limited, by state interpretation, to intrastate carriers.[18] Private companies, however, remained free to adopt reasonable regulations for passengers in interstate commerce, when there was no federal legislation.[19]

Only recently has the constitutionality of these statutes been questioned.[20] The typical state segregation statute requires all carriers doing business within the state to separate the races in one of three ways: (1) provide separate cars; (2) divide cars into sections by partitions; or (3) provide special seating arrangements that effectively separate the races. In all cases accommodations are to be "equal." Generally, the carrier also must furnish separate terminal facilities for each race. All the statutes empower the conductor or operator to enforce the segregation provisions.[21]

Not until 1896 was the Supreme Court required to consider whether separate but equal facilities satisfied the requirements of the equal protection clause of the fourteenth amendment.[22] In *Plessy v. Ferguson*[23] the Court upheld a Louisiana statute requiring segregation in railroad travel as a reasonable exercise of the police power under the discretion granted the state legislature. Mr. Justice Brown, for the majority, admitted that the amendment was intended "to enforce the absolute equality of the two races before the law," but denied that it could have been intended "to enforce social, as distinguished from political, equality, or a commingling of the races upon terms unsatisfactory to either."[24] Despite

17. The Chief Justice explained that while the statute purported to control carriers only while within the state, it necessarily influenced their conduct to some extent throughout their entire voyage. Any statute which seeks to impose a direct burden on interstate commerce, or to interfere directly with its freedom, encroaches on the exclusive power of Congress. Hall v. DeCuir, 95 U.S. 485, 551 (1877).

18. *Cf.* L.N.O. & T. Ry. Co. v. Kentucky, 133 U.S. 587 (1890).

19. See Chiles v. Chesapeake & Ohio Ry. Co., 218 U.S. 71 (1910), where the Supreme Court held that with regard to the acts of private persons, the distinction between interstate and intrastate carriers is unimportant, stating that congressional inaction is equivalent to a declaration that a carrier may separate white and Negro interstate passengers.

20. See discussion, *infra* p. 291.

21. See ALA. CODE tit. 48, §§ 196, 198 (1940); ARK. STAT. ANN. 73-1747, 1218 (1947); FLA. STAT. 352.03 (1953); GA. CODE ANN. §§ 18-205, 207 (1947); KY. REV. STAT. § 276.440 (1953); LA. REV. STAT. § 45-528 (1950); MISS. CODE ANN. §§ 7785, 7786 (1942); N.C. GEN. STAT. § 62-121.71 (1950); OKLA. STAT. tit. 13, § 181 (1951); S.C. CODE §§ 58.1491-1496 (1952); TEX. PEN. CODE ANN. art. 1659-60 (1948); VA. CODE §§ 56-326-330, 390-404 (1950).

22. The so-called separate but equal doctrine was first voiced in a state education case, Roberts v. Boston, 5 Cush. 198 (Mass. 1849).

23. 163 U.S. 537 (1896).

24. 163 U.S. at 544.

Justice Harlan's vigorous dissenting opinion,[25] this decision became the basis of legality for Jim Crow laws.[26]

Fifty years elapsed before the Supreme Court fully reversed its attitude toward segregation in transportation.[27] Until 1946 no state statute forbidding segregation had been upheld,[28] nor had any statute requiring segregation been invalidated.[29] In *Morgan v. Virginia*[30] the Court invalidated as a burden on interstate commerce a state law requiring all vehicle carriers operating within the state to separate white and colored passengers. The Court ruled that a statute which requires passengers to change seats when a carrier crosses a state line burdens those passengers and infringes upon the requirement of national uniformity of regulations. The decision made doubtful the validity of any state law which required an interstate passenger to change seats in any type of commercial transportation.[31]

The separate but equal doctrine also dictated, until 1950, the meaning of "equality" under the Interstate Commerce Act, section 3(1).[32] In *Henderson v. United States*[33] the Supreme Court reversed the decisions of both the Interstate Commerce Commission[34] and the district court[35] upholding a carrier's dining car segregation regulation. The Court, expressly refusing a decision on the constitutionality of segregation, held that the regulation, under which Negro passengers were refused service

25. 163 U.S. at 552. In his opinion Justice Harlan stated, "[I]n the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law." 163 U.S. at 559.

26. McCabe v. A.T. & S.F. Ry. Co., 235 U.S. 151, 160 (1914), emphasized the firmness with which segregation was intrenched in transportation under the *Plessy* doctrine. Chief Justice Hughes, upholding an Oklahoma segregation statute, declared that since Plessy v. Ferguson the question can no longer be considered an open one. It was not an infraction of the fourteenth amendment for a state to require separate but equal accommodations for the two races.

27. The forewarning of the change was Mitchell v. United States, 313 U.S. 80, (1941), where the Court required a more rigid compliance with the "equality" term of separate but equal. Also, in 1938, the attack on separate but equal began in public education facilities, but the doctrine was not discredited until 1954. See note 38 *infra.*

28. See Hall v. DeCuir, 95 U.S. 485 (1877).

29. See McCabe v. A.T. & S.F. Ry. Co., 235 U.S. 151 (1914); Plessy v. Ferguson, 163 U.S. 537 (1896); L.N.O. & T. Ry. Co. v. Kentucky, 133 U.S. 587 (1890).

30. 328 U.S. 373 (1946).

31. While the Court's decision was carefully limited to buses, its reasoning is easily extended to include other means of transportation. The inconvenience of changing seats is no more peculiar to buses than it is to trains, boats, and planes.

32. See Mitchell v. United States, 313 U.S. 80 (1941). Section 3(1) provides that no carrier shall subject any person to any undue or unreasonable prejudice or disadvantage. 24 STAT. 379, 380 (1887) 49 U.S.C. § 3(1) (1952).

33. 339 U.S. 816 (1950). For a complete background of this case, see note 74 *infra.*

34. Henderson v. Southern Ry. Co., 269 I.C.C. 73 (1947).

35. Henderson v. I.C.C., 80 F. Supp. 32 (D. Md. 1948).

at all but two tables, allowed an undue discrimination forbidden by the act. This ruling made it impossible for any interstate carrier to reserve a specific area for the use of whites and, at the same time, maintain the non-discriminatory regulations required by the act. Lower courts have used the commerce clause to effect the same result.[36]

On November 25, 1955, the Interstate Commerce Commission, belatedly recognizing the impact of the *Henderson* decision, ruled that racial segregation on train and bus travel in interstate commerce violates the Interstate Commerce Act.[37] It declared unlawful the separation of Negroes and whites not only while traveling, but also while in carrier-owned terminal facilities, *e.g.,* waiting rooms, station restaurants, and washrooms, thus barring all interstate segregation practices.

Separate but equal has been obviated not only in interstate commerce but also in the purely local area of education. As in the transportation cases, the Court, until 1954, avoided any ruling on the validity of that principle in education.[38] Then, in the *School Segregation* cases,[39] the Supreme Court met *Plessy v. Ferguson*[40] directly for the first time. Because the physical facilities available to the Negro and white students were identical, the Court could not use tangible inequalities to avoid the constitutional issue. A unanimous Court held that separate educational facilities in the public schools are inherently unequal and constitute a denial of equal protection. Thus, the *Plessy* case, its precedents almost entirely early school segregation cases, has become a rule without a reason.[41]

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36. In 1949, the Sixth Circuit employed the Interstate Commerce Act and the commerce clause to hold invalid a carrier regulation under which a Negro had been required to occupy a back seat in the defendant's bus. The court ruled that the regulation constituted a burden on commerce and furnished no immunity to the carrier for damages which flowed from its enforcement. Whiteside v. Southern Bus Lines, 177 F.2d 949 (6th Cir. 1949). In Chance v. Lambeth, 186 F.2d 879, 883 (4th Cir. 1951), the court said, "[W]e know of no principle of law which requires the courts to strike down a state statute which interferes with interstate commerce but to uphold a railroad regulation which is infected with the same vice."

37. See National Assn. for Advancement of Colored People v. St. Louis-San Francisco Ry. Co., 24 U.S.L. WEEK 2234 (Nov. 29, 1955).

38. The attack on separate but equal in education began in 1938. In a group of cases involving segregation in graduate study, the Court made equality so difficult to attain that the practical result was the abolition of the *Plessy* doctrine in the area. See McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950); Sweatt v. Painter, 339 U.S. 629 (1950); Sipuel v. Board of Regents, 332 U.S. 631 (1948); Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337 (1938).

39. 347 U.S. 483 (1954). For a general discussion of the problems that faced the Court in these cases see Leflar and Davis, *Segregation in the Public Schools,* 67 HARV. L. REV. 377 (1954).

40. 163 U.S. 537 (1896).

41. See 163 U.S. at 545 for a listing of the school segregation cases cited by the majority. One group of non-school cases, a string of state and lower federal court deci-

In public recreation as well, separate but equal has collapsed. On November 8, 1955, the Court reversed without opinion a lower court decision applying the *Plessy* doctrine to a suit to enjoin the city of Atlanta from making racial distinction in allocating public golf facilities.[42] At the same time, the Court affirmed without opinion a case holding that segregation of public beach facilities is not a proper exercise of the state's police power.[43] The lower court, cited by the Supreme Court, had ruled that because the authority of earlier cases upholding segregation had been swept away by the *School Segregation* cases, the races could not lawfully be separated in recreational facilities.[44]

The effect of these decisions on segregation in intrastate transportation will be seen when *Flemming v. South Carolina Electric & Gas Co.*[45] is decided by the Supreme Court. In an action for damages under the Civil Rights Act[46] against a city bus company whose driver forced a Negro to change seats in accordance with a state segregation statute, the Fourth Circuit reversed a judgment for the defendant, saying "the principle applied in the school cases should be applied in cases involving transportation."[47] Should *Flemming* be affirmed, the fourteenth amendment will bar state segregation of intrastate passengers.

As these cases illustrate, segregation is not a proper governmental function. Neither a state nor a private carrier is free to segregate its passengers in interstate commerce. However, in wholly intrastate facilities where private regulations without state authorization require separation, neither fourteenth amendment nor commerce clause limitations apply.[48] There may be, however, effective non-governmental "cures" for intrastate segregation by private companies. In Montgomery, Alabama, on December 5, 1955, eighty to ninety percent of the Negro population began a boycott of a city bus line which caused the arrest of a Negro

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sions, was cited in *Plessy* as upholding statutes requiring segregation on carriers, but an examination of those cases reveals that not one of them is actually in point. See Waite, *The Negro in the Supreme Court,* 30 MINN. L. REV. 219, 248-251 (1946).

42. Holmes v. Atlanta, 24 U.S.L. WEEK 3128 (U.S. Nov. 8, 1955), *reversing* 124 F. Supp. 290 (N.D. Ga. 1954).

43. Dawson v. Mayor and City Council of Baltimore, 24 U.S.L. WEEK 3128 (U.S. Nov. 8, 1955), *affirming* 220 F.2d 386 (4th Cir. 1955).

44. 220 F.2d 386, 387 (4th Cir. 1955).

45. 224 F.2d 752 (4th Cir. 1955), *appeal docketed,* No. 511, 24 U.S.L. WEEK 3138 (U.S. Nov. 8, 1955).

46. See discussion, *infra* p. 292.

47. 224 F.2d at 753.

48. No federal limitation is directly applicable to city bus, taxi, and streetcar companies. For a possible solution to the problem in this area, see discussion, *infra* pp. 294-95. However, the gas stations, restaurants, and other facilities used by Negroes traveling in private automobiles may require segregation under private rules, subject to no governmental limitations other than state law.

passenger who had disregarded a driver's order to move to the rear of the bus. The boycott was to be continued until colored bus riders were no longer "intimidated, embarrassed, and coerced."[49] What the federal government cannot touch, private economic pressure may be able to correct in southern states where the Negro race is a substantial, and sometimes major, segment of the population.

Of course, resort should be first made to the available legal remedies. The Civil Rights Act[50] provides one such remedy. It allows actions to redress invasions of rights and immunities secured by the Constitution, including those preserved by the equal protection clause.[51] The options under this act may be grouped into two general categories: (1) damages; and (2) declaratory judgment and injunction.[52]

To maintain an action for damages one need only have suffered the deprivation of his personal liberty protected by the Constitution. The amount of damages the plaintiff recovers is always entrusted to the determination of a jury.[53] The abstruse value of civil rights and the attitude of juries in the South, where the majority of these cases will undoubtedly arise, will play an important part in determining the effectiveness of this remedy. Considering the general attitude of white southerners, it is doubtful that the Negro can expect liberal damages in these actions where the amount of the judgment is left entirely to a jury.[54]

If there is no adequate remedy at law, a Negro who has been denied equal privileges may bring an action for an injunction. While this remedy may be used separately, in segregation cases it is often used in conjunction with a declaratory judgment. Generally, a plaintiff asks the court to declare a practice discriminatory and violative of his civil rights, and requests that an injunction restraining further invasion of those rights be

49. Louisville Courier-Journal, Dec. 6, 1955, p. 1, col. 7.

50. The act of 1866, 14 STAT. 27 (1866), was re-enacted by the second Civil Rights Act, passed in 1870 to enforce the provisions of the fourteenth amendment. 16 STAT. 140, amended, 16 STAT. 433 (1870). The third Civil Rights Act, 1871, became, with a few changes of the arrangement of clauses, the act of today which provides that every person who, under color of law, deprives any person of "any rights, privileges, or immunities" secured by the Constitution or law shall be "liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." REV. STAT. § 1983 (1875), 42 U.S.C. § 1983 (1952).

51. Hague v. C.I.O., 307 U.S. 496, 526 (1939).

52. In all actions under the statute, jurisdiction resides in the federal district courts without allegation or proof of any amount in controversy. Douglas v. City of Jeannette, 319 U.S. 157, 161 (1943).

53. Wiley v. Sinkler, 179 U.S. 58, 65 (1900).

54. Whether damage actions will have any great deterrent effect upon southern carriers will depend upon the size and the number of verdicts. Should the plaintiff in the *Flemming* case collect the $25,000 she seeks, the effect should be substantial. It is probable, however, that Negroes will have to resort to other remedies to discourage widespread segregation practices.

issued. These devices have been used successfully in recreation and education cases[55] and are well suited to preventing segregation in transportation. The injunction serves the individual plaintiff by requiring the carrier to change his practice with respect to him and all Negroes similarly situated, and thereby forces the carrier to amend his policy toward the entire race. While only parties to the suit can enforce the decree, the practical effect is the abolition of segregation on that line.

Since these proceedings are aimed at redressing individual wrongs, the position of the race will improve only if the benefits of a decree indirectly inure to all other Negroes. Federal Rule 23 provides for a class action, by which representatives of a group may sue to secure the rights of all members.[56] The primary difficulty in applying the rule to segregation cases arises in determining the "character of the right" sought to be enforced. Rule 23(a)(1) provides for the "true class suit" wherein, but for the class action, the joinder of all interested parties would be essential to the action.[57] This section allows any member of the class to come in and enforce a favorable judgment.[58]

Suits by minority groups to secure constitutional rights are placed in another category, that of the "spurious class suit."[59] This type of class action is merely a permissive joinder device, used where the right is "several" and there exists a common question of law or fact.[60] A decree under this category is not binding upon all members of the class; it binds only those before the court.[61] While a favorable decree, generally speaking, may not be enforced by members of the class not present in court,[62] the

55. Recreation: Dawson v. Mayor and City Council of Baltimore, 220 F.2d 386 (4th Cir. 1955), *aff'd per curiam*, 24 U.S.L. WEEK 3128 (U.S. Nov. 8, 1955); Holmes v. Atlanta, 124 F. Supp. 290 (N.D. Ga. 1954), *rev'd per curiam*, 24 U.S.L. WEEK 3128 (U.S. Nov. 8, 1955); Beal v. Holcombe, 193 F.2d 384 (5th Cir. 1951). Education: Constantine v. Southwestern Louisiana Institute, 120 F. Supp. 417 (W.D. La. 1954); Wilson v. Board of Supervisors, 92 F. Supp. 986 (E.D. La. 1950); Davis v. Cook, 80 F. Supp. 638 (N.D. Ga. 1948).

56. FED. R. CIV. P. 23(a). "If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be forced . . . is (1) joint, or common, or secondary . . . (3) several, and there is a common question of law or fact . . . and a common relief is sought." For a general discussion of the applicability of the class action to anti-segregation cases, see Comment, 20 U. OF CHI. L. REV. 577 (1953).

57. 3 MOORE'S FEDERAL PRACTICE 3435 (2d ed. 1948).

58. Smith v. Swormstedt, 14 U.S. (16 How.) 288 (1853).

59. 3 MOORE, *op. cit. supra* note 57 at 3450. *Cf.* McDaniel v. Board of Public Instruction, 39 F. Supp. 638 (N.D. Fla. 1941).

60. A class action in which the interests of members of a class are several and not interdependent, and where joinder is a matter of efficiency to avoid a multiplicity of suits, is a spurious class action. Knowles v. War Damage Corp., 171 F.2d 15, 18 (D.C. Cir. 1948), *cert. denied*, 336 U.S. 914 (1949).

61. 3 MOORE, *op. cit. supra* note 57 at 3465.

62. *Id.* at 3445.

action has more than a mere stare decisis effect. The fact that the litigation is a class action has a psychological value in inducing others to come forward with their claims and perhaps causing the court to treat those claims more liberally than ordinary action.[63]

The novelty of the anti-segregation decisions may account for the absence of the class action in transportation cases. However, the device has been applied successfully to segregation in various other fields, such as recreation and education,[64] and its applicability to certain actions for segregation in transportation seems a logical extension.[65]

The role of the Civil Rights Act in future intrastate segregation cases hinges on the outcome of the *Flemming* case.[66] At present, this act, which affords the only remedies available in this area, depends upon the segregation statutes to provide the vital link between the carrier's action and the state. Without the statutes, there would be no act "under color of law." Should the *Flemming* case be affirmed, the state law would be declared invalid, and the only remedy available to redress intrastate segregation would be eliminated unless another link to the state could be forged.

Such a link might be established should the carriers themselves attempt to segregate their passengers. Without the authorization of state statutes, the companies do not have the power to enforce segregation policies. A carrier cannot deny rides to potential passengers because, as a public utility,[67] it must give service to all, regardless of race. Resort to physical force by an operator in seating a passenger would subject him to possible tort liability. An effort to secure the aid of local police would place the state again in the position of enforcing segregation, and the

63. *Ibid.*

64. Recreation: See, *e.g.*, Lopez v. Seccombe, 71 F. Supp. 769 (S.D. Cal. 1944). Education: See *e.g.*, Wilson v. Board of Supervisors, 92 F. Supp. 986 (E.D. La. 1950), *aff'd*, 340 U.S. 909 (1950).

65. Moore's interpretation has been attacked by Professor Chafee who suggests that class actions be divided into two categories, the "solid class suit," and "invitations to come in." The first would correspond, in its binding effect on members of the class not in court, to Moore's true class suit. The latter would allow members of the class to join themselves and thereby become bound by the outcome of the suit. Chafee lists the following factors as tending to put an action under the solid class suit: The importance of the common question, the policy in favor of settling it once and for all, and a lack of distinctive individual interests which might be better served by individual actions. See CHAFEE, SOME PROBLEMS OF EQUITY 243-295 (1950). Whether anti-segregation suits would fall within Chafee's "solid class suit" is difficult to say. Certainly the requirements of the suit are to a great extent satisfied by the elements of an action by a group of Negroes to secure constitutional rights. Under Chafee's analysis, it is likely that these actions would have a binding effect on, and would be enforceable by, all members of the Negro race.

66. 224 F.2d 752 (4th Cir. 1955), *appeal docketed*, No. 511, 24 U.S.L. WEEK 3138 (U.S. Nov. 8, 1955).

67. See JONES & BIGHAM, PRINCIPLES OF PUBLIC UTILITIES 62-98 (1932), for a general discussion of the characteristics of public utilities.

Civil Rights Act requirement of action under color of law would be satisfied. Thus, even segregation practices of companies in intrastate transportation may be limited by the federal government.

The Interstate Commerce Act[68] specifically prohibits interstate carriers from discriminating among their patrons.[69] Section eight provides for recovery of damages resulting from a violation of the act[70] upon a showing of pecuniary loss.[71] The only victims of segregation who can prove the necessary financial harm are those who, in being ejected from restricted facilities, sustain physical injuries or loss of property.[72] If a Negro can show the requisite damages, the act allows an election of forum, *i.e.,* he may complain to the commission or bring suit in a federal district court.[73] One of the principle drawbacks in taking a complaint to the commission is the amount of time required to get a final ruling by that body.[74] An action in the federal courts would seem more deisrable.

When a plaintiff cannot prove pecuniary loss, he may still challenge the carrier's current regulations and seek to have them declared invalid.[75] Having been subjected to practices which violate the Interstate Commerce Act, he may contest the carrier's regulation on the ground that it permits

68. 24 STAT. 379, 380 (1887), 49 U.S.C. § 3(1) (1952).

69. From its inception the Interstate Commerce Commission has recognized the applicability of the act to discrimination against colored passengers because of their race, and the duty of carriers to provide equality of treatment with respect to transportation facilities. Mitchell v. United States, 313 U.S. 80, 95 (1941).

70. 24 STAT. 379, 382 (1887), 49 U.S.C. § 8 (1952), states that any common carrier who violates the act shall be liable to the person injured for the full amount of damages sustained.

71. The right to recover under section eight is limited to the pecuniary loss suffered and proved. Pennsylvania R.R. Co. v. International Coal Mining Co., 230 U.S. 184, 206 (1912); Henderson v. Southern Ry. Co., 258 I.C.C. 413 (1943), *rev'd on other grounds,* 339 U.S. 816 (1950). The mere violation of the act is not enough to justify a money judgment. Parsons v. Chicago & N.W. Ry. Co., 167 U.S. 447, 460 (1897).

72. See, for example, Whiteside v. Southern Bus Lines, 177 F.2d 949 (6th Cir. 1949); Day v. Atlantic Greyhound Corp., 171 F.2d 59 (4th Cir. 1948); Soloman v. Pennsylvania R.R. Co., 96 F. Supp. 709 (S.D. N.Y. 1951).

73. 24 STAT. 379, 382 (1887), 49 U.S.C. § 9 (1952). However, election under this section is not entirely free. Mitchell Coal Co. v. Pennsylvania R.R. Co., 230 U.S. 247 (1912). Questions of fact requiring determination by experts with special knowledge of transportation must be brought before the commission, but the reasonableness of a carrier's regulation is not such a question, nor is a constitutional problem. Moore v. Atlantic Coast Line R.R. Co., 98 F. Supp. 375, 384 (E.D. Pa. 1951).

74. The process of carrying a case through all the possible appeals and rehearings has required as long as eight years. In Henderson v. United States, 339 U.S. 816 (1950), the discrimination occurred in 1942. Henderson filed a complaint with the commission, and received an adverse ruling in 1943. 258 I.C.C. 413. The district court reversed and ordered a rehearing. 63 F. Supp. 906 (D. Md. 1945). At the rehearing, the defendant showed it had amended its regulation and the commission again ruled in the defendant's favor. 269 I.C.C. 73 (1947). The district court affirmed. 80 F. Supp. 32 (D. Md. 1948). Then, on direct appeal to the Supreme Court, the regulation was declared invalid.

75. Henderson v. United States, 339 U.S. 816, 823-824 (1950); Mitchell v. United States, 313 U.S. 80, 92-93 (1941).

the recurrence of comparable violations.[76] This action saves the complainant from similar treatment in the future and secures to the race as a whole the benefits of the action—freedom from unfriendly regulations.

It might be argued that the courts should allow damages under the act for unfair treatment resulting, not in financial harm, but in deprivation of civil rights. This position loses sight of the purpose of the act—to provide fair and impartial regulation in transportation.[77] While an unfair regulation may result in a violation of a Negro's rights, the Interstate Commerce Act is not the proper instrument to rely on for reparation. The courts, in including segregation in section 3(1), have already stretched the act beyond its intended scope.

In light of the Supreme Court's disposition of the school segregation and the recreation cases, the demise of the separate but equal doctrine in transportation seems a practical certainty. Strengthened with a recognition of his substantive rights by the courts and with the vitalization of remedies under the Civil Rights Act and the Interstate Commerce Act, the Negro is given new opportunities to seek acceptance on his own merits.

VITALIZATION OF THE INDIANA CORONER SYSTEM—CHANNELING MEDICO-LEGAL DUTIES TO THE TECHNICALLY TRAINED

Indiana is aligned with the majority of states[1] which continue to use outdated coroner procedures, the subject of increasing criticism not only from lawyers, prosecutors, and laymen but also from medical and non-medical coroners.[2] Established in 1852, the Indiana system has re-

76. *Ibid.*

77. New York, N.H., & H. R.R. Co. v. I.C.C., 200 U.S. 361, 402 (1905).

1. GRADWOHL, LEGAL MEDICINE 71-107 (1954); NATIONAL MUNICIPAL LEAGUE, CORONERS IN 1953; MINNESOTA LEGISLATIVE RESEARCH COMMITTEE, THE CORONER SYSTEM IN MINNESOTA (1954). In seven states, the coroner has been replaced by the medical examiner. In twelve other states, the medical examiner has replaced the coroner in certain counties. See Ferguson, *It's-Time for the Coroner's Post-Mortem,* 39 J. AM. JUD. SOC'Y. 40, 43 (1955).

2. See the following newspaper accounts: Chicago Daily Tribune, Oct. 10, 1955, Part 3, p. 4, col. 1; Stucky, *Kentucky Coroner System Labeled Ridiculous,* The Louisville Courier-Journal, Feb. 13, 1955, § 3, p. 5, col. 1. For more detailed study regarding coroner criticism see the following: NATIONAL MUNICIPAL LEAGUE, A MODEL STATE MEDICO-LEGAL INVESTIGATIVE SYSTEM (1954); MYREN, CORONERS IN NORTH CAROLINA (1953); BLAIR, THE OFFICE OF COUNTY CORONER IN KANSAS (1953); Ferguson, *supra* note 1, at 40; Snyder, *Justice and Sudden Death,* 36 J. AM. JUD. SOC'Y. 142 (1953); Ford, *Medicolegal Investigation of Violent and Unexplained Deaths,* 145 J. AM. MED. ASS'N 1027 (1951); *Helpern, The Postmortem Examination in Cases of Suspected Homicide,* 36 J. CRIM. L. & C. 485 (1946); Comment, 1951 WIS. L. REV. 529; Note, 26 N.C.L. REV. 96 (1947). In connection with research on this note, all counties in Indiana