

B. IMPLICIT IN THE CLAIM TO OBEDIENCE?

Are moral claims implicit in the claim that there is an obligation to obey the law?

Can positive law alone justify obedience?

BELL v. MARYLAND
378 U.S. 226 (1964)

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Petitioners, 12 Negro students, were convicted in a Maryland state court as a result of their participation in a "sit-in" demonstration at Hooper's restaurant in the City of Baltimore in 1960. The convictions were based on a record showing in summary that a group of 15 to 20 Negro students, including petitioners, went to Hooper's restaurant to engage in what their counsel describes as a "sit-in protest" because the restaurant would not serve Negroes. The "hostess," on orders of Mr. Hooper, the president of the corporation owning the restaurant, told them, "solely on the basis of their color," that they would not be served. Petitioners did not leave when requested to by the hostess and the manager; instead they went to tables, took seats, and refused to leave, insisting that they be served. On orders of Mr. Hooper the police were called, but they advised that a warrant would be necessary before they could arrest petitioners. Mr. Hooper then went to the police station and swore out warrants, and petitioners were accordingly arrested.

The statute under which the convictions were obtained was the Maryland criminal trespass law, § 577 of Art. 27 of the Maryland Code, 1957 edition, under which it is a misdemeanor to "enter upon or cross over the land, premises or private property of any person or persons in this State after having been duly notified by the owner or his agent not to do so." The convictions were affirmed by the Maryland Court of Appeals, 227 Md. 302, 176 A.2d 771 (1962), and we granted certiorari. 374 U.S. 805.

We do not reach the questions that have been argued under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. It appears that a significant change has taken place in the applicable law of Maryland since these convictions were affirmed by the Court of Appeals. Under this Court's settled practice in such circumstances, the judgments must consequently be vacated and reversed and the case remanded so that the state court may consider the effect of the supervening change in state law.

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Accordingly, the judgment of the Maryland Court of Appeals should be vacated and the case remanded to that court, and to this end the judgment is

Reversed and remanded.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE GOLDBERG concurs as respects Parts II-V, for reversing and directing dismissal of the indictment.

I.

I reach the merits of this controversy. The issue is ripe for decision and petitioners, who have been convicted of asking for service in Hooper's restaurant, are entitled to an answer to their complaint here and now.

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The whole Nation has to face the issue; Congress is conscientiously considering it; some municipalities have had to make it their first order of concern; law enforcement officials are deeply implicated, North as well as South; the question is at the root of demonstrations, unrest, riots, and violence in various areas. The issue in other words consumes the public attention. Yet we stand mute, avoiding decision of the basic issue by an obvious pretense.

The clash between Negro customers and white restaurant owners is clear; each group claims protection by the Constitution and tenders the Fourteenth Amendment as justification for its action. Yet we leave resolution of the conflict to others, when, if our voice were heard, the issues for the Congress and for the public would become clear and precise. The Court was created to sit in troubled times as well as in peaceful days.

II.

The issue in this case, according to those who would affirm, is whether a person's "personal prejudices" may dictate the way in which he uses his property and whether he can enlist the aid of the State to enforce those "personal prejudices." With all respect, that is not the real issue. The corporation that owns this restaurant did not refuse service to these Negroes because "it" did not like Negroes. The reason "it" refused service was because "it" thought "it" could make more money by running a segregated restaurant.

In the instant case, G. Carroll Hooper, president of the corporate chain owning the restaurant here involved, testified concerning the episode that gave rise to these convictions. The reasons were wholly commercial ones:

"I set at the table with him and two other people and reasoned and talked to him why my policy was not yet one of integration and told him that I had two hundred employees and half of them were colored. I thought as much of them as I did the white employees. I invited them back in my kitchen if they'd like to go back and talk to them. *I wanted to prove to them it wasn't my policy, my personal prejudice*, we were not, that I had valuable colored employees and I thought just as much of them. I tried to reason with these leaders, told them that *as long as my customers were the deciding who they want to eat with, I'm at the mercy of my customers. I'm trying to do what they want. If they fail to come in, these people are not paying my expenses, and my bills.* They didn't want to go back and talk to my colored employees

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because every one of them are in sympathy with me and that is we're in sympathy with what their objectives are, with what they are trying to abolish. . . ." (Italics added.)

Here, as in most of the sit-in cases before us, the refusal of service did not reflect "personal prejudices" but business reasons. Were we today to hold that segregated restaurants, whose racial policies were enforced by a State, violated the Equal Protection Clause, all restaurants would be on an equal footing and the reasons given in this and most of the companion cases for refusing service to Negroes would evaporate. Moreover, when corporate restaurateurs are involved, whose "personal prejudices" are being protected? The stockholders'? The directors'? The officers'? The managers'? The truth is, I think, that the corporate interest is in making money, not in protecting "personal prejudices."

III.

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I now assume that the issue is the one stated by those who would affirm. The case in that posture deals with a relic of slavery — an institution that has cast a long shadow across the land, resulting today in a second-class citizenship in this area of public accommodations.

The Thirteenth, Fourteenth, and Fifteenth Amendments had "one pervading purpose . . . we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him." *Slaughter-House Cases*, 16 Wall. 36, 71.

Prior to those Amendments, Negroes were segregated and disallowed the use of public accommodations except and unless the owners chose to serve them. To affirm these judgments would remit those Negroes to their old status and allow the States to keep them there by the force of their police and their judiciary.

We deal here with public accommodations — with the right of people to eat and travel as they like and to use facilities whose only claim to existence is serving the public. What the President said in his State of the Union Message on January 8, 1964, states the constitutional right of all Americans, regardless of race or color, to be treated equally by all branches of government:

"Today Americans of all races stand side by side in Berlin and in Vietnam.

"They died side by side in Korea.

"Surely they can work and eat and travel side by side in their own country."

The Black Codes were a substitute for slavery; segregation was a substitute for the Black Codes; the discrimination in these sit-in cases is a relic of slavery.

The Fourteenth Amendment says "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." The Fourteenth Amendment also makes every person who is born here a citizen; and there is no second or third or fourth class of citizenship.

We deal here with incidents of national citizenship. . . .

There has been a judicial reluctance to expand the content of national citizenship beyond racial discrimination, voting rights, the right to travel, safe custody in the hands of a federal marshal, diplomatic protection abroad, and the like. . . .

The manner in which the right to be served in places of public accommodations is an incident of national citizenship and of the right to travel is summarized in H. R. Rep. No. 914, Pt. 2, 88th Cong., 1st Sess., pp. 7-8:

"An official of the National Association for the Advancement of Colored People, testified before the Senate Commerce Subcommittee as follows:

"For millions of Americans this is vacation time. Swarms of families load their automobiles and trek across country. I invite the members of this committee to imagine themselves darker in color and to plan an auto trip from Norfolk, Va., to the gulf coast of Mississippi, say, to Biloxi. Or one from Terre Haute, Ind., to Charleston, S.C., or from Jacksonville, Fla., to Tyler, Tex.

"How far do you drive each day? Where and under what conditions can you and your family eat? Where can they use a rest room? Can you stop driving after a reasonable day behind the wheel or must you drive until you reach a city where relatives or friends will accommodate you and yours for the night? Will your children be denied a soft drink or an ice cream cone because they are not white?"

"In response to Senator Pastore's question as to what the Negro must do, there was the reply:

"Where you travel through what we might call hostile territory you take your chances. You drive and you drive and you drive. You don't stop where there is a vacancy sign out at a motel at 4 o'clock in the afternoon and rest yourself; you keep on driving until the next city or the next town where you know somebody or they know somebody who knows somebody who can take care of you.

"This is the way you plan it.

"Some of them don't go.'

"Daily we permit citizens of our Nation to be humiliated and subjected to hardship and abuse solely because of their color."

As stated in the first part of the same Report, p. 18:

"Today, more than 100 years after their formal emancipation, Negroes, who make up over 10 percent of our population, are by virtue of one or another type of discrimination not accorded the rights, privileges, and opportunities which are considered to be, and must be, the birthright of all citizens."

When one citizen because of his race, creed, or color is denied the privilege of being treated as any other citizen in places of public accommodation, we have classes of citizenship, one being more degrading than the other. That is at war with

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the one class of citizenship created by the Thirteenth, Fourteenth, and Fifteenth Amendments.

IV.

The problem in this case, and in the other sit-in cases before us, is presented as though it involved the situation of "a private operator conducting his own business on his own premises and exercising his own judgment" as to whom he will admit to the premises.

The property involved is not, however, a man's home or his yard or even his fields. Private property is involved, but it is property that is serving the public. . . . Here it is a restaurant refusing service to a Negro. But so far as principle and law are concerned it might just as well be a hospital refusing admission to a sick or injured Negro, or a drugstore refusing antibiotics to a Negro, or a bus denying transportation to a Negro, or a telephone company refusing to install a telephone in a Negro's home.

The problem with which we deal has no relation to opening or closing the door of one's home. The home of course is the essence of privacy, in no way dedicated to public use, in no way extending an invitation to the public. Some businesses, like the classical country store where the owner lives overhead or in the rear, make the store an extension, so to speak, of the home. But such is not this case. The facts of these sit-in cases have little resemblance to any institution of property which we customarily associate with privacy.

There is no specific provision in the Constitution which protects rights of privacy and enables restaurant owners to refuse service to Negroes. . . .

Apartheid, however, is barred by the common law as respects innkeepers and common carriers. There were, to be sure, criminal statutes that regulated the common callings. But the civil remedies were made by judges who had no written constitution. We, on the other hand, live under a constitution that proclaims equal protection under the law. Why then, even in the absence of a statute, should *apartheid* be given constitutional sanction in the restaurant field? . . . Constitutionally speaking, why should Hooper Food Co., Inc., or Peoples Drug Stores — or any other establishment that dispenses food or medicines — stand on a higher, more sanctified level than Greyhound Bus when it comes to a constitutional right to pick and choose its customers?

The right of any person to travel *interstate* irrespective of race, creed, or color is protected by the Constitution. Certainly his right to travel *intrastate* is as basic. Certainly his right to eat at public restaurants is as important in the modern setting as the right of mobility. In these times that right is, indeed, practically indispensable to travel either interstate or intrastate.

. . . .
Segregation of Negroes in the restaurants and lunch counters of parts of America is a relic of slavery. It is a badge of second-class citizenship. It is a denial of a privilege and immunity of national citizenship and of the equal protection guaranteed by the Fourteenth Amendment against abridgment by the States.

When the state police, the state prosecutor, and the state courts unite to convict Negroes for renouncing that relic of slavery, the "State" violates the Fourteenth Amendment.

I would reverse these judgments of conviction outright, as these Negroes in asking for service in Hooper's restaurant were only demanding what was their constitutional right.

APPENDIX I TO OPINION OF MR. JUSTICE DOUGLAS.

In the sit-in cases involving eating places last Term and this Term, practically all restaurant or lunch counter owners whose constitutional rights were vindicated below are corporations.

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We deal here, we are told, with personal rights — the rights pertaining to property. One need not share his home with one he dislikes. One need not allow another to put his foot upon his private domain for any reason he desires — whether bigoted or enlightened. In the simple agricultural economy that Jefferson extolled, the conflicts posed were highly personal. But how is a "personal" right infringed when a corporate chain store, for example, is forced to open its lunch counters to people of all races? How can that so-called right be elevated to a constitutional level? How is that corporate right more "personal" than the right against self-incrimination?

The revolutionary change effected by an affirmance in these sit-in cases would be much more damaging to an open and free society than what the Court did when it gave the corporation the sword and the shield of the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Affirmance finds in the Constitution a corporate right to refuse service to anyone "it" chooses and to get the State to put people in jail who defy "its" will.

More precisely, affirmance would give corporate management vast dimensions for social planning.

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MR. JUSTICE GOLDBERG, with whom THE CHIEF JUSTICE joins, and with whom MR. JUSTICE DOUGLAS joins as to Parts II-V, concurring.

I.

I join in the opinion and the judgment of the Court and would therefore have no occasion under ordinary circumstances to express my views on the underlying constitutional issue. Since, however, the dissent at length discusses this constitutional issue and reaches a conclusion with which I profoundly disagree, I am impelled to state the reasons for my conviction that the Constitution guarantees to all Americans the right to be treated as equal members of the community with respect to public accommodations.

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III.

The historical evidence amply supports the conclusion of the Government, stated by the Solicitor General in this Court, that:

"it is an inescapable inference that Congress, in recommending the Fourteenth Amendment, expected to remove the disabilities barring Negroes from the public conveyances and places of public accommodation with which they were familiar, and thus to assure Negroes an equal right to enjoy these aspects of the public life of the community."

The subject of segregation in public conveyances and accommodations was quite familiar to the Framers of the Fourteenth Amendment. Moreover, it appears that the contemporary understanding of the general public was that freedom from discrimination in places of public accommodation was part of the Fourteenth Amendment's promise of equal protection. [Justice Goldberg's discussion of the history and original intentions for the Fourteenth Amendment, the Civil Rights Acts passed by the Reconstruction Congress, and their relation to the then current rules at common law, are omitted.]

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IV.

My Brother DOUGLAS convincingly demonstrates that the dissent has constructed a straw man by suggesting that this case involves "a property owner's right to choose his social or business associates." *Post*, at 343. The restaurant involved in this case is concededly open to a large segment of the public. Restaurants such as this daily open their doors to millions of Americans. These establishments provide a public service as necessary today as the inns and carriers of Blackstone's time. It should be recognized that the claim asserted by the Negro petitioners concerns such public establishments and does not infringe upon the rights of property owners or personal associational interests.

. . . The Congress that enacted the Fourteenth Amendment was particularly conscious that the "civil" rights of man should be distinguished from his "social" rights.¹ Prejudice and bigotry in any form are regrettable, but it is the constitu-

¹ The approach is reflected in the reasoning stated by the Supreme Court of Michigan in 1890:

"Socially people may do as they please within the law, and whites may associate together, as may blacks, and exclude whom they please from their dwellings and private grounds; but there can be no separation in public places between people on account of their color alone which the law will sanction.

. . . .

"The man who goes either by himself or with his family to a public place must expect to meet and mingle with all classes of people. He cannot ask, to suit his caprice or prejudice or social views, that this or that man shall be excluded because he does not wish to associate with them. He may draw his social line as closely as he chooses at home, or in other private places, but he cannot [*sic*] in a public place carry the privacy of his home with him, or ask that people

tional right of every person to close his home or club to any person or to choose his social intimates and business partners solely on the basis of personal prejudices including race. These and other rights pertaining to privacy and private association are themselves constitutionally protected liberties.

We deal here, however, with a claim of equal access to public accommodations. This is not a claim which significantly impinges upon personal associational interests; nor is it a claim infringing upon the control of private property not dedicated to public use. A judicial ruling on this claim inevitably involves the liberties and freedoms both of the restaurant proprietor and of the Negro citizen. The dissent would hold in effect that the restaurant proprietor's interest in choosing customers on the basis of race is to be preferred to the Negro's right to equal treatment by a business serving the public. The history and purposes of the Fourteenth Amendment indicate, however, that the Amendment resolves this apparent conflict of liberties in favor of the Negro's right to equal public accommodations. As the Court said in *Marsh v. Alabama*, 326 U.S. 501, 506: "The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it." The broad acceptance of the public in this and in other restaurants clearly demonstrates that the proprietor's interest in private or unrestricted association is slight. . . .

Of course, although the present case involves the right to service in a restaurant, the fundamental principles of the Fourteenth Amendment apply with equal force to other places of public accommodation and amusement. Claims so important as those presented here cannot be dismissed by asserting that the Fourteenth Amendment, while clearly addressed to inns and public conveyances, did not contemplate lunch counters and soda fountains. Institutions such as these serve essentially the same needs in modern life as did the innkeeper and the carrier at common law. . . .

CONCLUSION

The constitutional right of all Americans to be treated as equal members of the community with respect to public accommodations is a civil right granted by the people in the Constitution — a right which "is too important in our free society to be stripped of judicial protection." Cf. *Wesberry v. Sanders*, 376 U.S. 1 (1964). . . .

It is, and should be, more true today than it was over a century ago that "the great advantage of the Americans is that . . . they are born equal" and that in the eyes of the law they "are all of the same estate." The first Chief Justice of the United States, John Jay, spoke of the "free air" of American life. The great purpose of the Fourteenth Amendment is to keep it free and equal. Under the Constitution no American can, or should, be denied rights fundamental to freedom and citizenship. I therefore join in reversing these trespass convictions.

not as good or great as he is shall step aside when he appears." *Ferguson v. Gies*, 82 Mich., at 363, 367-368, 46 N.W., at 720, 721.

MR. JUSTICE BLACK, with whom MR. JUSTICE HARLAN and MR. JUSTICE WHITE join, dissenting.

This case does not involve the constitutionality of any existing or proposed state or federal legislation requiring restaurant owners to serve people without regard to color. The crucial issue which the case does present but which the Court does not decide is whether the Fourteenth Amendment, of itself, forbids a State to enforce its trespass laws to convict a person who comes into a privately owned restaurant, is told that because of his color he will not be served, and over the owner's protest refuses to leave. We dissent from the Court's refusal to decide that question. For reasons stated, we think that the question should be decided and that the Fourteenth Amendment does not forbid this application of a State's trespass laws.

The petitioners were convicted in a Maryland state court on a charge that they "unlawfully did enter upon and cross over the land, premises and private property" of the Hooper Food Co., Inc., "after having been duly notified by Albert Warfel, who was then and there the servant and agent for Hooper Food Co.," not to do so, in violation of Maryland's criminal trespass statute. The conviction was based on a record showing in summary that:

[Justice Black's description is almost identical to the Court's description except for the addition of the following] Petitioners had remained in the restaurant in all an hour and a half, testifying at their trial that they had stayed knowing they would be arrested — that being arrested was part of their "technique" in these demonstrations.

[Justice Black's discussion of the procedural history, the effect of the subsequent passage of nondiscrimination laws and the contention that the trespass law was void for vagueness, are omitted.]

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III.

Section 1 of the Fourteenth Amendment provides in part:

"No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This section of the Amendment, unlike other sections, is a prohibition against certain conduct only when done by a State — "state action" as it has come to be known — and "erects no shield against merely private conduct, however discriminatory or wrongful." *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948). This well-established interpretation of section 1 of the Amendment — which all the parties here, including the petitioners and the Solicitor General, accept — means that this section of the Amendment does not of itself, standing alone, in the absence of some cooperative state action or compulsion, forbid property holders, including restaurant owners, to ban people from entering or remaining upon their premises, even if the owners act out of racial prejudice. But "the prohibitions of the amendment extend to all action of the State denying equal protection of the laws" whether "by its legislative, its executive, or its judicial authorities." *Virginia v. Rives*, 100 U.S. 313, 318 (1880). The

Amendment thus forbids all kinds of state action, by all state agencies and officers, that discriminate against persons on account of their race. It was this kind of state action that was held invalid in *Brown v. Board of Education*, 347 U.S. 483 (1954).

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Petitioners . . . contend that their conviction for trespass under the state statute was by itself the kind of discriminatory state action forbidden by the Fourteenth Amendment. . . . But . . . the Amendment does not forbid a State to prosecute for crimes committed against a person or his property, however prejudiced or narrow the victim's views may be. Nor can whatever prejudice and bigotry the victim of a crime may have be automatically attributed to the State that prosecutes. Such a doctrine would not only be based on a fiction; it would also severely handicap a State's efforts to maintain a peaceful and orderly society. Our society has put its trust in a system of criminal laws to punish lawless conduct. To avert personal feuds and violent brawls it has led its people to believe and expect that wrongs against them will be vindicated in the courts. Instead of attempting to take the law into their own hands, people have been taught to call for police protection to protect their rights wherever possible. It would betray our whole plan for a tranquil and orderly society to say that a citizen, because of his personal prejudices, habits, attitudes, or beliefs, is cast outside the law's protection and cannot call for the aid of officers sworn to uphold the law and preserve the peace. The worst citizen no less than the best is entitled to equal protection of the laws of his State and of his Nation. None of our past cases justifies reading the Fourteenth Amendment in a way that might well penalize citizens who are law-abiding enough to call upon the law and its officers for protection instead of using their own physical strength or dangerous weapons to preserve their rights.

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. . . [T]he line of cases from *Buchanan v. Warley*, 245 U.S. 60 (1917),] through *Shelley* establishes these propositions: (1) When an owner of property is willing to sell and a would-be purchaser is willing to buy, then the Civil Rights Act of 1866, which gives all persons the same right to "inherit, purchase, lease, sell, hold, and convey" property, prohibits a State, whether through its legislature, executive, or judiciary, from preventing the sale on the grounds of the race or color of one of the parties. *Shelley v. Kraemer*. (2) Once a person has become a property owner, then he acquires all the rights that go with ownership: "the free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land." *Buchanan v. Warley*. This means that the property owner may, in the absence of a valid statute forbidding it, sell his property to whom he pleases and admit to that property whom he will; so long as *both* parties are willing parties, then the principles stated in *Buchanan* and *Shelley* protect this right. But equally, when one party is unwilling, as when the property owner chooses *not* to sell to a particular person or *not* to admit that person, then, as this Court emphasized in *Buchanan*, he is entitled to rely on the guarantee of due process of law, that is, "law of the land," to protect his free use and enjoyment of property and to know that only by valid legislation, passed pursuant to some constitutional grant of power, can anyone disturb this free use. But petitioners here would have us hold that, despite the absence of any valid statute restricting the use of his property, the owner of Hooper's restaurant in Baltimore must not be accorded the same federally

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guaranteed right to occupy, enjoy, and use property given to the parties in *Buchanan* and *Shelley*; instead, petitioners would have us say that Hooper's federal right must be cut down and he must be compelled — though no statute said he must — to allow people to force their way into his restaurant and remain there over his protest. We cannot subscribe to such a mutilating, one-sided interpretation of federal guarantees the very heart of which is equal treatment under law to all. We must never forget that the Fourteenth Amendment protects "life, liberty, or property" of all people generally, not just some people's "life," some people's "liberty," and some kinds of "property."

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IV.

[Justice Black's discussion of the history and original intentions for the Fourteenth Amendment, the Civil Rights Acts passed by the Reconstruction Congress, and their relation to the then current rules at common law, are omitted.]

This Court has done much in carrying out its solemn duty to protect people from unlawful discrimination. And it will, of course, continue to carry out this duty in the future as it has in the past. But the Fourteenth Amendment of itself does not compel either a black man or a white man running his own private business to trade with anyone else against his will. We do not believe that Section 1 of the Fourteenth Amendment was written or designed to interfere with a storekeeper's right to choose his customers or with a property owner's right to choose his social or business associates, so long as he does not run counter to valid state or federal regulation. The case before us does not involve the power of the Congress to pass a law compelling privately owned businesses to refrain from discrimination on the basis of race and to trade with all if they trade with any. We express no views as to the power of Congress, acting under one or another provision of the Constitution, to prevent racial discrimination in the operation of privately owned businesses, nor upon any particular form of legislation to that end. Our sole conclusion is that Section 1 of the Fourteenth Amendment, standing alone, does not prohibit privately owned restaurants from choosing their own customers. It does not destroy what has until very recently been universally recognized in this country as the unchallenged right of a man who owns a business to run the business in his own way so long as some valid regulatory statute does not tell him to do otherwise.

... Whatever power it may allow the States or grant to the Congress to regulate the use of private property, the Constitution does not confer upon any group the right to substitute rule by force for rule by law. Force leads to violence, violence to mob conflicts, and these to rule by the strongest groups with control of the most deadly weapons. Our Constitution, noble work of wise men, was designed — all of it — to chart a quite different course: to "establish Justice, insure domestic Tranquility . . . and secure the Blessings of Liberty to ourselves and our Posterity." At times the rule of law seems too slow to some for the settlement of their grievances. But it is the plan our Nation has chosen to preserve both "Liberty" and equality for all. On that plan we have put our trust and staked our future. This constitutional rule of law has served us well. Maryland's trespass law does not depart from it. Nor shall we.

We would affirm.

NOTES

On remand, in *Bell v. State*, 236 Md. 356 (1964), the Maryland Court of Appeals affirmed the convictions, saying "that the provisions of the general saving clause statute . . . (that repeal or amendment of a statute shall not release, extinguish or change the criminal penalties imposed on the appellants unless the repealing statute 'expressly so provide') applies," 236 Md. at 367.

First, what should the Supreme Court have done? Through many separate cases raising the issue, the Supreme Court consistently sidestepped the question whether the sit-ins were protected, as it did in *Bell v. Maryland*. Plainly the Court had trouble with the idea that the trespass laws were unconstitutional *and* with the conclusion that they were enforceable. In fact a variety of very traditional arguments about the meaning and force of precedent and original intent can be and were made by the justices in their full opinions. As you think about what the Court and the parties should have done, you can assume that it was a close question. Does that make a difference?

Second, should Dr. King have refrained from marching or encouraging sit-ins or other prohibited forms of challenging segregation because the law said so? What civil rights advocates should have done is not, of course, the same question as what the Court should have done. If you were an attorney for the students sitting in at any of the lunch counters they tried to desegregate, you would no doubt have had to warn them that they risked arrest, conviction and some jail time and a fine. But would you also consider it your duty to add that it is wrong to violate the law? That you would be disappointed in them if they did? That indeed you might not represent them if they disregarded your advice? After all, the law is the law. If the fact that the law is on the books isn't enough, why not?

Third, if it was right for the demonstrators to ignore or disobey the law because the law was unjust, would it have been right for a court to follow, apply and enforce it? Should a moral judgment about the treatment of the civil rights demonstrators have affected the Court's judgment about the enforceability of the trespass laws when private persons invoke them to discriminate on the basis of race?

Are any of the positions in or about *Bell* free from taking a moral stand, whether for or against the demonstrators? Is the position that law should be enforced "as is" free from taking a position on a moral issue? Is morality something that a judge decides whether to consider, or are positions on moral issues inherent in deciding what to do?

On the relation of obedience to moral systems, see Joel Feinberg, *Civil Disobedience in the Modern World*, 2 HUMAN. IN SOC'Y 37 (1979).

Can positive law justify heinous behavior?