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The Origin of the First "Jim Crow" Law

By Stanley J. Folmsbee

The practice of requiring by legislative enactment that Negroes use railroad coaches or compartments separate from those for whites, commonly referred to as "Jim Crow" legislation, did not become general in the South until the closing decade of the nineteenth century. Earlier, however, in 1881, the legislature of Tennessee enacted a law requiring railroads to provide separate cars or compartments for the use of Negroes. By this abortive statute—for so it proved to be—Tennessee acquired a somewhat undeserved notoriety, in at least one college textbook, as the originator of "Jim Crow" legislation. Moreover, the purpose of this law and the circumstances surrounding its enactment were strikingly different from what is generally believed to be the origin of this type of discriminatory legislation. It is often assumed that prior to the passage of the "Jim Crow" laws no effective racial discrimination existed on railroad trains. A review of the facts will serve to correct this misconception and also provide bases for a comparison of the situation and attitudes as they were then with what they are today.

The alleged "Jim Crow" law of 1881 was enacted by a legislature

1 See A. M. Schlesinger, Political and Social Growth of the American People, 1865-1940 (New York, 1941), 185. Incidentally, Professor Schlesinger is in error in stating that the Tennessee law of 1881 required Negroes "to use" different coaches or compartments. He naturally ignored, as temporary, a Mississippi statute of November 21, 1865, passed by the first Reconstruction government of the state, which prohibited railroads from allowing Negroes to ride in coaches set apart for or used by whites. W. L. Fleming (ed.), Documentary History of Reconstruction (2 vols., Cleveland, 1906), I, 281. See also Vernon L. Wharton, The Negro in Mississippi, 1865-1890 (Chapel Hill, 1947), 230.
in which one house was controlled by the Republican party and which included four Negro members. Only two Negro members voted against the measure; the other two did not vote. The bill was signed without hesitation by the first Republican governor of the state elected after the overthrow of the Radical regime. The apparent anomaly of Republican support is explained by the fact that the bill was considered by white members to be a concession to Negroes—a consolation prize designed to assuage somewhat the sting caused by the failure of the four Negro legislators to secure the repeal of a more seriously discriminatory statute passed in 1875. It was also designed to clarify a rather confused legal situation.

In 1867 the Radical legislature had prohibited racial discrimination by railroads and other common carriers. The 1875 law not only nullified, in effect, this act, but also went so far as to abrogate the common law in regard to the "rights, duties, and liabilities of innkeepers, common carriers, and proprietors of places of public amusement." Such providers of public service were released from "any obligation to entertain, carry or admit, any person, whom he shall for any reason whatever, choose not to entertain, carry or admit"; and no right under the common law was to exist in favor of any person refused admission.

In the state campaign of 1880, Alvin Hawkins, one of the three Republicans elected to the governorship since Reconstruction, won the election because of a serious split in Democratic ranks over the issue of the state debt. The house of representatives elected was composed of 37 Republicans, 37 Democrats, and 1 Greenbacker, but was organized by the Republicans. The Democrats retained control of the senate. John Trotwood Moore and Austin P. Foster, *Tennessee, the Volunteer State* (4 vols., Chicago, 1923), I, 561.

The four Negro members of the house of representatives, all Republicans, were T. A. Sykes of Davidson County, T. F. Cassels and I. F. Norris of Shelby County, and John W. Boyd of Tipton County. Sykes had come from North Carolina with revenue officials of the United States government and served as internal revenue collector in Nashville. Cassels was a lawyer and had been educated at Oberlin College. He was an assistant attorney general of Shelby County. Norris was a successful businessman of Memphis; he later moved to North Dakota. Monroe N. Work (comp.), "Some Negro Members of Reconstruction Conventions and Legislatures and of Congress," in *Journal of Negro History* (Washington, D. C., 1916- ), V (1920), 113-15. See also Alrutheus A. Taylor, *The Negro in Tennessee, 1865-1880* (Washington, 1941), 298, n. 13. Taylor, following Charles Miller, *Official Manual of the State of Tennessee* (Nashville, 1890), omits the name of Norris from his list of Negro members of the assembly of 1881. Prior to 1881 only one Negro—Sampson W. Keeble, elected in 1872—had served in the Tennessee legislature.
The right of innkeepers, carriers of passengers, and keepers of places of amusement to "control the access and admission or exclusion of persons to or from" their establishments was made as "perfect and complete" as that of the owner "of any private house, carriage, or private theatre, or places of amusement for his family."4 Except as applied to common carriers this legislation is still in force in Tennessee and is in accord with the general pattern of southern racial discrimination.

So far as common carriers were concerned, this legislation enabled railroad companies to adopt the policy, which became customary, of giving Negroes, men and women alike, the choice of staying off the trains or of paying first-class fare and accepting second-class accommodations in the smoking cars. These were made offensive by tobacco smoke, tobacco juice, profanity, and obscenity. Since this practice occasionally involved interstate commerce, however, it made possible a test of the constitutionality of such state legislation by the Federal courts. Consequently, a Federal circuit court in 1880 adjudged the Tennessee law of 1875 to be unconstitutional in so far as it conflicted with the Federal regulation of interstate commerce. The particular case involved a Negro woman, alleged to have been a "notorious and public courtesan, addicted to the use of profane language and offensive conduct in public places." She had been forced to move from the ladies' car to the smoking car, which was "crowded with passengers, mostly immigrants traveling on cheap rates." The court awarded the plaintiff a judgment for $3,000 on the ground that having paid first-class fare she was entitled to accommodations "equal in all respects to the best which the company offered on that train to other female passengers traveling alone." Since the company withdrew its original plea, citing the Tennessee law of 1875 and the regulation of the road excluding persons of color from the ladies' car, and based its case on the reputation rather than the color of the plaintiff, the ruling of the court regarding the constitutionality of the 1875 statute may be considered

somewhat in the nature of an obiter dictum.\textsuperscript{5} The case was not appealed to the Supreme Court, and it appears to have had little effect on the racial discrimination policy of the railroads.

This was the situation when the four Tennessee Negro legislators elected in 1880 initiated a vigorous effort to repeal the obnoxious legislation of 1875. The repeal measure, introduced in the lower house by a Negro representative, T. A. Sykes of Davidson County, was defeated on March 10, 1891, by the narrow margin of 29 to 31. Although Negro members won support of a few Democrats, they were unable to secure enough Republican votes to defeat the law.\textsuperscript{6} Later in the session the bill was reconsidered and defeated a second time. On this occasion, although the bill obtained a simple majority, 36 to 27, of the votes cast, it lacked the majority of "all the members to which that house is entitled" required by the constitution of 1870 for the passage of a bill.\textsuperscript{7}

On the same day, March 30, the four Negro members submitted a detailed protest:

We, the undersigned members of the House of Representatives of the Forty-second General Assembly of the Legislature of the State of Tennessee, hereby enter our solemn protest against the action of this House in rejecting House Bill No. 70, for the following reasons:

1. Because the said bill, No. 70, sought to repeal an act of the General Assembly of the State of Tennessee, passed at its session in 1875, being chapter 130 of said act, which pretends to annul the general law, and is a palpable violation of the spirit, genius and letter of our system of free government.

2. Because the said act of 1875 sought to be repealed by the said House Bill No. 70 authorizes railroad companies and their employes, unjustly, cruelly, wantonly, without just cause or provocation, and in violation of the common

\textsuperscript{5} Brown v. Memphis & C. R. Co., 5 Fed. 499 (1880). The railroad regulation excluding persons of color from the ladies' car was obviously in violation of the congressional Civil Rights Act of 1875, prohibiting racial discrimination, but this law was later, in 1883, declared unconstitutional by the United States Supreme Court as an invasion of the rights of the states. 109 U. S. 3 (1883). One of the cases involved in this decision originated in Tennessee.

\textsuperscript{6} Tennessee General Assembly, House Journal, 1881, p. 540. The Negro members also introduced a large number of other bills designed to lessen racial discrimination, but they received little consideration.

\textsuperscript{7} Ibid., 857.
law and the laws of the general government, to oppress and discriminate against more than four hundred thousand citizens of the State of Tennessee, and the colored people of all other States who may desire to travel in Tennessee.

3. Because the said act sought to be repealed, in violation of every principle of right and justice, wickedly, cruelly, and inhumanly attempts to deny to persons aggrieved by the provisions of said Act any remedy or redress of grievances in the State courts of Tennessee, thereby driving such citizens of the State, against their desires and pecuniary interests, into Federal courts, in order to procure a redress of grievances.

4. Because, while four hundred thousand people of the State of Tennessee are citizens de jure, under the provisions of the act sought to be repealed by House Bill No. 70, they are aliens de facto, and entitled to no rights that railroads, hotels, and theaters are bound to respect.

T. F. Cassels
I. F. Norris
T. A. Sykes
J. W. Boyd

Meanwhile, Representative Norris had introduced a bill "To prevent discrimination by railroad companies among their passengers, etc.," presumably designed to prohibit charging Negroes first-class passage and then requiring them to ride in smoking cars. This bill, however, never came to a final vote, and the house adopted instead a senate bill—the first "Jim Crow" law—which had been passed in the upper chamber with only one dissenting vote. The substitute bill passed the house April 7, by a vote of 50 to 2, the two adverse votes being cast by two of the four Negro members, Norris and Sykes. One of the other two Negroes, Boyd, was absent, but the fourth, Cassels, was present but not voting.

The phraseology of the law is interesting:

An act to prevent discriminations by railroad companies among passengers who are charged and paying first class passage, and fixing penalty for the violation [of] same.

Whereas, it is the practice of railroad companies located and operated in

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8 Ibid., 840-41.
9 Ibid., 830, 868.
10 Ibid., 987. The bill was introduced in the senate by Thomas F. Perkins of Franklin, Williamson County. The one dissenting vote in the senate was cast by M. D. Smallman of Smithville, De Kalb County. Tennessee General Assembly, Senate Journal, 1881, pp. 575, 625.
the State of Tennessee to charge and collect from colored passengers traveling
over their roads first class passage fare, and compel said passengers to occupy
second class cars where smoking is allowed, and no restrictions enforced to
prevent vulgar or obscene language; therefore

Section 1. *Be it enacted by the General Assembly of the State of Tennessee,*
that all railroad companies located and operated in this State shall furnish
separate cars, or portions of cars cut off by partition walls, in which all colored
passengers who pay first class passenger rates of fare, may have the privilege
to enter and occupy, and such apartments shall be kept in good repair, and with
the same conveniences, and subject to the same rules governing other first class
cars, preventing smoking and obscene language.

Section 2. *Be it further enacted,* that upon the failure of any railroad com-
pany operating in the State to have the provisions of the second [first] section
of this act strictly enforced by their employees, then such railroad company shall
forfeit and pay the sum of one hundred dollars, recoverable before any court
having jurisdiction thereof, one half to be paid to the person suing, and the
other half to go to the common school fund of the State.11

For the Negro representatives "Jim Crow" legislation revived the
tactical dilemma which had beset their race ever since Reconstruction.
Faced with the impossibility of securing repeal of the basic discrimina-
tory law, they were, it appears, inclined to accept with extreme reluct-
tance the proffer of more satisfactory but segregated accommodations
on the railroads. It is perhaps significant that one of the four Negro
members of the legislature, though present, refrained from voting
against the "Jim Crow" bill.

In the new legislature of 1882, controlled by the Democrats, there
were again four Negro members. Once more they tried to substitute
an effective law against discrimination for the one requiring separate
railway accommodations for Negroes. But they had much less chance
of success than in the preceding session. The one Negro who was
returned to the house for a second term, J. W. Boyd of Tipton County,
introduced a bill "To prevent discrimination by railroad companies
among passengers charged first class passage." Before coming to a
final vote, it was amended to require separate cars for "different [that
is, Negro] passengers." In this form, practically the same as the "Jim

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Crow” law enacted during the preceding session, it passed the house by a vote of 56 to 19. Boyd voted against it, but one of the other Negroes actually voted for it. The other two Negro members refrained from voting.\textsuperscript{12} Since the bill made no significant change in the existing situation, it never came to a vote in the senate.

Such consideration as was given Negro members by white legislators of the two general assemblies of 1881 and 1883 was granted, it seems, largely because at that time Negroes constituted a powerful pressure group. According to the census of 1880, taken soon after the depopulating yellow fever epidemic of 1878-1879, the Negro population of Shelby County, including Memphis, was 55 per cent of the total. Not only in Shelby County, which elected two Negroes to the legislature in 1880, but also in other West and Middle Tennessee districts, any division within the Democratic ranks would enable Republicans, by occasionally nominating Negroes, to attain an unusual measure of political success. This was particularly true because of the political corruption which appears to have been rampant at that time.\textsuperscript{13} Consequently, the Democrats found it necessary to compete vigorously with the Republicans for Negro votes. By 1889 Democrats had supplemented the poll tax requirement for voting with improved registration and election laws designed to limit Negro suffrage indirectly. Tennessee, however, did not resort to the use of literacy tests and “grandfather clauses” which became so customary in the states of the

\textsuperscript{12} Tennessee General Assembly, \textit{House Journal}, 1883, pp. 514, 812. The Negro who voted for the bill, even with its “Jim Crow” amendment, was the Rev. D. F. Rivers of Fayette County, a graduate of Fisk University and of the law department of Walden University. He later served as pastor of the Berean Baptist Church in Washington, D. C. It is said that the popular daughter of the white man he defeated in 1882 met him on the street after the election and spat in his face. Work (comp.), “Some Negro Members of Reconstruction Conventions and Legislatures and of Congress,” \textit{loc. cit.}, 114. The nonvoting Negro members were Samuel McElwee of Haywood County and Leon Howard of Shelby. McElwee was re-elected in 1884, and in 1885 he received the complimentary votes of the thirty-two Republican representatives for the speakership. Tennessee General Assembly, \textit{House Journal}, 1885, p. 7. So far as is known he has not been succeeded by any other member of his race in the Tennessee legislature.

\textsuperscript{13} Gerald M. Capers, Jr., \textit{The Biography of a River Town: Memphis, Its Heroic Age} (Chapel Hill, 1939), 164, 200-201.
lower South where there was a greater proportion of Negro population.  

There still needs to be explained the strange lack of opposition on the part of Republicans and Bourbon Democrats in the general assembly. Many representatives supported railroad interests, and the legislation of 1881, if enforced, would have been rather expensive for the Tennessee railroads. It may be that there was a tacit understanding that the law would not be enforced in such a way as to be offensive to the railroad companies; and in fact the law was susceptible of use by the railroads as additional protection of their discriminatory practices. At any rate, there is no evidence that suit was brought against any railroad company for noncompliance or that any effort was made by the railroads to test the constitutionality of the law.

Later court cases indicate that the railroads in Tennessee, with the approval of the state supreme court, continued in effect discriminatory practices similar to those which had led to the passage of the “Jim Crow” law of 1881. Negro women were still excluded from the ladies' cars, unless they were there as nurses for white children. In the one case involving such exclusion which reached the supreme court of Tennessee, the railroad company was able to prove to the satisfaction of the court that the car to which a mulatto woman, Ida Wells, was assigned was “alike in every respect as to comfort, convenience, and safety” to the ladies' car, and that the two cars were “furnished and equipped alike, and with like accommodations.” Therefore the court accepted the railroad’s contention that it was furnishing “equal accommodations” to all first-class passengers, and agreed that its rule assigning persons of color to a particular car was reasonable. The car to which the Negro was assigned was not, however, a separate car for use by Negro passengers as envisaged by the act of 1881, for it was referred to as available to persons of either sex “without regard to race or color.” It is also possible that it was in reality a smoking car. The mulatto reformer claimed that “she saw one person smoking

in that car, and that it was filled with tobacco smoke.” Fortunately for the railroad company, however, another passenger testified that “there was no smoking, nor was there any tobacco smoke,” and that one of the six passengers in the car was a woman.\(^\text{15}\)

In another case, decided during the same term of the Tennessee supreme court, there is evidence that although Negro women were not allowed in a ladies’ car, “set apart for white ladies and their gentleman attendants,” white men unaccompanied by ladies were not denied access to such accommodations. Although involving a different railroad company, the situation was similar to that of the Wells case in that the train apparently carried only two passenger cars, one of which was the ladies’ car. A white man, traveling alone, had refused to surrender his ticket unless provided with a seat—not merely standing room—in the ladies’ car. The conductor offered him “temporary” accommodations in the gentlemen’s car until the train reached the next station, when it was expected a seat would be available for him in the ladies’ car. He refused, asserting that the foul air in the smoking car was likely to make him ill.\(^\text{16}\) If the practices of the different railroads in Tennessee were much the same, it is highly probable that the contention of Ida Wells that she was offered no better accommodations than a smoking car, designed largely for the use of gentlemen, was not entirely unjustified. It is significant that, until reversed by the state supreme court, this claim had obtained for her a $500 judgment in the circuit court of Shelby County.

With regard to trains carrying three or more passenger cars it appears that the railroads attempted, at least, to pay lip service to the Tennessee law. In addition to the ladies’ car and the regular smoking car, they usually provided what was called the “colored” first-class car, to which Negroes of both sexes with first-class tickets were assigned but which was also available for the use of white persons. Since the rules against smoking, drinking, and profanity were not enforced in such coaches, they still presented a distinctly “second-class,” smok-

\(^{15}\) Chesapeake, Ohio, and Southwestern Railroad Co. v. Wells, 85 Tenn. 613 (1887).

\(^{16}\) Memphis and Charleston R. R. Co. v. Benson, 85 Tenn. 627 (1887).
ing-car appearance; and though not exclusively for the use of Negroes, they were sometimes referred to as "Jim Crow" cars. 17

Such was the situation prior to the appearance in the South of the now familiar "Jim Crow" cars for Negroes only. Obviously it was not satisfactory to Negroes, particularly to colored women, who were excluded from the ladies' cars, which usually were the only ones where the rules against smoking were rigorously enforced. In view of the offensiveness of tobacco smoke to women during that period, such exclusion constituted a real hardship. With regard to male Negroes, however, there appears to have been much less discrimination or segregation. Therefore, the situation was considered highly unsatisfactory by many white people.

The innovation of the modern "Jim Crow" car was not the result of the Tennessee law of 1881 but of Supreme Court approval of a Mississippi statute of March 2, 1888. The Mississippi law required railroads (except street railways) to provide separate but equal accommodations for white and colored passengers and required whites and Negroes to use separate accommodations as provided. Because of the refusal of the Louisville, New Orleans and Texas Railway Company to comply with this law, the statute came before the United States Supreme Court and was upheld as constitutional, Justice John M. Harlan dissenting, on March 3, 1890. The court decided that the opinion of the Mississippi supreme court that the law applied only to intrastate commerce must be accepted as conclusive. It also held that the law was no more a burden on interstate commerce than requiring certain accommodations at depots or enforcing stops at street crossings. 18

Soon after this decision other southern states enacted similar legislation. Among the first was Louisiana, on July 10, 1890. In connection


18 Louisville, New Orleans and Texas Railway Company v. Mississippi, 133 U. S. 587 (1890). The Mississippi law is quoted in its entirety in the decision. It was enacted, apparently, because the first- and second-class arrangement, actually in effect despite legislation to the contrary, "did not sufficiently emphasize racial differences." Wharton, Negro in Mississippi, 231-32.
with this law, the question of the constitutionality of requiring Negroes to accept separate accommodations came before the United States Supreme Court in 1896 as a result of the refusal of a Negro, Homer Adolph Plessy, of only one-eighth African descent, to ride in a "Jim Crow" car. The Supreme Court upheld the law on the ground that it did not violate the Thirteenth or the Fourteenth Amendment and declared that social prejudice cannot be removed by legislation. Mis-interpreting the real intent of southern legislators, it also declared to be a fallacy the argument of the plaintiff that the enforcement of a separation of races stamped the colored race with a badge of inferiority.\textsuperscript{19}

Meanwhile, the legislature of Tennessee, apparently unaware that there was already a "Jim Crow" law on the statute books, passed another, this one on the Mississippi-Louisiana model, in March, 1891. This act required all railroads in the state except street railways to provide "equal, but separate accommodations" for the white and colored races, but it specifically allowed white persons to have colored nurses in a white car. Conductors were also required to assign white and colored passengers to their respective cars or compartments, and the railroads were declared not liable for damages for refusal to carry any passenger unwilling to accept such assignment.\textsuperscript{20} The senate amended the bill to make it apply to street railways as well, but the house eventually forced the senate to recede.\textsuperscript{21}

In contrast to the abortive legislation passed ten years before, the bona fide "Jim Crow" law of 1891 was opposed by the entire Republican delegation to the senate and by a considerable proportion of the

\textsuperscript{19} \textit{Plessy v. Ferguson}, 163 U. S. 537 (1896).
\textsuperscript{20} \textit{Acts of the State of Tennessee}, 1891, pp. 135-36. The colored nurse amendment was in accord with the prevalent southern view that "wherever the Negro appeared in a subordinate capacity, he was welcome; when he appeared as equal or superior, he was anathema." W. B. Hesseltine, \textit{The South in American History} (New York, 1943), 590. See also [Belton O'Neall Townsend], "South Carolina Society," in \textit{Atlantic Monthly} (Boston, 1857- ), XXXIX (1877), 676.
\textsuperscript{21} Tennessee General Assembly, \textit{Senate Journal}, 1891, pp. 331, 442. According to a newspaper report, it was generally conceded that the bill could not pass with the street railway amendment. Chattanooga \textit{Daily Times}, March 20, 1891. Subsequent legislation applying to street railways was passed in 1905.
Republicans in the house. The only Democrat to vote against the bill in either house was Representative W. L. Ledgerwood of Knox County. All the opposing votes were from East Tennessee, the sole remaining Republican stronghold in the state. Moreover, this legislation followed the acquisition of temporary control of the Democratic party in the state by the Farmers' Alliance in the campaign of 1890 and the election of an Alliance leader, John P. Buchanan, to the governorship.

This same legislature also provided for the first effective enforcement of the poll tax requirement for voting and made more generally applicable the stringent registration and election laws of 1889-1890. Therefore, it would appear that the passage of bona fide "Jim Crow" legislation went hand in hand with the adoption of indirect restrictions on Negro suffrage. This action was probably considered necessary in view of the avowed opposition of Negro leaders to such legislation. At the same time the Tennessee legislature was passing the "Jim Crow" law of 1891, an association of colored editors, meeting in Cincinnati, not only deplored the failure of Congress to enact the Blair Education Bill and Federal election laws, but also "denounced as an outrage the 'Jim Crow car' and all other discriminations practiced in places of public amusement and accommodation."

The whole structure of southern "Jim Crow" legislation is now threatened as a result of the recent Supreme Court decision in the case of *Morgan v. Virginia*, which declared a Virginia "Jim Crow" law to be unconstitutional on the ground that the diversity of such

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22 *Tennessee General Assembly, Senate Journal*, 1891, p. 332; *Tennessee General Assembly, House Journal*, 1891, p. 271. The votes were 71 to 7 in the house and 21 to 8 in the senate. Although originally voting against the bill, Ledgerwood later spoke in favor of the measure while opposing the senate amendments. Chattanooga *Daily Times*, March 20, 1891.


24 *Acts of the State of Tennessee*, 1891, pp. 337, 435-40. The poll tax law, amending an act of 1890, required the actual presentation of a poll tax receipt by the voter or the making of an affidavit that he had lost or misplaced his receipt. It also provided penalties of fine and imprisonment for voting without submitting such evidence of payment of the poll tax, if required, and for the permitting by an election judge of such illegal voting.

25 Chattanooga *Daily Times*, March 21, 1891.
statutes in the South constitutes an undue burden on interstate commerce.\textsuperscript{26} Although this decision does not directly invalidate racial segregation in intrastate travel, it could be argued that where interstate facilities are involved such segregation would also constitute an undue burden on interstate commerce. This point probably will be clarified in some future decision of the Supreme Court. The ending of segregation on transportation facilities operating exclusively within one state will require remedial legislation by the southern states themselves, and such action is by no means imminent. Also important, as evidenced by the situation in the 1880's, will be the policies voluntarily adopted by the transportation companies in response to public opinion. In the final analysis, there will have to be a very extensive revision of public sentiment before "Jim Crowism" becomes a thing of the past.

\textsuperscript{26} 328 U. S. 373 (1946). In his dissenting opinion Justice Harold H. Burton pointed out that on the basis of this argument the decision casts doubt on the validity of the laws of eighteen states prohibiting discrimination as well as of those of the other nine states in the South requiring it. Also, Justice Felix Frankfurter, in his concurring opinion, declared that since the commerce clause "does not require geographic conformity," if Congress should choose to do so, it could enact legislation requiring racial segregation on common carriers in the South while prohibiting it elsewhere.