Title VIII file

SUPREME COURT OF THE UNITED STATES

No. 645.—October Term, 1967.

Joseph Lee Jones et ux., Petitioners, *v.* Alfred H. Mayer Co. et al.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June 17, 1968.]

Mr. Justice Stewart delivered the opinion of the Court.

In this case we are called upon to determine the scope and the constitutionality of an Act of Congress, 42 U. S. C. § 1982, which provides that:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

On September 2, 1965, the petitioners filed a complaint in the District Court for the Eastern District of Missouri, alleging that the respondents had refused to sell them a home in the Paddock Woods community of St. Louis County for the sole reason that petitioner Joseph Lee Jones is a Negro. Relying in part upon § 1982, the petitioners sought injunctive and other relief.[1] The District Court sustained the respondents' motion to

[1] To vindicate their rights under 42 U. S. C. § 1982, the petitioners invoked the jurisdiction of the District Court to award "damages or . . . equitable or other relief under any Act of Congress providing for the protection of civil rights . . . ." 28 U. S. C. § 1343 (4). In such cases, federal jurisdiction does not require that the amount in controversy exceed $10,000. Cf. *Douglas* v. *City of Jeannette*, 319 U. S. 157, 161; *Hague* v. *C. I. O.*, 307 U. S. 496, 507–514, 527–532.

dismiss the complaint,[2] and the Court of Appeals for the Eighth Circuit affirmed, concluding that § 1982 applies only to state action and does not reach private refusals to sell.[3] We granted certiorari to consider the questions thus presented.[4] For the reasons that follow, we reverse the judgment of the Court of Appeals. We hold that § 1982 bars *all* racial discrimination, private as well as public, in the sale or rental of property, and that the statute, thus construed, is a valid exercise of the power of Congress to enforce the Thirteenth Amendment.[5]

I.

At the outset, it is important to make clear precisely what this case does *not* involve. Whatever else it may be, 42 U. S. C. § 1982 is not a comprehensive open housing law. In sharp contrast to the Fair Housing Title (Title VIII) of the Civil Rights Act of 1968, Pub. L. 90–284, 82 Stat. 73, the statute in this case deals only with racial discrimination and does not address itself to discrimination on grounds of religion or national origin.[6] It does not deal specifically with discrimination in the provision of services or facilities in connection with the sale or rental of a dwelling.[7] It does not prohibit advertising or other representations that indicate discriminatory preferences.[8] It does not refer explicitly

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[2] 255 F. Supp. 115.

[3] 379 F. 2d 33.

[4] 389 U. S. 968.

[5] Because we have concluded that the discrimination alleged in the petitioners' complaint violated a federal statute that Congress had the power to enact under the Thirteenth Amendment, we find it unnecessary to decide whether that discrimination also violated the Equal Protection Clause of the Fourteenth Amendment.

[6] Contrast the Civil Rights Act of 1968, § 804 (a).

[7] Contrast § 804 (b).

[8] Contrast §§ 804 (c), (d), (e).

to discrimination in financing arrangements [9] or in the provision of brokerage services.[10] It does not empower a federal administrative agency to assist aggrieved parties.[11] It makes no provision for intervention by the Attorney General.[12] And, although it can be enforced by injunction,[13] it contains no provision expressly authorizing a federal court to order the payment of damages.[14]

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[9] Contrast § 805.

[10] Contrast § 806. In noting that 42 U. S. C. § 1982 differs from the Civil Rights Act of 1968 in not dealing explicitly and exhaustively with such matters (see also nn. 7 and 9, *supra*), we intimate no view upon the question whether ancillary services or facilities of this sort might in some situations constitute "property" as that term is employed in § 1982. Nor do we intimate any view upon the extent to which discrimination in the provision of such services might be barred by 42 U. S. C. § 1981, the text of which appears in n. 78, *infra*.

[11] Contrast the Civil Rights Act of 1968, §§ 808–811.

[12] Contrast § 813 (a).

[13] The petitioners in this case sought an order requiring the respondents to sell them a "Hyde Park" type of home on Lot No. 7147, or on "some other lot in [the] subdivision sufficient to accommodate the home selected . . . ." They requested that the respondents be enjoined from disposing of Lot No. 7147 while litigation was pending, and they asked for a permanent injunction against future discrimination by the respondents "in the sale of homes in the Paddock Woods subdivision." The fact that 42 U. S. C. § 1982 is couched in declaratory terms and provides no explicit method of enforcement does not, of course, prevent a federal court from fashioning an effective equitable remedy. See, *e. g.*, *Texas & N. O. R. Co.* v. *Ry. Clerks*, 281 U. S. 548, 568-570; *Deckert* v. *Independence Corp.*, 311 U. S. 282, 288; *United States* v. *Republic Steel Corp.*, 362 U. S. 482, 491–492; *J. I. Case Co.* v. *Borak*, 377 U. S. 426, 432–435. Cf. *Ex parte Young*, 209 U. S. 123; *Griffin* v. *School Board*, 377 U. S. 218.

[14] Contrast the Civil Rights Act of 1968, § 812 (c). The complaint in this case alleged that the petitioners had "suffered actual damages in the amount of $50.00," but no facts were stated to support or explain that allegation. Upon receiving the injunctive relief to which they are entitled, see n. 13, *supra*, the petitioners

Thus, although § 1982 contains none of the exemptions that Congress included in the Civil Rights Act of 1968,[15] it would be a serious mistake to suppose that § 1982 in any way diminishes the significance of the law recently enacted by Congress. Indeed, the Senate Subcommittee on Housing and Urban Affairs was informed in hearings held after the Court of Appeals had rendered its decision in this case that § 1982 might well be "a presently valid federal statutory ban against discrimination by private persons in the sale or lease of real property." [16] The Subcommittee was told, however, that even if this Court should so construe § 1982, the existence of that statute would not "eliminate the need for congressional action" to spell out "responsibility on the part of the federal

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will presumably be able to purchase a home from the respondents at the price prevailing at the time of the wrongful refusal in 1965—substantially less, the petitioners concede, than the current market value of the property in question. Since it does not appear that the petitioners will then have suffered any uncompensated injury, we need not decide here whether, in some circumstances, a party aggrieved by a violation of § 1982 might properly assert an implied right to compensatory damages. Cf. *Texas & Pacific R. Co.* v. *Rigsby*, 241 U. S. 33, 39–40; *Steele* v. *Louisville & N. R. Co.*, 323 U. S. 192, 207; *Wyandotte Transportation Co.* v. *United States*, 389 U. S. 191, 202, 204. See generally *Bell* v. *Hood*, 327 U. S. 678, 684. See also 42 U. S. C. § 1988. In no event, on the facts alleged in the present complaint, would the petitioners be entitled to punitive damages. See *Philadelphia, Wilmington & Baltimore R. Co.* v. *Quigley*, 21 How. 202, 213–214. Cf. *Barry* v. *Edmunds*, 116 U. S. 550, 562–565; *Will* v. *Trans World Airlines, Inc.*, 200 F. Supp. 360, 367–368. We intimate no view, however, as to what damages might be awarded in a case of this sort arising in the future under the Civil Rights Act of 1968.

[15] See §§ 803 (b), 807.

[16] Hearings before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency, 90th Cong., 1st Sess., 229. These hearings were a frequent point of reference in the debates preceding passage of the 1968 Civil Rights Act. See, *e. g.*, 114 Cong. Rec. S. 1387 (Feb. 16, 1968), S. 1453 (Feb. 20, 1968), S. 1641 (Feb. 26, 1968), S. 1788 (Feb. 27, 1968).

government to enforce the rights it protects." [17] The point was made that, in light of the many difficulties confronted by private litigants seeking to enforce such rights on their own, "legislation is needed to establish federal machinery for enforcement of the rights guaranteed under Section 1982 of Title 42 even if the plaintiffs in Jones v. Alfred H. Mayer Company should prevail in the United States Supreme Court." [18]

On April 10, 1968, Representative Kelly of New York focused the attention of the House upon the present case and its possible significance. She described the background of this litigation, recited the text of § 1982, and then added:

> "When the Attorney General was asked in court about the effect of the old law [§ 1982] as compared with the pending legislation which is being considered on the House floor today, he said that the scope was somewhat different, the remedies and procedures were different, and that the new law was still quite necessary." [19]

Later the same day, the House passed the Civil Rights Act of 1968. Its enactment had no effect upon § 1982 [20]

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[17] Hearings, *supra*, n. 16, at 229.

[18] *Id.*, at 230. See also *id.*, at 129, 162–163, 251. And see Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 90th Cong., 1st Sess., 416.

[19] 114 Cong. Rec. H. 2807 (April 10, 1968). See also *id.*, at H. 2808. The Attorney General of the United States stated during the oral argument in this case that the Civil Rights Act then pending in Congress "would provide open housing rights on a complicated statutory scheme, including administrative, judicial, and other sanctions for its effectuation . . . ." "Its potential for effectiveness," he added, "is probably much greater than [§ 1982] because of the sanctions and the remedies that it provides."

[20] At oral argument, the Attorney General expressed the view that, if Congress should enact the pending bill, § 1982 would not be affected in any way but "would stand independently." That is, of course, correct. The Civil Rights Act of 1968 does not mention

and no effect upon this litigation,[21] but it underscored the vast differences between, on the one hand, a general statute applicable only to racial discrimination in the rental and sale of property and enforceable only by private parties acting on their own initiative, and, on the other hand, a detailed housing law, applicable to a broad range of discriminatory practices and enforceable by a complete arsenal of federal authority. Having noted these differences, we turn to a consideration of § 1982 itself.

II.

This Court last had occasion to consider the scope of 42 U. S. C. § 1982 in 1948, in *Hurd* v. *Hodge,* 334 U. S. 24. That case arose when property owners in the District of Columbia sought to enforce racially restrictive covenants against the Negro purchasers of several homes on their block. A federal district court enforced the restrictive agreements by declaring void the deeds of the Negro purchasers. It enjoined further attempts to sell or lease them the properties in question and directed them to "remove themselves and all of their personal belongings" from the premises within 60 days. The

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42 U. S. C. § 1982, and we cannot assume that Congress intended to effect any change, either substantive or procedural, in the prior statute. See *United States* v. *Borden Co.,* 308 U. S. 188, 198–199. See also § 815 of the 1968 Act: "Nothing in this title shall be construed to invalidate or limit any law of . . . any . . . jurisdiction in which this title shall be effective, that grants, guarantees, or protects the . . . rights . . . granted by this title . . . ."

[21] On April 22, 1968, we requested the views of the parties as to what effect, if any, the enactment of the Civil Rights Act of 1968 had upon this litigation. The parties and the Attorney General, representing the United States as *amicus curiae,* have informed us that the respondents' housing development will not be covered by the 1968 Act until January 1, 1969; that, even then, the Act will have no application to cases where, as here, the alleged discrimination occurred prior to April 11, 1968, the date on which the Act

Court of Appeals for the District of Columbia affirmed,[22] and this Court granted certiorari [23] to decide whether § 1982, then § 1978 of the Revised Statutes of 1874, barred enforcement of the racially restrictive agreements in that case.

The agreements in *Hurd* covered only two-thirds of the lots of a single city block, and preventing Negroes from buying or renting homes in that specific area would not have rendered them ineligible to do so elsewhere in the city. Thus, if § 1982 had been thought to do no more than grant Negro citizens the legal capacity to buy and rent property free of prohibitions that wholly disabled them because of their race, judicial enforcement of the restrictive covenants at issue would not have violated § 1982. But this Court took a broader view of the statute. Although the covenants could have been enforced without denying the general right of Negroes to purchase or lease real estate, the enforcement of those covenants would nonetheless have denied the Negro purchasers "the same right 'as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property.'" 334 U. S., at 34. That result, this Court concluded, was prohibited by

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became law; and that, if the Act were deemed applicable to such cases, the petitioners' claim under it would nonetheless be barred by the 180-day limitation period of §§ 810 (b) and 812 (a).

Nor did the passage of the 1968 Act after oral argument in this case furnish a basis for dismissing the writ of certiorari as improvidently granted. *Rice* v. *Sioux City Cemetery*, 349 U. S. 70, relied upon in dissent, *post*, at 29–30, was quite unlike this case, for the statute that belatedly came to the Court's attention in *Rice* reached precisely the same situations that would have been covered by a decision in this Court sustaining the petitioner's claim on the merits. The coverage of § 1982, however, is markedly different from that of the Civil Rights Act of 1968.

[22] 162 F. 2d 233.

[23] 332 U. S. 789.

§ 1982. To suggest otherwise, the Court said, "is to reject the plain meaning of language." *Ibid.*

Hurd v. *Hodge, supra,* squarely held, therefore, that a Negro citizen who is denied the opportunity to purchase the home he wants "[s]olely because of [his] race and color," 334 U. S., at 34, has suffered the kind of injury that § 1982 was designed to prevent. Accord, *Buchanan* v. *Warley,* 245 U. S. 60, 79; *Harmon* v. *Tyler,* 273 U. S. 668; *Richmond* v. *Deans,* 281 U. S. 704. The basic source of the injury in *Hurd* was, of course, the action of private individuals—white citizens who had agreed to exclude Negroes from a residential area. But an arm of the Government—in that case, a federal court—had assisted in the enforcement of that agreement.[24] Thus *Hurd* v. *Hodge, supra,* did not present the question whether *purely* private discrimination, unaided by any action on the part of government, would violate § 1982 if its effect were to deny a citizen the right to rent or buy property solely because of his race or color.

The only federal court (other than the Court of Appeals in this case) that has ever squarely confronted that question held that a wholly private conspiracy among white citizens to prevent a Negro from leasing a farm violated § 1982. *United States* v. *Morris,* 125 F. 322. It is true that a dictum in *Hurd* said that § 1982 was directed only toward "governmental action," 334 U. S., at 31, but neither *Hurd* nor any other case

[24] Compare *Harmon* v. *Tyler,* 273 U. S. 668, invalidating a New Orleans ordinance which gave legal force to private discrimination by forbidding any Negro to establish a home in a white community, or any white person to establish a home in a Negro community, "except on the written consent of a majority of the persons of the opposite race inhabiting such community or portion of the City to be affected." See *Shelley* v. *Kraemer,* 334 U. S. 1, 12.

before or since has presented that precise issue for adjudication in this Court.[25] Today we face that issue for the first time.

III.

We begin with the language of the statute itself. In plain and unambiguous terms, § 1982 grants to all citizens, without regard to race or color, "the same right" to purchase and lease property "as is enjoyed by white citizens." As the Court of Appeals in this case evidently recognized, that right can be impaired as effec-

[25] Two of this Court's early opinions contain dicta to the general effect that § 1982 is limited to state action. *Virginia* v. *Rives,* 100 U. S. 313, 317–318; *Civil Rights Cases,* 109 U. S. 3, 16–17. But all that *Virginia* v. *Rives, supra,* actually *held* was that § 641 of the Revised Statutes of 1874 (derived from § 3 of the Civil Rights Act of 1866 and currently embodied in 28 U. S. C. § 1443 (1)) did not authorize the removal of a state prosecution where the defendants, without pointing to any statute discriminating against Negroes, could only assert that a denial of their rights might take place and might go uncorrected at trial. 100 U. S., at 319–322. See *Georgia* v. *Rachel,* 384 U. S. 780, 797–804. And of course the *Civil Rights Cases, supra,* which invalidated §§ 1 and 2 of the Civil Rights Act of 1875, 18 Stat. 335, did not involve the present statute at all.

It is true that a dictum in *Hurd* v. *Hodge,* 334 U. S. 24, 31, characterized *Corrigan* v. *Buckley,* 271 U. S. 323, as having "held" that "[t]he action toward which the provisions of the statute . . . [are] directed is governmental action." 334 U. S., at 31. But no such statement appears in the *Corrigan* opinion, and a careful examination of *Corrigan* reveals that it cannot be read as authority for the proposition attributed to it in *Hurd.* In *Corrigan,* suits had been brought to enjoin a threatened violation of certain restrictive covenants in the District of Columbia. The courts of the District had granted relief, see 299 F. 899, and the case reached this Court on appeal. As the opinion in *Corrigan* specifically recognized, no claim that the covenants could not validly be *enforced* against the appellants had been raised in the lower courts, and no such claim was properly before this Court. 271 U. S., at 330–331. The only question presented for decision was whether the restrictive covenants *themselves* violated the Fifth, Thirteenth, and Fourteenth Amend-

tively by "those who place property on the market" [26] as by the State itself. For, even if the State and its agents lend no support to those who wish to exclude persons from their communities on racial grounds, the fact remains that, whenever property "is placed on the market for whites only, whites have a right denied to Negroes." [27] So long as a Negro citizen who wants to buy or rent a home can be turned away simply because he is not white, he cannot be said to enjoy "the *same* right . . . as is enjoyed by white citizens . . . to . . . purchase [and] lease . . . real and personal property." 42 U. S. C. § 1982. (Emphasis added.)

On its face, therefore, § 1982 appears to prohibit *all* discrimination against Negroes in the sale or rental of property—discrimination by private owners as well as discrimination by public authorities. Indeed, even the respondents seem to concede that, if § 1982 "means what it says"—to use the words of the respondents' brief—then it must encompass every racially motivated refusal

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ments, and §§ 1977, 1978, and 1979 of the Revised Statutes (now 42 U. S. C. §§ 1981, 1982, and 1983. *Ibid.* Addressing itself to that narrow question, the Court said that none of the provisions relied upon by the appellants prohibited private individuals from "enter[ing] into [contracts] in respect to the control and disposition of their own property." *Id.*, at 331. Nor, added the Court, had the appellants even *claimed* that the provisions in question "had, in and of themselves, . . . [the] effect" of prohibiting such contracts. *Ibid.*

Even if *Corrigan* should be regarded as an adjudication that 42 U. S. C. § 1982 (then § 1978 of the Revised Statutes) does not prohibit private individuals from *agreeing* not to sell their property to Negroes, *Corrigan* would *not* settle the question whether § 1982 prohibits an *actual refusal to sell* to a Negro. Moreover, since the appellants in *Corrigan* had not even argued in this Court that the statute prohibited private agreements of the sort there involved, it would be a mistake to treat the *Corrigan* decision as a considered judgment even on that narrow issue.

[26] 379 F. 2d 33, 43.

[27] *Ibid.*

to sell or rent and cannot be confined to officially sanctioned segregation in housing. Stressing what they consider to be the revolutionary implications of so literal a reading of § 1982, the respondents argue that Congress cannot possibly have intended any such result. Our examination of the relevant history, however, persuades us that Congress meant exactly what it said.

IV.

In its original form, 42 U. S. C. § 1982 was part of § 1 of the Civil Rights Act of 1866.[28] That section was cast in sweeping terms:

> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all persons born in the United States and not subject to any foreign power, . . . are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude . . . shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."[29]

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[28] Act of April 9, 1866, c. 31, § 1, 14 Stat. 27, re-enacted by § 18 of the Enforcement Act of 1870, Act of May 31, 1870, c. 114, § 18, 16 Stat. 140, 144, and codified in §§ 1977 and 1978 of the Revised Statutes of 1874, now 42 U. S. C. §§ 1981 and 1982. For the text of § 1981, see n. 78, *infra*.

[29] It is, of course, immaterial that § 1 ended with the words "any law, statute, ordinance, regulation, or custom, to the contrary not-

The crucial language for our purposes was that which guaranteed all citizens "the same right, in every State and Territory in the United States, . . . to inherit, purchase, lease, sell, hold, and convey real and personal property . . . as is enjoyed by white citizens . . . ." To the Congress that passed the Civil Rights Act of 1866, it was clear that the right to do these things might be infringed not only by "State or local law" but also by "custom, or prejudice." [30] Thus, when Congress provided in § 1 of the Civil Rights Act that the right to purchase and lease property was to be enjoyed equally throughout the United States by Negro and white citi-

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withstanding." The phrase was obviously inserted to qualify the reference to "like punishment, pains, and penalties, and to none other," thus emphasizing the supremacy of the 1866 statute over inconsistent state or local laws, if any. It was deleted, presumably as surplusage, in § 1978 of the Revised Statutes of 1874.

[30] Several weeks before the House began its debate on the Civil Rights Act of 1866, Congress had passed a bill (S. No. 60) to enlarge the powers of the Freedmen's Bureau (created by Act of March 3, 1865, c. 90, 13 Stat. 507) by extending military jurisdiction over certain areas in the South where, "in consequence of any State or local law, . . . *custom, or prejudice,* any of the civil rights . . . belonging to white persons (including the right . . . to inherit, purchase, lease, sell hold, and convey real and personal property . . .) are refused or denied to negroes . . . on account of race, color, or any previous condition of slavery or involuntary servitude . . . ." See Cong. Globe, 39th Cong., 1st Sess., 129, 209. (Emphasis added.) Both Houses had passed S. No. 60 (see *id.*, at 421, 688, 748, 775), and although the Senate had failed to override the President's veto (see *id.*, at 915–916, 943) the bill was nonetheless significant for its recognition that the "right to purchase" was a right that could be "refused or denied" by "custom or prejudice" as well as by "State or local law." See also the text accompanying nn. 49 and 59, *infra.* Of course an "abrogation of civil rights made 'in consequence of . . . custom, or prejudice' might as easily be perpetrated by private individuals or by unofficial community activity as by state officers armed with statute or ordinance." J. tenBroek, Equal Under Law 179 (1965 ed.).

zens alike, it plainly meant to secure that right against interference from any source whatever, whether governmental or private.[31]

Indeed, if § 1 had been intended to grant nothing more than an immunity from *governmental* interference, then much of § 2 would have made no sense at all.[32] For that section, which provided fines and prison terms for certain

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[31] When Congressman Bingham of Ohio spoke of the Civil Rights Act, he charged that it would duplicate the substantive scope of the bill recently vetoed by the President, see n. 30, *supra*, and that it would extend the territorial reach of that bill throughout the United States. Cong. Globe, 39th Cong., 1st Sess., 1292. Although the Civil Rights Act, as the dissent notes, *post*, at 9, 13, made no explicit reference to "prejudice," cf. n. 30, *supra*, the fact remains that nobody who rose to answer the Congressman disputed his basic premise that the Civil Rights Act of 1866 would prohibit every form of racial discrimination encompassed by the earlier bill the President had vetoed. Even Senator Trumbull of Illinois, author of the vetoed measure as well as of the Civil Rights Act, had previously remarked that the latter was designed to "extend to all parts of the country," on a permanent basis, the "equal civil rights" which were to have been secured in rebel territory by the former, *id.*, at 322, to the end that "*all* the badges of servitude . . . be abolished." *Id.*, at 323. (Emphasis added.)

[32] Section 2 provided:

"That any person who, *under color of any law, statute, ordinance, regulation, or custom,* shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court." (Emphasis added.)

For the evolution of this provision into 18 U. S. C. § 242, see *Screws* v. *United States*, 325 U. S. 91, 98–99; *United States* v. *Price*, 383 U. S. 787, 804.

individuals who deprived others of rights "secured or protected" by § 1, was carefully drafted to exempt private violations of § 1 from the criminal sanctions it imposed.[33] There would, of course, have been no private violations to exempt if the only "right" granted by § 1

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[33] When Congressman Loan of Missouri asked the Chairman of the House Judiciary Committee, Mr. Wilson of Iowa, "why the committee limit the provisions of the second section to those who act under the color of law," Cong. Globe, 39th Cong., 1st Sess., 1120, he was obviously inquiring why the second section did not also punish those who violated the first *without* acting "under the color of law." Specifically, he asked:

"Why not let them [the penalties of § 2] apply to the whole community where the acts are committed?" *Ibid.*

Mr. Wilson's reply was particularly revealing. If, as floor manager of the bill, he had viewed acts not under color of law as not violative of § 1 at all, that would of course have been the short answer to the Congressman's query. Instead, Mr. Wilson found it necessary to explain that the Judiciary Committee did not want to make "a general criminal code for the States." *Ibid.* Hence only those who discriminated "in reference to civil rights . . . under the color of . . . local laws" were made subject to the criminal sanctions of § 2. *Ibid.*

Congress might have thought it appropriate to confine criminal punishment to state officials, oath-bound to support the supreme federal law, while allowing only civil remedies—or perhaps only preventive relief—against private violators. Or Congress might have thought that States which did not authorize abridgment of the rights declared in § 1 would themselves punish all who interfered with those rights without official authority. See, *e. g.*, Cong. Globe, 39th Cong., 1st Sess., 1758, 1785. Cf. *Civil Rights Cases*, 109 U. S. 3, 19, 24–25.

Whatever the reason, it was repeatedly stressed that the only violations "reached *and punished*" by the bill, see *id.*, at 1294 (emphasis added), would be those "done under color of State authority." *Ibid.* It is observed in dissent, *post*, at 10, that Senator Trumbull told Senator Cowan that § 2 was directed not at "State officers especially, but [at] everybody who violates the law." That remark, however, was nothing more than a reply to Senator Cowan's charge that § 2 was "exceedingly objectionable" in singling out state judicial officers for punishment for the first time "in the history of civilized legislation." *Id.*, at 500.

had been a right to be free of discrimination by public officials. Hence the structure of the 1866 Act, as well as its language, points to the conclusion urged by the petitioners in this case—that § 1 was meant to prohibit *all* racially motivated deprivations of the rights enumerated in the statute, although only those deprivations perpetrated "under color of law" were to be criminally punishable under § 2.

In attempting to demonstrate the contrary, the respondents rely heavily upon the fact that the Congress which approved the 1866 statute wished to eradicate the recently enacted Black Codes—laws which had saddled Negroes with "onerous disabilities and burdens, and curtailed their rights . . . to such an extent that their freedom was of little value . . . ." *Slaughter-House Cases,* 16 Wall. 36, 70.[34] The respondents suggest that the only evil Congress sought to eliminate was that of racially discriminatory laws in the former Confederate States. But the Civil Rights Act was drafted to apply throughout the country,[35] and its language was far

[34] See, *e. g.*, Cong. Globe, 39th Cong., 1st Sess., at 39, 474, 516–517, 602-603, 1123-1125, 1151-1153, 1160. For the substance of the codes and their operation, see H. Exec. Doc. No. 118, 39th Cong., 1st Sess.; S. Exec. Doc. No. 6, 39th Cong., 2d Sess.; 1 W. Fleming, Documentary History of Reconstruction 273–312 (1906); E. McPherson, The Political History of the United States During the Period of Reconstruction 29–44 (1871); 2 S. Morison and H. Commager, The Growth of the American Republic 17–18 (1950 ed.); K. Stampp, The Era of Reconstruction 79–81 (1965).

[35] See n. 31, *supra.* It is true, as the dissent emphasizes, *post,* at 11, that Senator Trumbull remarked at one point that the Act "could have no operation in Massachusetts, New York, Illinois, or most of the States of the Union," whose laws did not themselves discriminate against Negroes. Cong. Globe, 39th Cong., 1st Sess., 1761. But the Senator was simply observing that the Act would "in no manner [interfere] with the . . . regulations of any State which protects all alike in their rights of person and property." *Ibid.* See also *id.*, at 476, 505, 600. That is, the Act would have

broader than would have been necessary to strike down discriminatory statutes.

That broad language, we are asked to believe, was a mere slip of the legislative pen. We disagree. For the same Congress that wanted to do away with the Black Codes *also* had before it an imposing body of evidence pointing to the mistreatment of Negroes by private individuals and unofficial groups, mistreatment unrelated to any hostile state legislation. "Accounts in newspapers North and South, Freedmen's Bureau and other official documents, private reports and correspondence were all adduced" to show that "private outrage and atrocity" was "daily inflicted on freedmen . . . ." [36] The congressional debates are replete with references to private injustices against Negroes—references to white employers who refused to pay their Negro workers,[37] white planters who agreed among themselves not to hire freed slaves without the permission of their former masters,[38] white

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no effect upon nondiscriminatory legislation. Senator Trumbull obviously could *not* have meant that the law would apply to racial discrimination in some States but not in others, for the bill on its face applied upon its enactment "in every State and Territory in the United States," and no one disagreed when Congressman Bingham complained that, unlike Congress' recently vetoed attempt to expand the Freedmen's Bureau, see n. 30, *supra*, the Civil Rights Act would operate "in every State in the Union." *Id.*, at 1292. Nor, contrary to a suggestion made in dissent, *post*, at 12, was the Congressman speaking only of the Act's *potential* operation in any State that might enact a racially discriminatory law in the *future*. The Civil Rights Act, Congressman Bingham insisted, would "be enforced in every State . . . [at] the *present* . . . time." *Ibid.* (Emphasis added.)

[36] J. tenBroek, *supra*, n. 30, at 181. See also W. Brock, An American Crisis 124 (1963); J. McPherson, The Struggle For Equality 332 (1964); K. Stampp, *supra*, n. 34, at 75, 131–132.

[37] Cong. Globe, 39th Cong., 1st Sess., 95, 1833.

[38] *Id.*, at 1160.

citizens who assaulted Negroes [39] or who combined to drive them out of their communities.[40]

Indeed, one of the most comprehensive studies then before Congress stressed the prevalence of private hostility toward Negroes and the need to protect them from the resulting persecution and discrimination.[41] The report noted the existence of laws virtually prohibiting Negroes from owning or renting property in certain towns,[42] but described such laws as "mere isolated cases," representing "the local outcroppings of a spirit . . . found to prevail everywhere" [43]—a spirit expressed, for example,

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[39] *Id.*, at 339-340, 1160, 1835. It is true, as the dissent notes, *post*, at 13, that some of the references to private assaults occurred during debate on the Freedmen's Bureau bill, n. 30, *supra*, but the congressional discussion proceeded upon the understanding that all discriminatory conduct reached by the Freedmen's Bureau bill would be reached as well by the Civil Rights Act. See, *e. g.*, n. 31, *supra*.

[40] *Id.*, at 1835. It is clear that these instances of private mistreatment, see also text accompanying n. 41, *infra*, were understood as illustrative of the evils that the Civil Rights Act of 1866 would correct. Congressman Eldridge of Wisconsin, for example, said this:

"Gentlemen refer us to individual cases of wrong perpetrated upon the freedmen of the South as an argument why we should extend the Federal authority into the different States to control the action of the citizens thereof. But, I ask, has not the South submitted to the altered state of things there, to the late amendment of the Constitution, to the loss of their slave property, with a cheerfulness and grace that we did not expect? . . . I deprecate all these measures because of the implication they carry upon their face that the people who have heretofore owned slaves intend to do them wrong. I do not believe it. . . . The cases of ill-treatment are exceptional cases." *Id.*, at 1156.

So it was that "opponents denied or minimized the facts asserted" but "did not contend that the [Civil Rights Act] would not reach such facts if they did exist." J. tenBroek, *supra*, n. 30, at 181.

[41] Report of C. Schurz, S. Exec. Doc. No. 2, 39th Cong., 1st Sess., 2, 17–25. See W. Brock, *supra*, n. 36, at 40–42; K. Stampp, *supra*, n. 34, at 73–75.

[42] *Id.*, at 23–24.

[43] *Id.*, at 25.

by lawless acts of brutality directed against Negroes who traveled to areas where they were not wanted.[44] The report concluded that, even if anti-Negro legislation were "repealed in all the States lately in rebellion," equal treatment for the Negro would not yet be secured.[45]

In this setting, it would have been strange indeed if Congress had viewed its task as encompassing merely the nullification of racist laws in the former rebel States. That the Congress which assembled in the Nation's capital in December 1865 in fact had a broader vision of the task before it became clear early in the session, when three proposals to invalidate discriminatory state statutes were rejected as "too narrowly conceived." [46] From the outset it seemed clear, at least to Senator Trumbull of Illinois, Chairman of the Judiciary Committee, that stronger legislation might prove necessary. After Senator Wilson of Massachusetts had introduced his bill to strike down all racially discriminatory laws in the South,[47] Senator Trumbull said this:

> "I reported from the Judiciary Committee the second section of the [Thirteenth Amendment] for the very purpose of conferring upon Congress authority to see that the first section was carried out

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[44] *Id.*, at 18.

[45] *Id.*, at 35.

[46] J. tenBroek, *supra*, n. 30, at 177. One of the proposals, sponsored by Senator Wilson of Massachusetts, would have declared void all "laws, statutes, acts, ordinances, rules, and regulations" establishing or maintaining in former rebel States "any inequality of civil rights and immunities" on account of "color, race, or . . . a previous condition . . . of slavery." Cong. Globe, 39th Cong., 1st Sess., 39. The other two proposals, sponsored by Senator Sumner of Massachusetts, would have struck down in the former Confederate States "all laws . . . establishing any oligarchial privileges and any distinction of rights on account of color or race" and would have required that all persons there be "recognized as equal before the law." *Id.*, at 91.

[47] See n. 46, *supra*.

in good faith . . . and I hold that under that second section Congress will have the authority, when the constitutional amendment is adopted, *not only to pass the bill of the Senator from Massachusetts, but a bill that will be much more efficient to protect the freedman in his rights.* . . . And, sir, when the constitutional amendment shall have been adopted, if the information from the South be that the men whose liberties are secured by it are deprived of the privilege to go and come when they please, *to buy and sell when they please,* to make contracts and enforce contracts, I give notice that, if no one else does, I shall introduce a bill and urge its passage through Congress that will secure to those men every one of these rights: they would not be freemen without them. *It is idle to say that a man is free who cannot go and come at pleasure, who cannot buy and sell, who cannot enforce his rights.* . . . [So] when the constitutional amendment is adopted I trust we may pass a bill, if the action of the people in the southern States should make it necessary, that will be *much more sweeping and efficient than the bill under consideration.*" [48]

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[48] Cong. Globe, 39th Cong., 1st Sess., 43. (Emphasis added.) The dissent seeks to neutralize the impact of this quotation by noting that, prior to making the above statement, the Senator had argued that the second clause of the Thirteenth Amendment was inserted "for the purpose, and none other, of preventing State Legislatures from enslaving, under any pretense, those whom the first clause declared should be free." See *post,* at 7, 14. In fact, Senator Trumbull was simply replying at that point to the contention of Senator Saulsbury of Delaware that the second clause of the Thirteenth Amendment was never intended to authorize federal legislation interfering with subjects other than slavery itself. See *id.,* at 42. Senator Trumbull responded that the clause was intended to authorize *precisely* such legislation. That, "and none other," he said for emphasis, was its avowed purpose. But Senator Trumbull did *not* imply that the force of § 2 of the Thirteenth Amendment would be

Five days later, on December 18, 1865, the Secretary of State officially certified the ratification of the Thirteenth Amendment. The next day Senator Trumbull again rose to speak. He had decided, he said, that the "more sweeping and efficient" bill of which he had spoken previously ought to be enacted

> ". . . at an early day for the purpose of quieting apprehensions in the minds of many friends of freedom lest by local legislation *or a prevailing public sentiment* in some of the States persons of the African race should continue to be oppressed and in fact deprived of their freedom . . . ." [49]

On January 5, 1866, Senator Trumbull introduced the bill he had in mind—the bill which later became the Civil Rights Act of 1866.[50] He described its objectives in terms that belie any attempt to read it narrowly:

> "Mr. President, I regard the bill to which the attention of the Senate is now called as the most important measure that has been under its consideration since the adoption of the constitutional amendment abolishing slavery. That amendment declared that all persons in the United States should be free. This measure is intended to give effect to that declaration and secure to all persons within the United States practical freedom. There is very little importance in the general declaration of abstract truths and principles unless they can be carried into effect, unless the persons who are to be

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spent once Congress had nullified discriminatory state laws. On the contrary, he emphasized the fact that it was "for Congress to determine, and nobody else," what sort of legislation might be "appropri-" ate" to make the Thirteenth Amendment effective. *Id.*, at 43. Cf. Part V of this opinion, *infra*.

[49] *Id.*, at 77. (Emphasis added.)

[50] *Id.*, at 129.

> affected by them have some means of availing themselves of their benefits." [51]

Of course, Senator Trumbull's bill would, as he pointed out, "destroy all [the] discriminations" embodied in the Black Codes,[52] but it would do more: It would affirmatively secure for all men, whatever their race or color, what the Senator called the "great fundamental rights":

> ". . . the right to acquire property, the right to go and come at pleasure, the right to enforce rights in the courts, to make contracts, and to inherit and dispose of property." [53]

As to those basic civil rights, the Senator said, the bill would "break down *all* discrimination between black men and white men." [54]

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[51] *Id.*, at 474.

[52] *Ibid.* See the dissenting opinion, *post*, at 9.

[53] *Id.*, at 475.

[54] *Id.*, at 599. (Emphasis added.) Senator Trumbull later observed that his bill would add nothing to federal authority if the States would fully "perform their constitutional obligations." *Id.*, at 600. See also Senator Trumbull's remarks, *id.*, at 1758; the remarks of Senator Lane of Indiana, *id.*, at 602–603; and the remarks of Congressman Wilson of Iowa, *id.*, at 1117–1118. But it would be a serious mistake to infer from such statements any notion (see the dissenting opinion, *post*, at 11–12) that, so long as the States refrained from actively discriminating against Negroes, their "obligations" in this area, as Senator Trumbull and others understood them, would have been fulfilled. For the Senator's concern, it will be recalled (see text accompanying n. 49, *supra*), was that Negroes might be "oppressed and in fact deprived of their freedom" not only by hostile laws but also by "prevailing public sentiment," and he viewed his bill as necessary "unless by local legislation they [the States] provide for the real freedom of their former slaves." *Id.*, at 77. See also *id.*, at 43. And see the remarks of Congressman Lawrence of Ohio:

"Now, there are two ways in which a State may undertake to deprive citizens of these absolute, inherent, and inalienable rights: either by

That the bill would indeed have so sweeping an effect was seen as its great virtue by its friends [55] and as its great danger by its enemies [56] but was disputed by none. Opponents of the bill charged that it would not only regulate state laws but would directly "determine the persons who [would] enjoy . . . property within the States," [57] threatening the ability of white citizens "to determine who [would] be members of [their] communit[ies] . . . ." [58] The bill's advocates did not deny the accuracy of those characterizations. Instead, they defended the propriety of employing federal authority to deal with "the white man . . . [who] would invoke the power of local prejudice" against the Negro.[59] Thus, when the Senate passed the Civil Rights Act on February 2, 1866,[60] it did so fully aware of the breadth of the measure it had approved.

In the House, as in the Senate, much was said about eliminating the infamous Black Codes.[61] But, like the Senate, the House was moved by a larger objective—that of giving real content to the freedom guaranteed by the Thirteenth Amendment. Representative Thayer of Pennsylvania put it this way:

> "[W]hen I voted for the amendment to abolish slavery . . . I did not suppose that I was offer-

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prohibitory laws, or by a failure to protect any one of them." *Id.*, at 1833.

[55] See, *e. g.*, the remarks of Senator Howard of Michigan. *Id.*, at 504.

[56] See, *e. g.*, the remarks of Senator Cowan of Pennsylvania, *id.*, at 500, and the remarks of Senator Hendricks of Indiana. *Id.*, at 601.

[57] Senator Saulsbury of Delaware. *Id.*, at 478.

[58] Senator Van Winkle of West Virginia. *Id.*, at 498.

[59] Senator Lane of Indiana. *Id.*, at 603.

[60] *Id.*, at 606–607.

[61] See, *e. g.*, *id.*, *at* 1118–1119, 1123–1125, 1151–1153, 1160. See generally the discussion in the dissenting opinion, *post*, at 16–18.

> ing . . . a mere paper guarantee. And when I voted for the second section of the amendment, I felt . . . certain that I had . . . given to Congress ability to protect . . . the rights which the first section gave . . . .
>
> "The bill which now engages the attention of the House has for its object to carry out and guaranty the reality of that great measure. It is to give to it practical effect and force. It is to prevent that great measure from remaining a dead letter upon the constitutional page of this country. . . . The events of the last four years . . . have changed [a] large class of people . . . from a condition of slavery to that of freedom. *The practical question now to be decided is whether they shall be in fact freemen. It is whether they shall have the benefit of this great charter of liberty* given to them by the American people." [62]

Representative Cook of Illinois thought that, without appropriate federal legislation, any "combination of men in [a] neighborhood [could] prevent [a Negro] from having any chance" to enjoy those benefits.[63] To Congressman Cook and others like him, it seemed evident that, with respect to basic civil rights—including the "right to . . . purchase, lease, sell, hold, and convey . . . property," Congress must provide that "there . . . be *no* discrimination" on grounds of race or color.[64]

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[62] *Id.*, at 1151. (Emphasis added.)

[63] *Id.*, at 1124.

[64] *Ibid.* (Emphasis added.) The clear import of these remarks is in no way diminished by the heated debate, see *id.*, at 1290–1294, portions of which are quoted in the dissenting opinion, *post*, at 18–19, between Representative Bingham, opposing the bill, and Representative Shellabarger, supporting it, over the question of what *kinds* of state laws might be invalidated by § 1, a question not involved in this case.

It thus appears that, when the House passed the Civil Rights Act on March 13, 1866,[65] it did so on the same assumption that had prevailed in the Senate: It too believed that it was approving a comprehensive statute forbidding *all* racial discrimination affecting the basic civil rights enumerated in the Act.

President Andrew Johnson vetoed the Act on March 27,[66] and in the brief congressional debate that followed, his supporters characterized its reach in all-embracing terms. One stressed the fact that § 1 would confer "the right . . . to purchase . . . real estate . . . without any qualification and without any restriction whatever . . . ." [67] Another predicted, as a corollary, that the Act would preclude preferential treatment for white persons in the rental of hotel rooms and in the sale of church pews.[68] Those observations elicited no reply. On April 6 the Senate, and on April 9 the House, overrode the President's veto by the requisite majorities,[69] and the Civil Rights Act of 1866 became law.[70]

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[65] *Id.*, at 1367. On March 15, the Senate concurred in the several technical amendments that had been made by the House. *Id.*, at 1413–1416.

[66] *Id.*, at 1679–1681.

[67] Senator Cowan of Pennsylvania. *Id.*, at 1781.

[68] Senator Davis of Kentucky. *Id.*, Appendix, at 183. Such expansive views of the Act's reach found frequent and unchallenged expression in the Nation's press. See, *e. g.*, Daily National Intelligencer (Washington, D. C.), March 24, 1866, p. 2, col. 1; New York Herald, March 29, 1866, p. 4, col. 3; Cincinnati Commercial, March 30, 1866, p. 4, col. 2; Evening Post (New York), April 7, 1866, p. 2, col. 1; Indianapolis Daily Herald, April 17, 1866, p. 2, col. 1.

[69] Cong. Globe, 39th Cong., 1st Sess., 1809, 1861.

[70] "Never before had Congress over-ridden a President on a major political issue, and there was special gratification in feeling that this had not been done to carry some matter of material interest, such as a tariff, but in the cause of disinterested justice." W. Brock, *supra*, n. 36, at 115.

In light of the concerns that led Congress to adopt it and the contents of the debates that preceded its passage, it is clear that the Act was designed to do just what its terms suggest: to prohibit all racial discrimination, whether or not under color of law, with respect to the rights enumerated therein—including the right to purchase or lease property.

Nor was the scope of the 1866 Act altered when it was re-enacted in 1870, some two years after the ratification of the Fourteenth Amendment.[71] It is quite true that some members of Congress supported the Fourteenth Amendment "in order to eliminate doubt as to the constitutional validity of the Civil Rights Act as applied to the States." *Hurd* v. *Hodge,* 334 U. S. 24, 32–33. But it certainly does not follow that the adoption of the Fourteenth Amendment or the subsequent readoption of the Civil Rights Act were meant somehow to *limit* its application to state action. The legislative history furnishes not the slightest factual basis for any such speculation, and the conditions prevailing in 1870 make it highly implausible. For by that time most, if not all, of the former Confederate States, then under the control of "reconstructed" legislatures, had formally repudiated racial discrimination, and the focus of congressional concern had clearly shifted from hostile statutes to the activities of groups like the Ku Klux Klan, operating wholly outside the law.[72]

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[71] Section 18 of the Enforcement Act of 1870, Act of May 31, 1870, c. 114, § 18, 16 Stat. 140, 144:

"*And be it further enacted,* That the act to protect all persons in the United States in their civil rights, and furnish the means of their vindication, passed April nine, eighteen hundred and sixty-six, is hereby re-enacted . . . ."

[72] See *United States* v. *Mosley,* 238 U. S. 383, 387–388; *United States* v. *Price,* 383 U. S. 787, 804–805; 2 W. Fleming, Documentary History of Reconstruction 285–288 (1907); K. Stampp, *supra,* n. 34, at 145, 171, 185, 198–204; G. Stephenson, Race Distinctions in American Law 116 (1910).

Against this background, it would obviously make no sense to assume, without any historical support whatever, that Congress made a silent decision in 1870 to exempt private discrimination from the operation of the Civil Rights Act of 1866.[73] "The cardinal rule is that repeals by implication are not favored." *Posadas* v. *National City Bank,* 296 U. S. 497, 503. All Congress said in 1870 was that the 1866 law "is hereby re-enacted." That is all Congress meant.

As we said in a somewhat different setting two Terms ago, "We think that history leaves no doubt that, if we are to give [the law] the scope that its origins dictate, we must accord it a sweep as broad as its language." *United States* v. *Price,* 383 U. S. 787, 801. "We are not at liberty to seek ingenious analytical instruments," *ibid.,* to carve from § 1982 an exception for private conduct—even though its application to such conduct in the present context is without established precedent. And, as the Attorney General of the United States said at the oral argument of this case, "The fact that the statute lay partially dormant for many years cannot be held to diminish its force today."

V.

The remaining question is whether Congress has power under the Constitution to do what § 1982 purports to do: to prohibit all racial discrimination, private and public, in the sale and rental of property. Our starting point is the Thirteenth Amendment, for it was pursuant

[73] The Court of Appeals in this case seems to have derived such an assumption from language in *Virginia* v. *Rives,* 100 U. S. 313, 317–318, and *Hurd* v. *Hodge,* 334 U. S. 24, 31. See 379 F. 2d 33, 39–40, 43. Both of those opinions simply asserted that, at least after its re-enactment in 1870, the Civil Rights Act of 1866 was directed only at governmental action. Neither opinion explained why that was thought to be so, and in each case the statement was merely dictum. See n. 25, *supra.*

to that constitutional provision that Congress originally enacted what is now § 1982. The Amendment consists of two parts. Section 1 states:

> "Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Section 2 provides:

> "Congress shall have power to enforce this article by appropriate legislation."

As its text reveals, the Thirteenth Amendment "is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States." *Civil Rights Cases,* 109 U. S. 3, 20. It has never been doubted, therefore, "that the power vested in Congress to enforce the article by appropriate legislation," *ibid.,* includes the power to enact laws "direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not." *Id.,* at 23.[74]

Thus, the fact that § 1982 operates upon the unofficial acts of private individuals, whether or not sanctioned by state law, presents no constitutional problem. If Congress has power under the Thirteenth Amendment to eradicate conditions that prevent Negroes from buying and renting property because of their race or color, then no federal statute calculated to achieve that objective can be thought to exceed the constitutional power of

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[74] So it was, for example, that this Court unanimously upheld the power of Congress under the Thirteenth Amendment to make it a crime for one individual to compel another to work in order to discharge a debt. *Clyatt* v. *United States,* 197 U. S. 207.

Congress simply because it reaches beyond state action to regulate the conduct of private individuals. The constitutional question in this case, therefore, comes to this: Does the authority of Congress to enforce the Thirteenth Amendment "by appropriate legislation" include the power to eliminate all racial barriers to the acquisition of real and personal property? We think the answer to that question is plainly yes.

"By its own unaided force and effect," the Thirteenth Amendment "abolished slavery, and established universal freedom." *Civil Rights Cases,* 109 U. S. 3, 20. Whether or not the Amendment *itself* did any more than that—a question not involved in this case—it is at least clear that the Enabling Clause of that Amendment empowered Congress to do much more. For that clause clothed "Congress with power to pass *all laws necessary and proper for abolishing all badges and incidents of slavery in the United States.*" *Ibid.* (Emphasis added.)

Those who opposed passage of the Civil Rights Act of 1866 argued in effect that the Thirteenth Amendment merely authorized Congress to dissolve the legal bond by which the Negro slave was held to his master.[75] Yet many had earlier opposed the Thirteenth Amendment on the very ground that it would give Congress virtually unlimited power to enact laws for the protection of Negroes in every State.[76] And the majority leaders in Congress—who were, after all, the authors of the Thirteenth Amendment—had no doubt that its Enabling Clause contemplated the sort of positive legislation that was embodied in the 1866 Civil Rights Act. Their chief spokesman, Senator Trumbull of Illinois, the Chairman of the Judiciary Committee, had brought the Thirteenth

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[75] See, *e. g., Cong. Globe,* 39th Cong., 1st Sess., 113, 318, 476, 499, 507, 576, 600–601.

[76] See, *e. g.,* Cong. Globe, 38th Cong., 1st Sess., 1366, 2616, 2940–2941, 2962, 2986; Cong. Globe, 38th Cong., 2d Sess., 178–180, 182, 192, 195, 239, 241–242, 480–481, 529.

Amendment to the floor of the Senate in 1864. In defending the constitutionality of the 1866 Act, he argued that, if the narrower construction of the Enabling Clause were correct, then

> "the trumpet of freedom that we have been blowing throughout the land has given an 'uncertain sound,' and the promised freedom is a delusion. Such was not the intention of Congress, which proposed the constitutional amendment, nor is such the fair meaning of the amendment itself. . . . I have no doubt that under this provision . . . we may destroy all these discriminations in civil rights against the black man; and if we cannot, our constitutional amendment amounts to nothing. It was for that purpose that the second clause of that amendment was adopted, which says that Congress shall have authority, by appropriate legislation, to carry into effect the article prohibiting slavery. Who is to decide what that appropriate legislation is to be? The Congress of the United States; and it is for Congress to adopt such appropriate legislation as it may think proper, so that it be a means to accomplish the end." [77]

Surely Senator Trumbull was right. Surely Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation. Nor can we say that the determination Congress has made is an irrational one. For this Court recognized long ago that, whatever else they may have encompassed, the badges and incidents of slavery—its "burdens and disabilities"—included restraints upon "those fundamental rights which are the essence of civil freedom, namely, the same right . . . to

[77] Cong. Globe, 39th Cong., 1st Sess., 322. See also the remarks of Senator Howard of Michigan. *Id.*, at 503.

inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens." *Civil Rights Cases,* 109 U. S. 3, 22.[78] Just as the Black Codes, enacted after the Civil

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[78] The Court did conclude in the *Civil Rights Cases* that "the act of . . . the owner of the inn, the public conveyance or place of amusement, refusing . . . accommodation" cannot be "justly regarded as imposing any badge of slavery or servitude upon the applicant." 109 U. S., at 24. "It would be running the slavery argument into the ground," the Court thought, "to make it apply to every act of discrimination which a person may see fit to make as to the guests he will entertain, or as to the people he will take into his coach or cab or car, or admit to his concert or theatre, or deal with in other matters of intercourse or business." *Id.,* at 24–25. Mr. Justice Harlan dissented, expressing the view that "such discrimination practised by corporations and individuals in the exercise of their public or quasi-public functions is a badge of servitude the imposition of which Congress may prevent under its power, by appropriate legislation, to enforce the Thirteenth Amendment." *Id.,* at 43.

Whatever the present validity of the position taken by the majority on that issue—a question rendered largely academic by Title II of the Civil Rights Act of 1964, 78 Stat. 241, 243 (see *Heart of Atlanta Motel* v. *United States,* 379 U. S. 241; *Katzenbach* v. *McClung,* 379 U. S. 294)—we note that the entire Court agreed upon at least one proposition: The Thirteenth Amendment authorizes Congress not only to outlaw all forms of slavery and involuntary servitude but also to eradicate the last vestiges and incidents of a society half slave and half free, by securing to all citizens, of every race and color, "the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens." 109 U. S., at 22. Cf. *id.,* at 35.

In *Hodges* v. *United States,* 203 U. S. 1, a group of white men had terrorized several Negroes to prevent them from working in a sawmill. The terrorizers were convicted under 18 U. S. C. § 241 (then Revised Statutes § 5508) of conspiring to prevent the Negroes from exercising the right to contract for employment, a right secured by 42 U. S. C. § 1981 (then Revised Statutes § 1977, derived from § 1 of the Civil Rights Act of 1866, see n. 28, *supra*). Section 1981 provides, in terms that closely parallel those of § 1982 (then Revised Statutes § 1978), that all persons in the United States "shall have *the same right . . . to make and enforce contracts,* to sue, be parties,

War to restrict the free exercise of those rights, were substitutes for the slave system, so the exclusion of Negroes from white communities became a substitute for the Black Codes. And when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery.

Negro citizens North and South, who saw in the Thirteenth Amendment a promise of freedom—freedom to

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give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens . . . ." (Emphasis added.)

This Court reversed the conviction. The majority recognized that "one of the disabilities of slavery, one of the indicia of its existence, was a lack of power to make or perform contracts." 203 U. S., at 17. And there was no doubt that the defendants had deprived their Negro victims, on racial grounds, of the opportunity to dispose of their labor by contract. Yet the majority said that "no mere personal assault or trespass or appropriation operates to reduce the individual to a condition of slavery," *id.*, at 18, and asserted that only conduct which actually enslaves someone can be subjected to punishment under legislation enacted to enforce the Thirteenth Amendment. Contra, *United States* v. *Cruikshank*, 25 Fed. Cas. 707, 712 (dictum of Mr. Justice Bradley, on circuit), aff'd, 92 U. S. 542; *United States* v. *Morris*, 125 F. 322, 324, 330–331. Mr. Justice Harlan, joined by Mr. Justice Day, dissented. In their view, the interpretation the majority placed upon the Thirteenth Amendment was "entirely too narrow and . . . hostile to the freedom established by the supreme law of the land." 203 U. S., at 37. That interpretation went far, they thought, "towards neutralizing many declarations made as to the object of the recent Amendments to the Constitution, a common purpose of which, this court has said, was to secure to a people theretofore in servitude, the free enjoyment, without discrimination merely on account of their race, of the essential rights that appertain to American citizenship and to freedom." *Ibid.*

The conclusion of the majority in *Hodges* rested upon a concept of congressional power under the Thirteenth Amendment irreconcilable with the position taken by every member of this Court in the *Civil Rights Cases* and incompatible with the history and purpose of the Amendment itself. Insofar as *Hodges* is inconsistent with our holding today, it is hereby overruled.

"go and come at pleasure" [79] and to "buy and sell when they please" [80]—would be left with "a mere paper guarantee" [81] if Congress were powerless to assure that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man. At the very least, the freedom that Congress is empowered to secure under the Thirteenth Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live. If Congress cannot say that being a free man means at least this much, then the Thirteenth Amendment made a promise the Nation cannot keep.

Representative Wilson of Iowa was the floor manager in the House for the Civil Rights Act of 1866. In urging that Congress had ample authority to pass the pending bill, he recalled the celebrated words of Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat. 316, 421:

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." [82]

"The end is legitimate," the Congressman said, "because it is defined by the Constitution itself. The end is the maintenance of freedom . . . . A man who enjoys the civil rights mentioned in this bill cannot be reduced to slavery. . . . This settles the appropriateness of this measure, and that settles its constitutionality." [83]

We agree. The judgment is

Reversed.

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[79] See text accompanying n. 48, *supra.*

[80] *Ibid.*

[81] See text accompanying n. 62, *supra.*

[82] Cong. Globe, 39th Cong., 1st Sess., 1118.

[83] *Ibid.*