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." [21]

The Thirteenth Amendment, then, could provide the constitutional support for the various congressional enactments against private racial discrimination that Congress had previously based on the Commerce Clause.[22] Because the 1866 Act contains none of the limitations written into the modern laws, it has a vastly extensive application.[23]

Peonage

Notwithstanding its early acknowledgment in the *Slaughter-House Cases* that peonage was comprehended within the slavery and involuntary servitude proscribed by the Thirteenth Amendment,[24] the Court has had frequent occasion to determine whether state legislation or the conduct of individuals has contributed to reestablishment of that prohibited status. Defined as a condition of enforced servitude by which the servitor is compelled to labor against his will in liquidation of some debt or obligation, either real or pretended, peonage was found to have been unconstitutionally sanctioned by an Alabama statute, directed at defaulting sharecroppers, which imposed a criminal liability and subjected to imprisonment

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[21] Jones v. Alfred H. Mayer Co., 392 U.S. 409, 440–43 (1968). *See also* City of Memphis v. Greene, 451 U.S. 100, 124–26 (1981).

[22] *E.g.*, federal prohibition of racial discrimination in public accommodations, found lacking in constitutional basis under the Thirteenth and Fourteenth Amendments in the *Civil Rights Cases*, 109 U.S. 3 (1883), was upheld as an exercise of the commerce power in Heart of Atlanta Motel v. United States, 379 U.S. 241 (1965), and Katzenbach v. McClung, 379 U.S. 294 (1965).

[23] The 1968 statute on housing and the 1866 act are compared in Jones v. Alfred H. Mayer Co., 392 U.S. 409, 413–17 (1968). The expansiveness of the 1866 statute and of congressional power is shown by Sullivan v. Little Hunting Park, 396 U.S. 229 (1969) (1866 law protects share in a neighborhood recreational club which ordinarily went with the lease or ownership of house in area); Runyon v. McCrary, 427 U.S. 160 (1976) (guarantee that all persons shall have the same right to make and enforce contracts as is enjoyed by white persons protects the right of black children to gain admission to private, commercially operated, nonsectarian schools); Johnson v. Railway Express Agency, 421 U.S. 454, 459–60 (1975) (statute affords a federal remedy against discrimination in private employment on the basis of race); McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 285–96 (1976) (statute protects against racial discrimination in private employment against whites as well as nonwhites). *See also* Tillman v. Wheaton-Haven Recreation Ass'n, 410 U.S. 431 (1973). The Court has also concluded that pursuant to its Thirteenth Amendment powers Congress could provide remedial legislation for African-Americans deprived of their rights because of their race. Griffin v. Breckenridge, 403 U.S. 88, 104–05 (1971). Conceivably, the reach of the 1866 law could extend to all areas in which Congress has so far legislated and to other areas as well, justifying legislative or judicial enforcement of the Amendment itself in such areas as school segregation.

[24] 83 U.S. (16 Wall.) 36 (1873).