gress to exercise its discretion in fashioning remedies to achieve civil and political equality for all citizens." Within this discretion is the "power to determine that in order adequately to protect the right to equal utilization of state facilities, it is also appropriate to punish other individuals" who would deny such access.[2113]

The Court, however, ultimately rejected this expansion of the powers of Congress in *United States v. Morrison*.[2114] In *Morrison*, the Court invalidated a provision of the Violence Against Women Act [2115] that established a federal civil remedy for victims of gender-motivated violence. The case involved a university student who brought a civil action against other students who allegedly raped her. The argument was made that there was a pervasive bias against victims of gender-motivated violence in state justice systems, and that the federal remedy would offset and deter this bias. The Court first reaffirmed the state action requirement for legislation passed under the Fourteenth Amendment,[2116] dismissing the *dicta* in *Guest*, and reaffirming the precedents of the *Civil Rights Cases* and *United States v. Harris*. The Court also rejected the assertion that the legislation was "corrective" of bias in the courts, as the suits are not directed at the state or any state actor, but rather at the individuals committing the criminal acts.[2117]

[2113] 383 U.S. at 777–79, 784.

[2114] 529 U.S. 598 (2000).

[2115] Pub. L. 103–322, § 40302, 108 Stat. 1941, 42 U.S.C. § 13981.

[2116] 529 U.S. at 621 (quoting Shelley v. Kraemer, 334 U.S. 1, 13 (1948), for the proposition that the Amendment "erects no shield against merely private conduct, however discriminatory or wrongful").

[2117] This holding may have broader significance for federal civil rights law. For instance, 42 U.S.C. § 1985(3) (a civil statute paralleling the criminal statute held unconstitutional in United States v. Harris) lacks a "color of law" requirement. Although the requirement was read into it in Collins v. Hardyman, 341 U.S. 651 (1951), to avoid constitutional problems, it was read out again in Griffin v. Breckenridge, 403 U.S. 88, 97 (1971) (although it might be "difficult to conceive of what might constitute a deprivation of the equal protection of the laws by private persons . . . there is nothing inherent in the phrase that requires the action working the deprivation to come from the State"). What the unanimous Court held in *Griffin* was that an "intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." Id. at 102. As so construed, the statute was held constitutional as applied in the complaint before the Court on the basis of the Thirteenth Amendment and the right to travel; there was no necessity therefore, to consider Congress's powers under § 5 of the 14th Amendment. Id. at 107.

The lower courts have been quite divided with respect to what constitutes a non-racial, class-based animus, and what constitutional protections must be threatened before a private conspiracy can be reached under § 1985(3). *See*, *e.g.*, Action v. Gannon, 450 F.2d 1227 (8th Cir. 1971); Dombrowski v. Dowling, 459 F.2d 190 (7th Cir. 1972); Great American Fed. S. & L. Ass'n v. Novotny, 584 F.2d 1235 (3d Cir.