Attempts to apply this theory to other kinds of private conduct, such as operation of private utilities,[1330] use of permissive state laws to secure property claimed to belong to creditors,[1331] maintaining schools for "problem" children referred by public institutions,[1332] provision of workers' compensation coverage by private insurance companies,[1333] and operation of nursing homes in which patient care is almost all funded by public resources,[1334] proved unavailing. The question is not "whether a private group is serving a 'public function.' . . . That a private entity performs a function which serves the public does not make its acts state action."[1335] The "public function" doctrine is to be limited to a delegation of "a power 'traditionally exclusively reserved to the State.'"[1336]

Public function did play an important part, however, in the Court's finding state action in the exercise of peremptory challenges in jury selection by non-governmental parties. Using tests developed in an earlier case involving garnishment and attachment,[1337] the Court found state action in the racially discriminatory use of such challenges during *voir dire* in a civil case.[1338] The Court first asked "whether the claimed constitutional deprivation resulted from the exercise of a right or privilege having its source in state authority," and then "whether the private party charged with the deprivation could be described in all fairness as a state actor." In answering the second question, the Court considered three factors: "the extent to which the actor relies on governmental assistance and benefits, whether the actor is performing a traditional governmental function, and whether the injury caused is aggravated in a unique way by the incidents of governmental authority."[1339] There was no question that the exercise of peremptory challenges derives from governmental authority (either state or federal, as the case may be); exercise of peremptory challenges is authorized by law, and the number is limited. Similarly, the Court easily concluded that private parties exercise peremptory challenges with the "overt" and "significant" assistance of the court.

[1330] Jackson v. Metropolitan Edison Co., 419 U.S. 345, 352 (1974).
[1331] Flagg Bros. v. Brooks, 436 U.S. 149, 157–159 (1978).
[1332] Rendell-Baker v. Kohn, 457 U.S. 830, 842 (1982).
[1333] American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40 (1999).
[1334] Blum v. Yaretsky, 457 U.S. 991, 1011–1012 (1982).
[1335] Rendell-Baker v. Kohn, 457 U.S. 830, 842 (1982).
[1336] Flagg Bros. v. Brooks, 436 U.S. 149, 157 (1978) (quoting Jackson v. Metropolitan Edison Co., 419 U.S. 345, 352 (1974)).
[1337] Lugar v. Edmondson Oil Corp., 457 U.S. 922 (1982).
[1338] Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991).
[1339] Edmonson v. Leesville Concrete Co., 500 U.S. 614, 620–22 (1991) (citations omitted).