

were general civil rights statutes that broadly attacked racial and other discrimination on the part of private individuals and groups as well as by the states, but the Supreme Court declared unconstitutional or rendered ineffective practically all of these laws over the course of several years.²⁰⁸⁴ In the end, Reconstruction was abandoned and with rare exceptions no cases were brought under the remaining statutes until fairly recently.²⁰⁸⁵ Beginning with the Civil Rights Act of 1957, however, Congress generally acted pursuant to its powers under the Commerce Clause²⁰⁸⁶ until Supreme Court decisions indicated an expansive concept of congressional power under the Civil War amendments,²⁰⁸⁷ which culminated in broad provisions against private interference with civil rights in the 1968 legislation.²⁰⁸⁸ The story of these years is largely an account of the “state action” doctrine in terms of its limitation on congressional powers;²⁰⁸⁹ lately, it is the still-unfolding history of the lessening of the doctrine combined with a judicial vesting of discretion in Congress to reinterpret the scope and content of the rights guaranteed in these three constitutional amendments.

State Action

In enforcing by appropriate legislation the Fourteenth Amendment guarantees against state denials, Congress has the discretion to adopt remedial measures, such as authorizing persons being denied their civil rights in state courts to remove their cases to fed-

modern provisions surviving of these statutes are 18 U.S.C. §§ 241, 242, 42 U.S.C. §§ 1981–83, 1985–1986, and 28 U.S.C. § 1343. Two lesser statutes were the Slave Kidnaping Act of 1866, ch. 86, 14 Stat. 50, and the Peonage Abolition Act, ch. 187, 14 Stat. 546, 18 U.S.C. §§ 1581–88, and 42 U.S.C. § 1994.

²⁰⁸⁴ See generally R. CARR, *FEDERAL PROTECTION OF CIVIL RIGHTS: QUEST FOR A SWORD* (1947).

²⁰⁸⁵ For cases under 18 U.S.C. §§ 241 and 242 in their previous codifications, see *United States v. Mosley*, 238 U.S. 383 (1915); *United States v. Gradwell*, 243 U.S. 476 (1917); *United States v. Bathgate*, 246 U.S. 220 (1918); *United States v. Wheeler*, 254 U.S. 281 (1920). The resurgence of the use of these statutes began with *United States v. Classic*, 313 U.S. 299 (1941), and *Screws v. United States*, 325 U.S. 91 (1945).

²⁰⁸⁶ The 1957 and 1960 Acts primarily concerned voting; the public accommodations provisions of the 1964 Act and the housing provisions of the 1968 Act were premised on the commerce power.

²⁰⁸⁷ *United States v. Guest*, 383 U.S. 745 (1966); *Katzenbach v. Morgan*, 384 U.S. 641 (1966). The development of congressional enforcement powers in these cases was paralleled by a similar expansion of the enforcement powers of Congress with regard to the Thirteenth Amendment, *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968). *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

²⁰⁸⁸ 82 Stat. 73, 18 U.S.C. § 245.

²⁰⁸⁹ On the “state action” doctrine in the context of the direct application of § 1 of the Fourteenth Amendment, see discussion, *supra*.