eral courts,[2090] and to provide criminal[2091] and civil[2092] liability for state officials and agents[2093] or persons associated with them[2094] who violate protected rights. These statutory measures designed to eliminate discrimination "under color of law"[2095] present no problems of constitutional foundation, although there may well be other problems of application.[2096] But the Reconstruction Congresses did not stop with statutory implementation of rights guaranteed against state infringement, moving as well against private interference.

Thus, in the Civil Rights Act of 1875[2097] Congress had proscribed private racial discrimination in the admission to and use of inns, public conveyances, theaters, and other places of public amusement. The *Civil Rights Cases*[2098] found this enactment to be beyond Congress's power to enforce the Fourteenth Amendment. The Court observed that § 1 prohibited only state action and did not reach private conduct. Therefore, Congress's power under § 5 to enforce § 1 by appropriate legislation was held to be similarly limited. "It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation, or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers executive or judicial, when these are subversive of the fundamen-

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[2090] Section 3 of the Civil Rights Act of 1866, 14 Stat. 27, 28 U.S.C. § 1443. *See* Virginia v. Rives, 100 U.S. 313, 318 (1880); Strauder v. West Virginia, 100 U.S. 303 (1880). The statute is of limited utility because of the interpretation placed on it almost from the beginning. *Compare* Georgia v. Rachel, 384 U.S. 780 (1966), *with* City of Greenwood v. Peacock, 384 U.S. 808 (1966).

[2091] 18 U.S.C. §§ 241, 242. *See* Screws v. United States, 325 U.S. 91 (1945); Williams v. United States, 341 U.S. 97 (1951); United States v. Guest, 383 U.S. 745 (1966); United States v. Price, 383 U.S. 787 (1966); United States v. Johnson, 390 U.S. 563 (1968).

[2092] 42 U.S.C. § 1983. *See* Monroe v. Pape, 365 U.S. 167 (1961); *see also* 42 U.S.C. § 1985(3), construed in Griffin v. Breckenridge, 403 U.S. 88 (1971).

[2093] *Ex parte* Virginia, 100 U.S. 339 (1880).

[2094] United States v. Price, 383 U.S. 787 (1966).

[2095] Both 18 U.S.C. § 242 and 42 U.S.C. § 1983 contain language restricting application to deprivations under color of state law, whereas 18 U.S.C. § 241 lacks such language. The newest statute, 18 U.S.C. § 245, contains, of course, no such language. On the meaning of "custom" as used in the "under color of" phrase, *see* Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970).

[2096] *E.g.*, the problem of "specific intent" in Screws v. United States, 325 U.S. 91 (1945), and Williams v. United States, 341 U.S. 97 (1951), and the problem of what "right or privilege" is "secured" to a person by the Constitution and laws of the United States, which divided the Court in United States v. Williams, 341 U.S. 70 (1951), and which was resolved in United States v. Price, 383 U.S. 787 (1966).

[2097] 18 Stat. 335, §§ 1, 2.

[2098] 109 U.S. 3 (1883). The Court also rejected the Thirteenth Amendment foundation for the statute, a foundation revived by Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).