Historical Context of 42 USC § 1983:
The Klu Klux Klan Act of 1871,
Also known as "The Anti-Lynching Law"

(By 3 Sources as Noted)

Source I: West's Law Encyclopedia-
The Ku Klux Klan Act of 1871

The Ku Klux Klan Act of 1871 (ch. 22, 17 Stat. 13 [codified as amended at 18 U.S.C.A. § 241, 42 U.S.C.A. §§ 1983, 1985(3), and 1988]), also called the Civil Rights Act of 1871 or the Force Act of 1871, was one of several important civil rights acts passed by Congress during Reconstruction, the period following the Civil War when the victorious northern states attempted to create a new political order in the South. The act was intended to protect African Americans from violence perpetrated by the Ku Klux Klan (KKK), a white supremacist group.

In March 1871, President Ulysses S. Grant requested from Congress legislation that would address the problem of KKK violence, which had grown steadily since the group's formation in 1866. Congress responded on April 20, 1871, with the passage of the Ku Klux Klan Act, originally introduced as a bill "to enforce the provisions of the Fourteenth Amendment and for other purposes." Section 1 of the act covered enforcement of the Fourteenth Amendment and was later codified, in part, at 42 U.S.C.A. § 1983. Section 2 of the act, codified at 42 U.S.C.A. § 1985(3), provided civil and criminal penalties intended to deal with conspiratorial violence of the kind practiced by the Klan. Both sections of the act were intended to give federal protection to Fourteenth Amendment rights that were regularly being violated by private individuals as opposed to the state.

In addition, the Ku Klux Klan Act gave the president power to suspend the writ of habeas corpus in order to fight the KKK. President Grant used this power only once, in October 1871, in ten South Carolina counties experiencing high levels of Klan terrorism. The act also banned KKK and other conspiracy members from serving on juries.

The Republicans who framed the Ku Klux Klan Act intended it to provide a federal remedy for private conspiracies of the sort practiced by the KKK against African Americans and others. As had become all too apparent by 1871, local and state courts were ineffective in prosecuting Klan violence. Local and state law enforcement officials, including judges, were often sympathetic to the KKK or were subject to intimidation by the group, as were trial witnesses. The Ku Klux Klan Act would allow victims of Klan violence to take their case to a federal court, where, it was supposed, they would receive a fairer trial.

The act, like other civil rights laws from the Reconstruction era, sparked considerable legal debate. Its detractors claimed that the law improperly expanded federal jurisdiction to areas of criminal law better left to the states. The Supreme Court took this view in 1883 when it struck down the criminal provisions of the act's second section on the ground that protecting individuals

from private conspiracies was a state and not federal function (*United States v. Harris,* 106 U.S. 629, 1 S. Ct. 601, 27 L. Ed. 290). This and other rulings stripped the Ku Klux Klan Act of much of its power. Like many other civil rights laws from its era, it went largely unenforced in succeeding decades.

The remaining civil provisions of the act were later codified under 42 U.S.C.A. § 1985(3), where they have been referred to as the conspiracy statute. These provisions hold, in part, that when two or more persons "conspire or go in disguise on the highway or the premises of another, for the purpose of depriving … any person or class of persons of the equal protection of the law," they may be sued by the injured parties. The civil provisions, or § 1985(3), remained generally unused until the 1971 U.S. Supreme Court decision *Griffin v. Breckenridge,* 403 U.S. 88, 91 S. Ct. 1790, 29 L. Ed. 2d 338. In *Griffin,* the Court reaffirmed the original intention of § 1985(3) and ruled that the statute may allow a civil remedy for certain private conspiracies. The *Griffin* case concerned a 1966 incident in Mississippi in which a group of white men stopped a car out of suspicion that one of its three African American occupants was a civil rights worker. The whites proceeded to beat and threaten the African Americans. The Court upheld one victim's claim that, under § 1985(3), the whites had engaged in a conspiracy to deny him the equal protection of the laws of the United States and Mississippi.

In making its decision, the Court was careful to restrict § 1985 claims to those involving actions motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus." This standard meant that the conspirators in question had to be motivated against a class of persons, not a particular political or social issue. By creating this standard, the Court sought to prevent § 1985(3) from becoming a "general federal tort law" that would cover every type of private conspiracy.

Since *Griffin,* the Court has expressed misgivings about expanding the types of classes protected by the statute. Using the *Griffin* standard, the Court later ruled in *United Brotherhood of Carpenters & Joiners v. Scott,* 463 U.S. 825, 103 S. Ct. 3352, 77 L. Ed. 2d 1049 (1983), that economic or commercial groups could not be considered a class protected by the law. In that case, the Court rejected a claim by nonunion workers who had been attacked by union workers at job sites.

During the 1980s and 1990s, lower federal courts upheld the use of § 1985(3) against antiabortion protesters who blockaded family planning clinics with large demonstrations and disruptions. In one ruling, a federal district court held that an antiabortion group had conspired to violate the right to interstate travel of women seeking to visit family planning clinics (*NOW v. Operation Rescue,* 726 F. Supp. 1483 [E.D. Va. 1989]).

However, in a 1993 case, *Bray v. Alexandria Women's Health Clinic,* 506 U.S. 263, 113 S. Ct. 753, 122 L. Ed. 2d 34, the Supreme Court ruled that § 1985(3) could not be used against antiabortion protesters. The Court held that women seeking abortion cannot be considered a class under the terms of the law.

See: Civil Rights Acts; Civil Rights Cases; Civil Rights Movement; Jim Crow Laws.

Source II: Acts of Congress-

The Ku Klux Klan Act of 1871

The Enforcement Act (17 Stat. 13), commonly known as the Ku Klux Klan Act or the Civil Rights Act of 1871, was a response to extraordinary civil unrest during the Reconstruction period. This unrest threatened the lives and the political and economic rights of all newly freed slaves. Although closely tied to the era in which it was enacted, portions of the statute remain extraordinarily important to modern civil rights enforcement.

Major Features of the Act

Section 1 of the act (now codified at 42 U.S.C. § 1983, and called in this entry "section 1983"), provided that any person deprived of rights conferred by the Constitution by someone acting "under color" of law (i.e., a state or local official acting with legally granted authority, or, through purporting to act within such limits, an official may be misusing authority) or custom could bring suit in federal court and recover damages or equitable relief. Section 2 (now codified at 42 U.S.C. § 1985, and called in this entry "section 1985") of the act provided criminal sanctions and a civil damages action for conspiracy to commit a range of offenses. These offenses included attempting to overthrow the government, intimidating witnesses or parties to legal action, using threat or force to influence jurors, or going on the highway in disguise to deprive others of the exercise of constitutional rights guaranteed by the Fourteenth and Fifteenth Amendments. The section is used less frequently than section 1, but is still a relevant and powerful piece of civil rights legislation.

Section 3 of the act authorized the president to use the U.S. armed forces to put down rebellions, and section 4 permitted the suspension of the writ of habeas corpus. Section 5 provided that jurors in U.S. courts must not be parties to combinations or conspiracies and that they must swear, on penalty of perjury, that they did not have any allegiances to groups dedicated to the overthrow of the government or denial of constitutional rights. Section 6 (now 42 U.S.C. § 1986), provided that persons with knowledge of a conspiracy who failed to take reasonable actions to prevent wrongful acts from occurring could be named as a defendant and be held liable for any death caused by failure to intercede.

Historical Circumstances Leading to the Act

Knowing the act's background is essential to understanding its place in history and its contemporary relevance. The United States Supreme Court, in its interpretation of the act, has taken that historical background extremely seriously.

The act was intended to enforce the Fourteenth Amendment. The motivation for its passage really begins with events that took place near the end of the Civil War in 1863. At the time, President Abraham Lincoln issued a simple statement called the Emancipation Proclamation. This document freed the slaves in the states that had seceded from the Union. Because the Emancipation Proclamation was a presidential order, Congress was concerned it might be

overridden by subsequent legislation. Congress then passed the Thirteenth Amendment, which abolished slavery and involuntary servitude and gave Congress the power to enforce its provisions.

It soon became clear that the Thirteenth Amendment was insufficient to end the conditions of servitude in which the freed slaves found themselves. Many states enacted "Black Codes." These were laws that so closely regulated the lives of the former slaves as to be just short of slavery. For example, unemployed African Americans could be fined as vagrants or imprisoned. To enter some states, they had to post bond. As a result, African Americans found themselves limited to working for their former masters, and still ostracized and inhibited from enjoying any fruits of freedom.

Congress passed several historic civil rights acts in an effort to remedy the limitations of the Thirteenth Amendment. The Act of April 9, 1866 gave the former slaves citizenship and some basic economic and legal rights. Doubts as to the constitutional validity of this law led to the adoption of the Fourteenth Amendment to the Constitution in 1868. Like the 1866 act, the Fourteenth Amendment bestowed citizenship as a national birthright, overruling the Dred Scott Decision of 1857. It contained broader prohibitions against discrimination than those in the 1866 act. It guaranteed that no state would make laws to abridge "the privileges and immunities of citizens" or deprive any person of "life, liberty or property without due process of law," or "deny any person within its jurisdiction the equal protection of the laws." Section 5 of the Fourteenth Amendment gave Congress the power to enforce its provisions.

The Southern states initially refused to ratify the Fourteenth Amendment. In response, Congress instituted military, or radical, reconstruction, in the South. Congress's efforts to exert greater control were successful in reconstituting the state electorates, but unsuccessful in stemming the rebelliousness of state officials and the citizenry. Evidence of the brutal lynchings of former slaves and the destruction of property began to emerge. These attacks were the work of a number of white supremacy groups, the most notorious of which was the Ku Klux Klan. Their acts were intended to deter African Americans from exercising any of the basic rights granted to them by the Civil Rights Act of 1866 or the Fourteenth and Fifteenth Amendments. Even worse, there was evidence that state officials were encouraging this vigilante action and were deliberately unresponsive to pleas they utilize law enforcement power to stop it. Even if perpetrators were apprehended, there was no commitment within the state legal systems to bringing them to justice or mete out punishment.

In March 1871 President Ulysses S. Grant came to Congress and requested emergency legislation to stem what he described as virtual anarchy in the South. He told Congress the states would not and could not control the violence. The legislative response to this plea was the Civil Rights Act of April 20, 1871. It was known as the Ku Klux Klan Act because of that group's prominent participation in the violence.

Legislative History of the Act

Section 5 of the Fourteenth Amendment gave Congress the power to address the problem President Grant described. Representative Samuel Shellabarger, a Republican from Ohio,

introduced "a bill (H.R. No. 320) to enforce the provisions of the fourteenth amendment to the Constitution of the United States, and for other purposes." Section 1, the civil remedy for violation of the Fourteenth Amendment, was derived from the 1866 Civil Rights Act. It generated little debate among the representatives. The controversial portion of the act was section 2, which imposed its penalties on "any person" conspiring to do certain acts. Opponents argued that the provision would be unconstitutional because it was not limited to those acting under color of state law. This meant it could potentially reach purely private parties. The sections granting the president the power to suspend habeas corpus and to use armed force to suppress violence were also argued to be beyond the scope of the Fourteenth Amendment's protection. First the House, and then the Senate, passed the bill. The chair of the Senate Judiciary Committee, Lyman Trumbull, a Republican from Illinois, was a proponent of the act though he interpreted it rather narrowly. One controversial amendment, known as the Sherman Amendment, sought to make cities and counties liable for violence occurring within their borders. The House refused to concur, and legislators held a conference committee meeting. The Sherman Amendment was rewritten to impose liability only for persons who knew of a conspiracy to violate civil rights and who could have prevented it. Finally both Houses agreed and the Ku Klux Klan Act became law on April 20, 1871.

History of the Act from 1871 to 1961

If you try to find the Klu Klux Klan Act among current United States statutes, you will be unsuccessful. In 1874 the statutes were revised in what was to be merely a procedural reorganization. Sections 1, 2, 3, 5, and 6 were scattered throughout the Revised Statutes. Section 4, permitting the suspension of habeas corpus, provided its own expiration date (after the end of the next regular section of Congress) and so did not make it into the Revised Statutes. A modern reader encounters only remnants and revisions of the original Act located in several places in the United States Code.

The various provisions of the Ku Klux Klan Act were not used frequently after their enactment. One reason was that the Supreme Court gave an extremely narrow interpretation to the privileges and immunities clause of the Fourteenth Amendment in the *Slaughterhouse Cases* (1873). In these cases, the Court held that only privileges and immunities of national citizenship were protected by the provision. Most civil rights were deemed to be privileges of state citizenship and fell outside the protection of the Fourteenth Amendment. This interpretation meant that states, not the federal government, would be the primary protectors of civil rights. Since the Ku Klux Klan Act was designed to enforce the Fourteenth Amendment, the result was that there was not much left to enforce. Subsequent decisions further narrowed the Fourteenth Amendment by ruling that it applied only to state action (*United States v. Cruikshank* [1876]; *Virginia v. Rives* [1879]). The Court's decision in *United States v. Harris* (1882) invalidated the criminal conspiracy section of the act for the same reason.

The result of these decisions was that states were once again primarily responsible for protecting the rights of their citizens, and Black Codes reappeared and melded with a system of social apartheid that became known as "Jim Crow." Congress, which had lost any political will to protect and enforce the Reconstruction Amendments and legislation, was content to see the

statutes fall into disuse. Consequently, discriminatory laws affected not only African Americans but many other racial minorities.

Key Provisions and Their Current Relevance

Of the many sections of the Ku Klux Klan Act, the most influential today is the little debated section 1983. The section provides in part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

The language of the statute is much the same as it was in 1871. Interestingly, the 1874 revisions resulted in the apparently inadvertent insertion of the words "and laws," which has resulted in a large expansion of the statute's coverage. Reference to the District of Columbia and to territories was added in 1979.

Section 1983 allows people to sue for state and local violations of the Constitution and federal law. It enables private citizens to affirmatively enforce these rights. Lawsuits may be brought in federal or state court, and the remedies available for violations include damages and injunctive relief. A key to Section 1983's revitalization was when the Supreme Court breathed new life into the Fourteenth Amendment. The Court developed an extensive theoretical framework for the due process and equal protection clauses, under which it recognized a wide variety of federally protected rights. Also, in *Monroe v. Pape* (1961), the Supreme Court interpreted Section 1983's "under color of law" requirement to cover cases in which state and local officials were not acting in accordance with state law but in violation of it. This was the beginning of a series of interpretations that loosened the judicial stranglehold on civil rights legislation that had been passed during the Reconstruction era.

More recently, a vast number of Supreme Court decisions relate to Section 1983. They cover issues such as the conditions under which governmental entities can be held liable for acts of their various employees, immunities that can be asserted to preclude suits against particular officials, the requirements for awards of damages and injunctive relief, circumstances in which federal courts should abstain from deciding a Section 1983 claim, and more. The rights litigated under Section 1983 are extremely varied, including not only equal protection and due process, but constitutional rights made applicable to the states by the Fourteenth Amendment and many federal statutes.

Section 1985 provides a civil action for those injured by conspiracies formed to prevent an officer of the United States from performing official duties, to obstruct justice, or "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of the equal privileges and immunities under the laws." Unlike Section 1983, the statute was interpreted to apply to the actions of private parties in *Griffin v. Breckenridge* (1971). This interpretation is consistent with the statute's original goal of reaching

Ku Klux Klan conspirators. Although it applies to private individuals, the statute has a narrow scope because the Supreme Court has sought to ensure that it does not encompass ordinary civil wrongs or crimes. To confine the type of private behavior covered by section 1985, the Court wrote in the *Griffin* case that "there must be some racial or perhaps other class-based invidiously discriminatory animus behind the conspirators' action."

Bray v. Alexandria Women's Health Clinic (1993) illustrates this limitation. In *Bray,* a group of plaintiffs who provided abortions or wished to use abortion clinics sought unsuccessfully to use section 1985 against members of Operation Rescue for their organization and coordination of demonstrations blocking access to abortion clinics. Justice Antonin Scalia, writing for the Court, rejected arguments that the conspiracy was against women as a class, or that it was designed to defeat exercise of the right to travel guaranteed in the Constitution. He concluded that "women seeking abortion" was not a qualifying class.

Although the criminal counterpart to section 1985 was found unconstitutional, a very similar criminal conspiracy statute derived from the Civil Rights Act of 1870 survived, and was interpreted to reach private conspiracies. Another viable, but rarely used provision, section 1986 (42 U.S.C. Section 1986), permits an action for neglecting to prevent a conspiracy. Courts have found that plaintiffs seeking to establish a violation of section 1986 must also establish a violation of Section 1985. An example of a potentially valid claim stems from a case where African American motorists alleged that the attorney general of New Jersey had conspired with members of his office staff to conceal the existence of racial profiling from the judiciary and Justice Departments, and that, despite his knowledge of racially motivated conspiracies among the state police, he did nothing to stop the conspirators.

Another provision grants the president the power to utilize the armed forces of the United States to combat insurrections. Although it has not been used frequently, it was invoked by President Dwight Eisenhower to order federal troops to Little Rock in 1957 when the governor of Arkansas had ordered the Arkansas National Guard to block school desegregation.

In conclusion, though the Klu Klux Klan Act was a response to a unique threat to the exercise of constitutional rights, the act was drafted broadly enough that portions of it, particularly section 1983, are vital to modern enforcement of constitutional and federal statutory rights.

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Source III: Wikipedia:

Civil Rights Act of 1871

The **Civil Rights Act of 1871**, also known as the **Ku Klux Klan Act of 1871**, is an important federal statute in force in the United States. Several of its provisions still exist today as codified statutes, but the most important still-existing provision is **42 U.S.C. § 1983**. The Act was originally enacted a few years after the American Civil War, along with the 1870 Force Act. One of the chief reasons for its passage was to protect southern blacks from the Ku Klux Klan by providing a civil remedy for abuses then being committed in the South. The statute has been subject to only minor changes since then, but has been the subject of voluminous interpretation by courts.

The document reads:[1]

> Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

For most of its history, the Act had very little effect. The legal community did not think the statute served as a check on state officials, and did not often litigate under the statute. However, this changed in 1961 when the Supreme Court of the United States decided *Monroe v. Pape*.[2] In that case, the Court articulated three purposes that underlay the statute: "1) 'to override certain kinds of state laws'; 2) to provide 'a remedy where state law was inadequate'; and 3) to provide 'a federal remedy where the state remedy, though adequate in theory, was not available in practice.'" Blum & Urbonya, Section 1983 Litigation, p. 2 (Federal Judicial Center, 1998) (quoting *Monroe v. Pape*). *Pape* opened the door for renewed interest in Section 1983.

Now the statute stands as one of the most powerful authorities with which State and federal courts may protect those whose rights are deprived. Section 1983 of the Civil Rights Act provides a way individuals can sue to redress violations of federally protected rights, like the First Amendment rights and the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Section 1983 can be used to enforce rights based on the federal constitution and federal statutes, such as the prohibition of public sector employment discrimination based on race, color, national origin, sex and religion. Section 1983 rarely applies to private employers.

History

Legislation

Main article: Ku Klux Klan

The Ku Klux Klan Act was originally passed because some governors in the South during Reconstruction were unwilling or unable to act against violence by the Ku Klux Klan. In lynching cases, whites were almost never indicted by all-white coroner's juries, and even when there was an indictment, all-white trial juries were extremely unlikely to vote for conviction. In many states, use of black militiamen would ignite a race war. When Republican governor William Woods Holden of North Carolina called out the state militia against the Klan in 1870, the result was a backlash culminating with his impeachment in 1871. Many Southern states had already passed anti-Klan legislation, and, in February 1871, former Union general Benjamin Franklin Butler, a US House of Representatives member from Massachusetts, introduced federal legislation modeled on these acts. Some politicians at the national level professed doubt about Klan activities, but the tide was turned in favor of the bill by the governor of South Carolina's appeal for federal troops, and by reports of a riot and massacre in a Meridian, Mississippi courthouse, during which a black state representative was forced to hide in the woods in order to escape a likely death.

In 1871, Republican President Ulysses S. Grant signed Butler's legislation, the Ku Klux Klan Act.

Use during Reconstruction

Main article: Reconstruction era of the United States

Under the Klan Act during Reconstruction, federal troops were used rather than state militias to enforce the law, and Klansmen were prosecuted in federal court, where juries were often predominantly black. Hundreds of Klan members were fined or imprisoned, and *habeas corpus* was suspended in nine counties in South Carolina. These efforts were so successful that the Klan was destroyed in South Carolina and decimated throughout the rest of the country, where it had already been in decline for several years. The Klan was not to exist again until its recreation in 1915, but it had already achieved many of its goals in the South, such as denying voting rights to Southern blacks.

Later uses

Although some provisions were ruled unconstitutional in 1882, the Force Act and the Klan Act have been invoked in later civil rights conflicts, including the 1964 murders of Chaney, Goodman, and Schwerner; the 1965 murder of Viola Liuzzo; and in *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993), in which the court ruled that "The first clause of 1985(3) does not provide a federal cause of action against persons obstructing access to abortion clinics."

It was also utilized in the 1966 case of Tinker v. Des Moines.By the time Beth Tinker was in school, the law had expanded to make even school boards liable if they stood in the way of people's federally-protected rights.

Today, the Civil Rights Act can be invoked whenever a state or local government official violates a federally guaranteed right. The most common use today is to redress violations of the Fourth Amendment's protection against unreasonable search and seizure. Such lawsuits concern false arrest and police brutality, most notably in the Rodney King case.

Notes

1. ^ Ross, Darrell L. (2003). *Civil Liability in Criminal Justice Third Edition*. Anderson Publishing Co..
2. ^ *Monroe v. Pape*, 365 U.S. 167 (1961).