

NEW YORK UNIVERSITY SCHOOL OF LAW
OFFICE OF DEVELOPMENT AND ALUMNI RELATIONS
THE 24TH ANNUAL DERRICK BELL LECTURE ON RACE IN AMERICAN SOCIETY
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[Civil Rights Act of 1866](#), parts of which are now codified at 42 USC section 1981, 1982, and 1983.

During Reconstruction, Congress passed several statutes aimed at protecting the rights of the newly freed slaves, many of them over the veto of President Andrew Johnson. One such law was the Civil Rights Act of 1866, which declared that all people born in the United States were U.S. citizens and had certain inalienable rights, including the right to make contracts, to own property, to sue in court, and to enjoy the full protection of federal law. The act gave the U.S. district courts exclusive jurisdiction over criminal cases related to violations of the act, and concurrent jurisdiction, along with the U.S. circuit courts, of all civil and criminal cases affecting those who were unable to enforce in state court the rights guaranteed by the act. The Civil Rights Act began a gradual transformation of the federal courts into the primary forums for individuals to enforce their constitutional and statutory rights.

[Section 1981 of the Civil Rights Act of 1866 \(Section 1981\)](#)

A federal law prohibiting discrimination on the basis of race, color, and ethnicity when making and enforcing contracts. Section 1981 specifically grants all individuals within the US jurisdiction the same rights and benefits as "enjoyed by white citizens" regarding contractual relationships ([42 U.S.C. § 1981\(a\)](#)). Courts have interpreted Section 1981 to apply to the employment context, including **at-will employment** and the **independent contractor** relationship. Section 1981 also prohibits retaliation. It does not prohibit discrimination on the basis of any other **protected class**.

Section 1981 applies to all private employers and labor organizations, but does not apply to discrimination by the US federal government as an employer. It also does not apply to state or local government employers.

Section 1981 does not require an individual to exhaust administrative remedies by filing a charge before any government agency and waiting for that charge to be adjudicated or released before proceeding to court.

There is no damages cap under Section 1981.