

Congress and the First Civil Rights Era, 1861-1918

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Overview of the Book

We propose a book that examines how the issue of civil rights for black Americans emerged and developed in the U.S. Congress from the Civil War through the end of World War I, a period we refer to as the “First Civil Rights Era.” Congress will serve as the focus of analysis for the following reason: while the president and the courts played an important role in the trajectory of civil rights during this period, the establishment of said rights was *statutory*. That is, Congress was the forum in which civil, political, and social equality for black Americans originated, through landmark statutes (the Civil Rights Acts of 1866 and 1875; the Reconstruction Acts, and the Enforcement Acts) and legislation that would lead to foundational constitutional amendments in the remaking of American society (the 13th, 14th, and 15th Amendments).

The book will take a historical, developmental approach and detail how the U.S. Congress struggled with civil rights issues across this era in the Nation’s history, from Reconstruction through Redemption, when blacks were first empowered and then reduced to second-class citizens, and through the bleak period of the late-19th and early-20th centuries, when Congress was almost wholly unreceptive to black Americans’ plight and civil rights policy reached a post-Civil War low point.

In laying out the political-economic history of civil rights during this era, we will make two distinct contributions to the political science literature. First, we will analyze how the course of civil rights policy in Congress depended on the “electoral connection.”¹ Second, we will examine how the Republican Party – the driving force for the establishment of civil rights –

¹ The standard work on the electoral connection in Congress is David R. Mayhew, *Congress: The Electoral Connection* (New Haven: Yale University Press, 1974). Since Mayhew’s landmark study, a number of works have examined how variation in the electoral connection may affect how members of Congress behave.

struggled internally and evolved on civil rights. We will briefly describe each of these contributions in turn.

The book's first political science contribution will be to show that the civil rights agenda in Congress during the First Civil Rights Era was determined in large part by Northern public opinion and subsequent congressional elections. While Reconstruction of the South after the Civil War is often referred to as "Radical Reconstruction," the Radical Republicans – those who sought full civil, political, and social equality for black Americans -- were not the pivotal force in policymaking; moderate Republicans – those who sought a slower, more-careful integration of the Freedmen into the American body politics – determined the course of Reconstruction policy, and Radical policy prescriptions that would have been created a true societal upheaval (e.g., land confiscation and redistribution to the former slaves; permanent suffrage and office-holding restrictions on former Confederates; and the imposition of long-term martial law in the former Confederate states) were rejected as too extreme for the Northern public. At the same time, overreach by the Democrats in the first two years after the Civil War and countless missteps by President Andrew Johnson allowed the Radicals to persuade moderate Republicans (and the Northern public) to accept policies that were more revolutionary than seemed possible for the time. That said, the public's appetite for perpetual attention to the civil rights of black Americans and the political affairs of the South was limited, and increasing pressure was placed on Northern Republicans (helped along by an economic panic and subsequent depression) to move beyond Reconstruction.

In short, to fully understand how civil rights policy developed during the Civil War and Reconstruction eras, and afterward, we must understand the politics that were involved – and these politics were, at their heart, electoral-based. The representative-constituency linkage,

embodied in the electoral connection, drove policymaking – just as it does in the contemporary era. Civil Rights became less important for Northern constituents over time, and Republicans in Congress responded accordingly. While some Republicans continued to support civil rights, many sought to move the party in a different direction (toward economic development and serving the needs of big business). This transformation occurred over several decades, and was not linear. For example, during the post-Reconstruction period known as Redemption, a significant attempt was made to resuscitate enforcement of voting rights, but failed. Politics was at the heart of this failed attempt, too. In a period (the 1880s) of razor thin electoral margins nationally, important elements in the GOP were not yet willing to cede complete control of the South to the Democrats.

Eventually, civil rights advocacy made little sense except to a small handful of Republicans. During the 1890s, the emergence of state-level Jim Crow restrictions effectively eliminated the possibility of a Southern wing of the GOP; at the same time, the Republicans had become competitive or ascendant in every other region of the country. Thus, between 1891 and 1918, almost no Republicans in Congress acted on civil rights issues, as blacks were not viewed as electorally pivotal anywhere in the country.

The book's second political science contribution will be to reveal the internal dynamics of the Republican Party during the First Civil Rights Era. The Republican Party is often characterized as a "unitary actor" in 19th Century civil rights narratives – that is, that the GOP was the purveyor and protector of black rights. The story, in fact, is considerably more complex than that. The Republican Party was a collection of different ideological groups. All were cognizant of electoral considerations, to be sure, but real ideological differences existed over how Reconstruction should be carried out – and what was constitutionally viable. At the heart of

these differences was a division over the nature of federalism, and the degree to which the federal government could – or should – be strengthened to protect and enforce black rights. A significant portion of the GOP – the moderates – felt strongly about maintaining states’ rights, as embodied in the balance the Framers’ struck between federal and state power, and would only go so far in supporting (enabling) new legislation that would “federalize” civil rights protections.² Another portion of the GOP – the Radicals – were ready to expand federal power considerably, and were happy to go to any length to protect the civil rights of blacks in the South. The Radicals were not willing to be constrained by 18th century visions of federal-state relations; they believed a new, revolutionary moment was in the offing, and were ready to empower the federal government to make it happen. The struggle between the moderates and Radicals – and the relative influence of each group over time – would dictate how Reconstruction policy would develop.

In detailing the political-economic history of civil rights in Congress from the Civil War through World War I, we will use a variety of data and evidentiary sources including bill introductions, congressional roll-call votes, congressional proceedings, legislative hearings, and media (newspaper) coverage. Special attention will be given to those issues that elicited roll calls on the floor, as they possessed the ability to effect meaningful change. When analyzing votes, we will use standard descriptive techniques (like reporting the yeas and nays by party) as well as statistical measures and techniques, like NOMINATE scores and regression analysis, to discern more specific patterns based on factors like member ideology and district/state

² By the early 1870s, a portion of these moderate Republicans would embody a new “liberal” Republicanism (and some would even break from the GOP entirely and form the Liberal Republican Party). Led by Senator Carl Schurz (MO), among others, these members believed (or came to believe) that using federal power to effect change in the South was not viable. Only time would improve race relations, they held, and that federal power could not force white Southerners to change their beliefs. And, in fact, such attempts at federal coercion would only make race relations worse.

characteristics.³ Focusing on the roll-call record will allow us to highlight the intra-Republican conflicts that had such an impact on civil rights policy through these years.

A chronological outline of the book follows this general overview. There will be eight chapters. Chapters 3 through 7 have already been written in conference-paper form. And a portion of Chapter 7 has appeared in a stand-alone journal article: “Between Reconstructions: Congressional Action on Civil Rights, 1891-1940,” published in *Studies in American Political Development*.⁴ In December 2016, in advance of the SPSA meetings, we will write a paper that will become Chapter 2. At that point, we will have written material for all substantive chapters. In 2017, we will simply need to edit and weave them together, as well as to write an Introduction and a Conclusion. We will provide a full draft of the book by June 1, 2017.

Chronological Outline:

Chapter 1: Introduction

We will cover most of the basic themes detailed above, by providing a historical overview of how Congress dealt with the issue of civil rights between 1861 and 1918 – a period we call the First Civil Rights Era – and discussing how a study of the political-economic history of civil rights can contribute to important theoretical debates in race, congressional behavior, and political parties literatures. We will also discuss briefly the pre-Civil War era, and how the civil rights issue was the successor to the slavery issue, which divided the country for decades and eventually led to the Civil War.

³ NOMINATE scores represent a measure of member ideology (or “revealed preferences”) that is now ubiquitous in the literature. See Keith T. Poole and Howard Rosenthal, *Congress: A Political-Economic History of Roll Call Voting* (New York: Oxford University Press, 1997).

⁴ Jeffery A. Jenkins, Justin Peck, and Vesla M. Weaver, “Between Reconstructions: Congressional Action on Civil Rights, 1891-1940,” *Studies in American Political Development* 24 (2010): 57-89.

Chapter 2: Imagining Civil Rights: The Civil War Era, 1861-1865

We will describe how civil rights for black Americans were forced by the exigencies of war, thanks to the congressional passage of the First and Second Confiscation Acts – which freed the slaves in a piecemeal way after Union military victories and occupation of parts of the South – and later Lincoln’s Emancipation Proclamation. With slaves now free, the question of how they should be treated (and what rights they possessed) demanded attention. We will then cover the creation of the Freedmen’s Bureau, a new federal entity that was intended to assist millions of former slaves in their transition to freedom and independence, and the introduction and passage of legislation that would become the 13th Amendment, which abolished slavery for good. Finally, we will discuss the intra-party disagreement that occurred between Lincoln and Republicans in Congress on how the South would in fact be “reconstructed”; Lincoln preferred an amicable reconciliation with lenient terms, while congressional Republicans (led by the Radicals) favored an approach that would be considerably more punitive.

Chapter 3: The Battle Over Civil Rights: Presidential Reconstruction, 1865-1867

The two years after the Civil War, which broadly overlap with the 39th Congress (1865-67), were a defining period in the emergence of policy to protect the rights of black Americans. This period is often referred to as Presidential Reconstruction, as President Andrew Johnson – now in the White House, following Lincoln’s assassination – attempted to define the conditions by which the South would be integrated back into the Union. Johnson’s policy – implemented during a congressional recess – allowed the white leaders of the South to quickly reestablish themselves and placed former slaves in a subservient position: slavery was abolished, but “Black Codes” were allowed, which severely limited the rights of the Freedmen. Republicans, once Congress was back in session, fought Johnson, and after several veto battles took control of

Reconstruction policy. Johnson's persistent and public intransigence allowed the Radicals to push Reconstruction policy in a more extreme direction – more extreme than many moderates initially wanted – and the 39th Congress saw a series of landmark laws adopted: the Civil Rights Act of 1866, which provided citizenship to the former slaves and guaranteed equal protection of the laws; a New Freedmen's Bureau Act, which re-established and expanded the Bureau for two more years; legislation that became the Fourteenth Amendment, which broadened the rights provided under the 1866 Act and guaranteed a republican form of government; and the First Reconstruction Act, which created five military zones in the former Confederate states to govern readmission and, perhaps most importantly, allowed the Freedmen to vote in the establishment of new state constitutional conventions. We will cover the Johnson vs. congressional Republicans drama, and the resulting landmark civil rights legislation that was produced, in detail.

Chapter 4: The Establishment of Civil Rights: The Early Congressional Reconstruction Years, 1867-1871

The four years that comprised the 40th and 41st Congresses (1867-1871) were in many ways the high-water mark of Reconstruction. The congressional Republicans had defeated Johnson, and nearly impeached him, and welcomed Ulysses Grant as the new U.S. president. During these years, the Republicans completed their vision of Southern Reconstruction; such a vision would be determined by moderate members, but would be tilted in important ways by the Radicals (thanks to continued opposition by Democrats, and regular violence against blacks in the South). Three additional Reconstruction Acts (the Second, Third, and Fourth Reconstruction Acts) were adopted to clarify the military's role in registering new (black) voters and determining voter eligibility; legislation that would become the Fifteenth Amendment, which eliminated race, color, or previous condition of servitude as conditions for voting, was passed; the Department of

Justice, a cabinet level office that would handle criminal prosecutions and civil suits, was established; and three Enforcement Acts (the First, Second, and Third Enforcement Acts) were adopted to empower the federal courts to oversee elections and preserve order at polling places. We will cover these enactments, and the intra- and inter-party politics that helped shape them, in detail.

Chapter 5: The Retreat from Civil Rights: The Late Congressional Reconstruction Years, 1871-1877

The three Congresses that spanned 1871-1877, the 42nd, 43rd, and 44th, represent a retreat from Reconstruction. The period began optimistically enough, with the passage of a new Enforcement Act (the Fourth overall, also known as the Ku Klux Klan Act), which provided the president with new authority to use the military (and suspend the writ of *habeas corpus*) to eliminate violent conspiracies in the South and ensure that civil and voting rights were protected. Thanks to this new authority, Grant used the army to break the Klan and created an environment for (relatively) violence-free elections in the South in 1872. But it all went downhill after that. Republican divisions on civil rights – and further expansion of federal power – surfaced in a public way during proceedings on a Fifth Enforcement Act, which sought to provide further protections at polling stations. While the legislation was enacted, it was gutted of any real authority. Shortly thereafter, an economic panic and subsequent depression resulted in the GOP losing majority control of the House in the 1874 midterms. The Northern public was increasingly tired of the time and energy that was being devoted to Reconstruction and the protection of black rights, and Republicans in Congress increasingly lost interest as a result. During this period, the Freedmen's Bureau was discontinued, many former Confederates were re-qualified to hold public office, a new law to provide equal access to public accommodations (the Civil Rights Act of 1875) was

shorn of any means of enforcement, and a new Enforcement bill to protect voting rights in advance of the 1876 elections was defeated. Finally, the entire South was lost to the Democrats, following the 1876 presidential election and subsequent “Compromise of 1877.” We will cover these various events – and thus the “demise” of Reconstruction – in detail.

Chapter 6: The Erosion of Civil Rights: The Redemption Years, 1877-1891

By late-1877, the entire South had fallen into Democratic hands, and a period of “Redemption” had begun, wherein black citizenship and voting rights would slowly be wiped away. Southern Democrats, now in firm control of Congress, tried to repeal the various Enforcement Acts, but could not overcome President Hayes’s veto. While one segment of the Republican Party – the “Half Breeds” – sought to cut ties with the Radical’s southern experiment and more closely align with northern business interests, another segment of the party – the “Stalwarts” – sought to maintain a southern presence and protect the rights of the Freedmen. Stalwart efforts would include a series of election contests (disputes) in Southern states and districts, based on charges of fraud and violence; an attempt to desegregate public transportation, after the Supreme Court in the *Civil Rights Cases* ruled the Civil Rights Act of 1875 to be unconstitutional; an effort to create a program of federal education, which would raise up the poor classes in the South (including blacks) and threaten the caste system and governing (white) hierarchy; and, most important, a push to enact a new Enforcement Act to protect voting rights, which was sponsored by Henry Cabot Lodge (R-MA). The Lodge Bill passed in the House in 1890 but stalled in the Senate, when a number of western (“silver”) Republicans joined the Democrats to prevent its passage. We will cover these continued Republican efforts to support black rights – even as many in the party sought to move beyond such efforts, and Democrats increasingly controlled political (and structural) authority to thwart them – in detail.

Chapter 7: The Elimination of Civil Rights: The Wilderness Years, 1891-1918

After the Lodge Bill narrowly failed in 1890-91, the Democrats in Congress acted swiftly to protect against additional civil rights encroachments in the South. The state-level initiatives to disenfranchise based on presumptive non-racial considerations – known as Jim Crow – are well known. At the congressional level, in the 52nd Congress (1891-93), the Democrats enjoyed unified control of the federal government for the first time since the antebellum era, and they quickly used their leverage to repeal the major elements of the various Enforcement Acts. They also eliminated the prohibition on former-Confederate officers from holding similar positions in the U.S. army or navy. And, after their national electoral successes in the 1894-96 elections, the Republicans gave up their pursuit of a southern wing of the party. Election contests were no longer pushed in the newly-Jim Crow South, and a civil rights agenda in Congress was dropped. A Republican-Populist alliance made a brief attempt around the turn of the 20th century to reduce the ratio of representation enjoyed by Southern states, arguing that Jim Crow prevented a “republican form of government.” But the attempt went nowhere. In the early 1900s, Republican Presidents Theodore Roosevelt and William Howard Taft distanced the GOP from civil rights enforcement in the South, and Republican efforts in Congress quickly dissipated entirely. Civil rights policy hit a low point with Democratic President Woodrow Wilson’s efforts to segregate the federal workforce, while Democrats in Congress pushed for an anti-miscegenation law in the District of Columbia – the bill passed in the House in 1915, but died in the Senate. In sum, during these two decades, black Americans had no real electoral voice, and thus had almost no champions in Washington. Republican support for civil rights had effectively come to an end, while Democrats were openly hostile and sought to remove or abolish any rights that still existed.

Chapter 8: Conclusion

We end the book by looking ahead: in the 20th century, the fight for civil rights reforms expands, as civil rights advocates target not only Congress but also the Supreme Court and the executive branch. National administrative expansion driven by New Deal reforms provided civil rights advocates with new resources with which to press the fight. When Congress proved to be an obstacle – as it often did because of the political strength of the Southern Democrats – civil rights advocates could turn to the president. Through executive orders and bureaucratic action, FDR and Truman both implemented meaningful policy changes. And the Supreme Court began chipping away at voting rights restrictions and segregation in the 1940s and 1950s. These changes put additional pressure on Congress to act, and emboldened liberal elements in the Democratic Party to continue to push for reform.

The same opportunities did not exist in the 19th century and early 20th century – the Supreme Court was a persistent opponent during this time and the executive branch was underdeveloped. As a result, reformers operating during the First Civil Rights Era were forced to pursue their goals exclusively through Congress. For these reasons, we end our analysis before the implementation of the “modern” era. The battle for civil rights from the Civil War era through the end of World War I was primarily fought in Congress, within the Republican Party, and between Democrats and Republicans. We thus wrap up the book by summarizing these conflicts, paying special attention to the electoral politics involved, the ideological contestation, and the legislative successes and the failures.