

Congress and the Second Civil Rights Era, 1919-2016

Jeffery A. Jenkins
University of Virginia
jajenkins@virginia.edu

Justin Peck
San Francisco State University
jpeck@sfsu.edu

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Book Proposal

We propose a book that examines how the issue of civil rights for black Americans has developed in the U.S. Congress since the early part of the 20th century – a period that we refer to as the Second Civil Rights Era. In an earlier book, we examined how civil rights for black Americans first emerged as a major issue in Congress during the Civil War, took meaningful shape during Reconstruction, and eroded significantly during and after Redemption. That book covered, from the perspective of Congress, the rise and fall of the First Civil Rights Era. This book picks up where the earlier book left off, and documents how civil rights for black Americans reemerged as a meaningful issue in Congress after World War I and has continued to evolve through the present day.

Congress will serve as the focus of our analysis for the following reason: while the president and the courts have played a critical role in the hastening of civil rights for black Americans, especially in the mid-20th Century, the most-lasting victories of the Second Civil Rights Era have been *statutory*. The Civil Rights Act of 1964 and the Voting Rights Act of 1965, in particular, swept Jim Crow-style discrimination away once and for all. As such, charting the course to these victories (and beyond) is crucial for a full understanding of how the civil rights issue has developed over time. That said, positioning these statutory victories in the context of landmark Supreme Court cases and executive actions is important for an accurate and comprehensive account.

The book will take a historical, developmental approach and detail how the U.S. Congress has struggled with civil rights issues across different periods in the post-World War I era: from the battle over anti-lynching legislation in the 1920s and 1930, through the expansion of civil rights initiatives in the 1940s and early civil rights victories in the 1950s, before finally

culminating in the landmark Acts of 1964 and 1965 (and their subsequent Extensions and Amendments).

In laying out the political-economic history of civil rights, we will make two distinct contributions to the political science literature. First, we will examine how the course of civil rights policy in Congress has depended on the “electoral connection.”¹ Second, we will examine how the congressional parties have lined up over time (and switched places) on civil rights. We 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 has waxed and waned depending on the degree to which black Americans have been pivotal in congressional elections. During Reconstruction, blacks in the South were critical to the creation and maintenance of a southern wing of the Republican Party. Such a southern wing melted away as Democrats returned to power in the region, and Republicans increasingly turned a blind eye to the plight of black Americans. Between 1891 and 1918, there were almost no members of Congress who cared about civil rights issues, as blacks were not electorally pivotal anywhere in the country. With the First Great Migration during and after World War I, the number of black voters in the North increased substantially, and blacks became pivotal in many district and state elections. As a result, northern politicians, first in the Republican Party in the 1920s and then in the Democratic Party in the 1930s, had an electoral incentive to respond to black voters and thus became receptive to reviving a civil rights agenda. Blacks would use their pivotal electoral status in the North to great effect through the middle part of the 20th century, as Northern Democrats in Congress sought to promote black voting rights and end segregation.

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.

The book's second political science contribution will be to reveal the partisan realignment on race that occurred in the 20th century. The common understanding in the literature is that such a partisan realignment on race occurred in Congress in the mid-1960s, as Democrats came to represent black interests while Republicans (the old "Party of Lincoln") turned their back on black voters.² This view that a racial realignment did not occur until the height of the Civil Rights Movement is inaccurate. In fact, the racial realignment was gradual and began decades earlier. Republicans continued to be the advocates of a civil rights agenda through the 1920s, when the first anti-lynching campaign in Congress was waged; however, a majority of *Northern* Democrats supported black interests (by voting for the anti-lynching bill) as early as 1921. By the late-1930s, the Northern Democrats had become the chief advocates in Congress for black civil rights, with Southern Democrats virulently opposed. Republicans, as the swing coalition, continued to be supportive of black rights through much of the 1930s, but beginning in 1938 they began acting strategically—supporting or opposing civil rights initiatives depending on the electoral payoff involved. This strategic behavior continued through the mid-1960s; a majority of Republicans, in fact, supported the Civil Rights Act of 1964 and Voting Rights Act of 1965. Only in the late-1960s, beginning with early votes on legislation that would become the Fair Housing Act (otherwise known as the Civil Rights Act of 1968), did the Republicans start taking more decidedly conservative positions on civil rights. This culminated in a clear "right turn" in the early-1970s, on the issues of equal employment and forced busing.

² See Edward G. Carmines and James A. Stimson, *Issue Evolution: Race and the Transformation of American Politics* (Princeton, NJ: Princeton University Press, 1989); Paul Frymer, *Uneasy Alliances: Race and Party Competition in America* (Princeton, NJ: Princeton University Press, 1999). For a view that opposes this traditional perspective, and is consistent with my arguments (but uses different metrics), see Eric Schickler, Kathryn Pearson, and Brian D. Feinstein, "Congressional Parties and Civil Rights Politics from 1933 to 1972," *Journal of Politics* 77 (2010): 672-89; Eric Schickler, *Racial Realignment: The Transformation of American Liberalism, 1932-1965* (Princeton: Princeton University Press, 2016).

In detailing the political-economic history of civil rights in Congress, and making contributions to key literatures in political science, 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 techniques, like regression analysis, to discern more specific patterns based on factors like member ideology and district/state characteristics.³ Focusing on the roll-call record will allow us to highlight (a) the regional differences between Northern and Southern Democrats and (b) the strategic behavior within the Republican Party on civil rights policy through these years.

A chronological outline of the book follows this general overview. There will be eight chapters. Portions have already been written as stand-alone journal articles. The article “Between Reconstructions: Congressional Action on Civil Rights, 1891-1940,” published in *Studies in American Political Development*, will form the basis for parts of Chapter 2.⁴ Another article, “Building toward Major Policy Reform: Congressional Action on Civil Rights, 1941-1950,” published in *Law and History Review*, will form the bulk of Chapter 3.⁵ We also have a version of Chapter 4 in working paper form. Thus, three substantive chapters (5, 6, and 7) still need to be written, along with an Introduction and Conclusion. We will begin these new chapters in Summer or Fall 2017, once our first civil rights book is completely done (i.e., edits, proofs, etc.)

³ In analyzing roll calls, one covariate of interest will be the NOMINATE score, a measure of member ideology 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.

⁵ Jeffery A. Jenkins and Justin Peck, “Building toward Major Policy Change: Congressional Action on Civil Rights, 1941-1950,” *Law and History Review* 31 (2013): 139-98.

Chronological Outline:

Chapter 1: Introduction

We will first provide context for the starting point of the book by summarizing the rise and fall of black rights during the First Civil Rights Era (i.e., our first book). We will then cover most of the basic themes detailed above, while also discussing how a study of the political-economic history of civil rights can contribute to important theoretical debates in the literatures on race, congressional behavior, and political parties. We will offer a brief overview of the chapters to come, and in doing so, reveal the factors that spurred Congress to focus on black rights again (after decades in which civil rights policy was ignored or eroded) and led to the creation of the Second Civil Rights Era.

Chapter 2: The Reemergence of Civil Rights: Anti-Lynching Legislation, 1919-1940

As thousands of black Americans move North during and after World War I – as part of the First Great Migration – the electoral dynamics of the previous two decades changed. Blacks were now pivotal in a number of Northern House districts and states, thanks to the close margins between white voters aligned with the Republicans and Democrats. As a result, many Republicans in Congress were (once again) receptive to new civil rights policies, and focused their efforts on an initiative pushed by the NAACP that elicited broad support – anti-lynching legislation. In 1921, a GOP-sponsored anti-lynching bill passed the House but was filibustered by the Democrats in the Senate. By the late-1930s, the partisan landscape had changed, and Northern Democrats, following FDR’s lead, started reaching out successfully to black voters, and Democrat-sponsored anti-lynching bills passed in the House in 1937 and 1940 (before once again hitting a brick wall in the Senate, led mostly by Southern Democrats). Apart from detailing this “electoral connection” story, we describe the parties’ reorientation on racial issues,

which happened both earlier and differently than the received wisdom implies. For example, a majority of Northern Democrats began voting against the party's dominant southern wing as early as 1921 (earlier than is argued in the literature) and black voters operated in a largely independent fashion during much of the 1920s and 1930s (rarely discussed, and typically ignored, in the literature). In addition, Republicans, while beginning to behave strategically during the 1930s, were not willing to cede the black vote to the Democrats just yet.

Chapter 3: Momentum for Civil Rights Increases, 1941-1950

We then examine the decade of the 1940s, which was an important bridge period between the relatively quiet 1919-1940 period and the critical years of the Civil Rights Movement during the 1950s and 1960s. We uncover four sets of civil rights initiatives that emerged in the 1940s and elicited roll-call votes on the floor: (1) efforts to eliminate the poll tax in southern elections; (2) attempts to federalize soldier voting during World War II, thereby threatening state-level electoral institutions; (3) attempts to institute fair employment practices among private sector employers, labor unions, and federal agencies; and (4) efforts to eliminate discrimination in public education, through conditional federal assistance for state-level school lunch programs. Only one, the elimination of discrimination in school lunch programs, was a clear victory for civil rights advocates. By looking more closely at the defeats, however, we reveal a continuing process of partisan realignment driven by debates over civil rights. As the position of Southern Democrats was weakening across the decade, Northern Democrats actively sought to represent black voters. Republicans, as the swing coalition, often hedged on civil rights and tended to support more symbolic or procedural measures over strong substantive initiatives; by the end of the decade, however, they largely gave up on winning black votes and began forming a more stable alliance with Southern Democrats.

Chapter 4: Initial Civil Rights Successes, 1951-1960

With the *Brown v. Board of Education* decision in 1954, which ended state-sponsored segregation based on the “separate but equal” doctrine, civil rights advocates stepped up their pressure on Congress. In 1956, Rep. Adam Clayton Powell (D-N.Y.) was successful in getting an amendment passed that withheld federal funds for school construction to states that refused to obey the Supreme Court’s *Brown* decision. Later that year, a new civil rights bill passed in the House, but was killed in the Senate. A year later, the Senate blockade was broken and the Civil Rights Act of 1957, a voting rights law with little enforcement power, was passed into law. Nevertheless, it possessed symbolic value, being the first civil rights law passed by Congress in more than eight decades. Three years later, the Civil Rights Act of 1960 was passed, which provided additional, modest legal remedies to assist in fostering voting rights. Northern Democrats during this time continued to grow stronger relative to their Southern brethren, while Republicans largely supported civil rights initiatives, but did so for strategic reasons – principally to divide and embarrass the majority Democrats and attempt to break apart the New Deal coalition. These initial civil rights successes laid the groundwork for more significant legislation in subsequent years.

Chapter 5: Major Civil Rights Breakthroughs, 1961-1965

Northern Democrats continued to build on their civil rights successes by passing legislation in 1962 that would eliminate the poll tax; this would later become the 24th Amendment. They subsequently followed this victory by enacting the landmark Civil Rights Act of 1964, which eliminated unequal application of voter registration requirements and unequal access to public accommodations and facilities. And, in the Voting Rights Act of 1965, all remaining Jim Crow

institutions (like literacy tests and voter qualification devices) that could restrict voting rights were prohibited. (The initial VRA lasted for 5 years, before being extended in 1970.) The pattern of these victories was consistent across the decade as Republicans joined with Northern Democrats to roll the Southern Democrats. Republicans often acted strategically, however, and typically required that bills be weakened or extracted concessions from Northern Democrats on other policy dimensions before formally offering their support.⁶ Nonetheless, if one were to examine landmark civil rights legislation through the mid-1960s, one would see a bipartisan coalition of Northern Democrats and Republicans facing off against (mostly) Southern Democrats.

Chapter 6: Civil Rights Divides the Parties, 1966-1980

By the late-1960s, however, the ideological struggle within the GOP had been won largely by the party's conservative wing, and significant defections were observed on some of the early Fair Housing votes. (A majority of Republicans did support the Fair Housing Act – otherwise known as the Civil Rights Act of 1968 – which eliminated discrimination in housing, but only after requiring that anti-riot provisions be included in the bill.) This provided the first hint that the GOP would not continue to pursue an accommodating strategy on civil rights. And a gradual polarization between Northern Democrats and Republicans on civil rights occurred in the early-1970s – as Republicans more often joined with Southern Democrats on ideological grounds. For example, while the Republicans joined with Northern Democrats to pass the Equal Employment Opportunity Act of 1972, which strengthened the enforcement of provisions of the Civil Rights Act of 1964, they did so only after joining with the Southern Democrats to amend the bill and

⁶ See, for example, Daniel B. Rodriguez and Barry R. Weingast, “The Positive Political Theory of Legislative History: New Perspectives on the Civil Rights Act of 1964 and Its Interpretation,” *University of Pennsylvania Law Review* 151 (2003): 1417-1542.

refocus key aspects (by providing court enforcement powers in lieu of “cease and desist” authority). And the Republicans also successfully fought Northern Democrats’ attempts to integrate the public schools, by forcefully opposing mandatory busing. And, finally, while the Republicans supported the Voting Rights Amendments of 1975, they began to voice opposition to the federal government intruding upon the independent domains of the states, an argument that would become increasingly common going forward.

Chapter 7: Polarization and the Civil Rights State, 1981-present

From 1981 (following Ronald Reagan’s election to the presidency) through the present, Republicans and Democrats have often taken opposing sides on civil rights initiatives, and increasingly so as the parties in Congress have continued to polarize ideologically. Over a decade and a half after its passage, the Voting Rights Act (and the infusion of black voters into the southern electorate) had the effect of eliminating conservative Democrats in the South – replacing them with liberal-to-moderate Democrats and conservative Republicans. As a result, the Democrats have become a clear liberal party and the Republicans a clear conservative party. Thus, when civil rights initiatives are considered in Congress, they no longer resemble the crosscutting issues of years past; rather, they map into the natural left-right ideological distribution of the congressional parties.⁷ And when basic civil rights initiatives have been considered, like the proposed Civil Rights Act of 1990 that sought to create additional protections in the area of employment discrimination, they have often elicited strongly partisan debates and starkly divided votes. The proposed 1990 Act also showed how much partisan tension had ratcheted up on civil rights, as the bill elicited a veto from President George H. W. Bush – based on his belief that racial quotas would be imposed – that the Senate could not

⁷ Keith T. Poole and Howard Rosenthal, *Congress and Ideology* (New Brunswick, NJ: Transaction Publishers, 2007), 318.

override; moreover, the override attempt broke down almost perfectly along partisan lines.

While a more narrowly drawn Civil Rights Act would be adopted in 1991, ideological divisions persisted. In sum, civil rights policy remains contested terrain in the modern era.

Chapter 8: Conclusion

We will summarize our historical findings and recapitulate the books' political science contributions regarding the electoral connection and partisan sorting in Congress on civil rights. We will also discuss whether our evidence, which provides a new developmental understanding of civil rights and congressional policy making that is both chronological and theoretical, can help shed light on broader questions in the American politics literatures, like representative-constituency relations, party politics and dynamics, and American political development. We will also speculate on the future of civil rights legislation in Congress, especially as polarization sets new record highs and partisan tensions have increased markedly.