

**Congressional Action on Civil Rights:
The Wilderness Years, 1891-1918**

Jeffery A. Jenkins
Price School of Public Policy
University of Southern California
jjenkins@usc.edu

Justin Peck
Department of Government
Wesleyan University
jcpeck@wesleyan.edu

January 1, 2018

Abstract:

Prior analyses of congressional action on the issue of African-American civil rights have typically examined either of the two major Reconstructions. Here, we examine a portion of the large five-decade black box between the end of the First Reconstruction and the beginning of the Second, routinely skipped over in scholarship on Congress, parties, and racial politics. Specifically, we analyze three decades surrounding the turn of the Twentieth Century, between 1891 and 1918, a period often considered to be the nadir for African Americans in the post-Civil War era. These decades saw statutory protections stripped away by a unified Democratic government, and no meaningful achievements produced when Republicans were in power. Overall, neither party in Congress was receptive to African Americans' needs – the Republicans, aside from a few individual members, no longer considered them an important or vital electoral coalition, while the Democrats were overtly hostile.

Prepared for presentation at the 2018 annual meeting of the Southern Political Science Association, New Orleans, LA.

I. Introduction

The policy of Southern Reconstruction (1865-1877) after the American Civil War was a noble experiment in civil and political equality.¹ After the former black slaves of the South were granted their freedom and extended national citizenship, an attempt was made to integrate the races and alter the fabric of southern life. This attempt was led by the governing Republican Party, specifically the “Radicals” within the party, and carried out under the watchful eye of the Union army stationed throughout the former Confederacy. There were many successes associated with the Radicals’ vision of a re-made South – notably the significant voter participation among the newly-enfranchised Freedmen and the election of a number of blacks to local, state, and federal positions (including more than a dozen to Congress) – but none would be lasting. By the early-1870s, southern white conservatives, initially under the boot of the new cross-racial Republican regimes in the region,² were re-integrated into the political system and began reasserting themselves. A strategy of violence toward and intimidation of black voters, coupled with a severe economic depression following the Panic of 1873, led to significant Democratic victories in the midterm elections of 1874 – culminating in the Democrats’ capture of the House of Representatives and a number of southern state legislatures. By 1877, all state legislatures within the former-Confederate South would be “redeemed.”

While the Republican-led Reconstruction policy would officially end with the election of 1876 – and the subsequent “bargain” that led to Rutherford Hayes’ ascension to the presidency

¹ The period between 1867 and 1877 is typically referred to as “Congressional Reconstruction,” as the Republican-led forces in Congress dictated how the various Southern states would be reorganized and brought back into the Union. This contrasts with the 1865-67 period, which is known as “Presidential Reconstruction,” as President Andrew Johnson sought to promote a quick and painless reconciliation with the South, skewed heavily toward the interests of southern white leaders. By 1867, Congressional Republicans had won their battle with Johnson, and a more significant social and political upheaval in the South, wherein former slaves would be elevated to “equal status” with whites, would be pursued.

² The southern Republican Party was comprised of three groups: Carpetbaggers (white northern politicians who recently moved to the South); Scalawags (white southern politicians who had previously been Democrats); and blacks (some of whom were former slaves, and some of whom were free prior to the Civil War).

and the removal of the U.S. army as political/electoral watchdog in the South – a number of Republican politicians were unwilling to ignore their promise to the Freedmen and cede control of the South completely to the Democrats. As black civil and political gains were stripped away in the late-1870s and 1880s, Republican leaders continued to use whatever resources they could muster – such as executive patronage and seat “flips” in Congress resulting from contested election cases – to maintain a partisan foothold in the South.³ Finally, the Republicans would score a significant blow in the elections of 1888, winning the presidency as well majorities in both the House and Senate; as a result, the 51st Congress (1889-91) would offer the party a renewed opportunity to promote black civil rights and combat Democratic dominance in the South. The result was a new Federal Elections Bill, offered by Henry Cabot Lodge (R-MA), which would have placed national elections – specifically House elections – under *federal* control (thus superceding state control). The Lodge Bill passed by a slim margin in the House, but was bottled up in the Senate, thanks to the concerted efforts of Democrats and a small group of western (silver) Republicans.⁴ This was a crushing defeat for the party, as the Republicans would lose control of first, the House – and thus unified control of government – in the midterm elections of 1890 and, second, *all* reins of government in the elections of 1892.

³ Given the electoral balance between the Republicans and Democrats during the late-Nineteenth Century, the Republicans could not afford to disregard the South entirely, even as the center of gravity in the party shifted to the political-economic needs of the northeast and west. For a discussion of a Republican “southern strategy” during this era, especially in relation to the use of executive patronage, see Vincent De Santis, *Republicans Face the Southern Question: The New Departure Years, 1877-1897* (Baltimore: Johns Hopkins University Press, 1959); Stanley Hirshson, *Farewell to the Bloody Shirt: Northern Republicans and the Southern Negro, 1877-1893* (Bloomington: Indiana University Press, 1962); and Charles W. Calhoun, *Conceiving a New Republic: The Republican Party and the Southern Question, 1869-1900* (Lawrence: University Press of Kansas, 2006). On the use of contested election cases as a partisan device, and their role in promoting a southern wing of the Republican Party in the post-Reconstruction era, see Jeffery A. Jenkins, “The First ‘Southern Strategy’: The Republican Party and Contested-Election Cases in the Late-19th Century House,” in *Party, Process, and Political Change in Congress, Volume 2: Further New Perspectives on the History of Congress*, eds. David W. Brady and Mathew D. McCubbins (Stanford: Stanford University Press, 2007), 78-90.

⁴ For a lengthy discussion of the political proceedings (and intrigues) surrounding the Lodge Bill, see Calhoun, *Conceiving a New Republic*, Chapter 9; and Richard M. Valelly, “Partisan Entrepreneurship and Policy Windows: George Frisbie Hoar and the 1890 Federal Elections Bill,” in *Formative Acts: American Politics in the Making*, eds. Stephen Skowronek and Matthew Glassman (Philadelphia: University of Pennsylvania Press, 2007), 126-52.

The early-1890s were an especially difficult time for African Americans in the South. Apart from the failed Lodge Bill, two other developments were occurring that would shape southern life – and African Americans’ misfortunes – for decades to come. First, after gaining unified control of the national government for the first time since the late-1850s, the Democrats acted quickly in the 53rd Congress (1893-95) to scuttle the remnants of the GOP’s Reconstruction policy. The five Enforcement Acts passed between 1870 and 1872, which provided for federal supervision of state elections, were repealed in February 1894. While these laws had not been enforced for some time,⁵ many Democrats viewed their repeal as an important, symbolic act – wiping the vestiges of Reconstruction from the statute books further signified (in their minds) the ultimate redemption of the white South. Second, southern state legislatures and constitutional conventions began systematically disenfranchising black voters, beginning in 1890.⁶ While Democrats had used violence and intimidation to dampen black voter participation in the 1870s and 1880s, party leaders sought legal remedies thereafter – which included poll taxes, literacy tests, residency requirements, and grandfather clauses, among others. These legal remedies would form the basis of Jim Crow rule in the South, which lasted into the 1960s.

Our goal in this paper is to investigate the role Congress played in civil rights policy during the “wilderness years” of 1891-1918. During these three decades, black political participation was limited, thanks to small population numbers in the North, the advent of Jim Crow and widespread disenfranchisement in the South, and the absence of a strong NAACP. As

⁵ Indeed, Lodge’s Federal Elections Bill was pushed in 1890-91 in part because the prior Enforcement Acts, as written, were no longer suitable for federal supervision in the post-Reconstruction environment. The Lodge Bill placed much greater supervisory power with the federal circuit courts, for example.

⁶ Mississippi (1890) was the first state to re-write its constitution and adopt provisions to restrict voter participation. Between 1890 and 1908, ten of the eleven states of the former-Confederacy had pursued constitutional reform toward the goal of disenfranchisement (with the sole exception being Tennessee, which pursued statutory reform exclusively). For details, see J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South* (New Haven: Yale University Press, 1974) and Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888-1908* (Chapel Hill: University of North Carolina Press, 2001).

a consequence, African Americans faced a Republican Party in Congress – aside from a few individuals – that was largely unwilling to fight for meaningful civil rights legislation (or prevent discriminatory legislation) and a Democratic Party that was hostile to legislation that would aid African Americans (and actively sought racial exclusions) in the few instances when substantive race-related bills were initiated.

II. Repeal of Enforcement Acts

As the 51st Congress (1889-91) ended, and the failure of the Lodge Bill soured the mood of many Republican leaders and backbenchers, life for African Americans would get considerably worse in short order. The urgency of passing a new Federal Elections Bill in the lame-duck session of the 51st Congress stemmed from the GOP's impending loss of majority control of government. The 1890 congressional midterms had seen Republicans get slaughtered in much of the Midwest, such that the Democrats would be the new majority party in the House when the 52nd Congress (1891-93) convened.

Divided government would not give the Republicans a chance at a do-over on the Lodge Bill. And, in fact, the situation was much worse, as the new Democratic House majority would begin to set the stage for the repeal of the existing Enforcement Acts. While the Democrats had not made a concerted attempt to pursue such a repeal since the late-1870s – when President Hayes vetoed seven such attempts by the Democratically-controlled 46th Congress – the GOP's near success on the Lodge Bill made Federal interference in Southern elections a vital concern in the minds of Democratic leaders once again. Securing state control of elections – whether fighting off new Enforcement Acts, or wiping existing ones from the statute books – was a Southern goal that needed to be achieved.

Initial efforts were modest. In July 1892, a House committee – led by a Democratic majority – charged with investigating federal election enforcement recommended that the Enforcement Acts be abolished, based on arguments that they were used for partisan purposes, too expansive and interfered with the rights of qualified voters, and largely ineffective in producing convictions.⁷ Such a recommendation was merely symbolic, of course, as a Republican Senate and president would not support any meaningful action along those lines.

The November 1892 elections, however, would change the partisan landscape. A rematch between President Benjamin Harrison and former-President Grover Cleveland saw a reverse of the 1888 outcome; this time Cleveland bested Harrison, and his coattails produced Democratic majorities in both the House and Senate. As the Democrats looked ahead to the 53rd Congress (1893-95), they would enjoy unified control of government for the first time since before the Civil War.

And with unified control in hand, Democratic leaders in the 53rd Congress moved quickly to make the symbolic recommendation from the 52nd Congress a reality. Action took place first in the House. On September 11, 1893, Henry St. George Tucker (D-VA) introduced a bill (H.R. 2331) “to repeal all statutes relating to supervisors of elections and special deputy marshals, and for other purposes,” and referred it to the Committee on the Election of President, Vice-President, and Representatives of which he was chair.⁸ On September 20, it was reported back to the floor and placed on the House calendar.⁹ It was taken up less than a week later, on

⁷ Xi Wang, *The Trial of Democracy: Black Suffrage and Northern Republicans, 1860-1910* (Athens: University of Georgia Press, 1997), 254.

⁸ *Congressional Record*, 53rd Congress, 1st Session (September 11, 1893): 1395.

⁹ *Congressional Record*, 53rd Congress, 1st Session (September 20, 1893): 1634.

September 26, under a special order that provided for debate until October 10, when all pending amendments and the underlying bill would be voted on.¹⁰

H.R. 2331, per Xi Chang, “was so comprehensive and thorough that it intended to eliminate all of the five enforcement laws enacted by the Republican Congress between 1870 and 1872.”¹¹ The bill took specific aim at eliminating all provisions “relating to the appointment, qualifications, power, duties, and compensation” of supervisors of elections and special deputy marshals, along with any provisions dealing with the punishment of crimes under the various acts.

Democratic arguments for the repeal – led by Tucker – revolved around states’ rights, specifically that states possessed the power under the Constitution to determine questions of suffrage.¹² And, thus, the Enforcement Acts were an unconstitutional infringement upon those rights. Republicans countered that the Civil War and Reconstruction had fundamentally changed the nature of federal vs. state power, and that the Fourteenth and Fifteenth Amendments had specifically given Congress the power to adopt legislation to enforce the new rights granted therein.¹³ Moreover, Republicans – led by George Washington Ray (R-NY) – countered that Democratic arguments were merely a smokescreen to justify their base desire to eliminate black suffrage and roll back the outcome of the Civil War.

On October 10, the House first considered two Republican amendments offered by Julius Burrows (R-MI) and John F. Lacey (R-IA), which sought to preserve certain provisions of the

¹⁰ *Congressional Record*, 53rd Congress, 1st Session (September 26, 1893): 1803.

¹¹ Wang, *The Trial of Democracy*, 255.

¹² As Tucker stated: “I hold that the power of the citizen and the right of the citizen to vote is a right given to him not by the Constitution of the United States or by the Federal Government, but is a right reserved to the State and recognized in the Constitution.” *Congressional Record*, 53rd Congress, 1st Session (September 26, 1893): 1804.

¹³ In response to Republicans referencing the text of the Fourteenth and Fifteenth Amendments, as a counter to anti-constitutional critiques, Democrats generally countered with arguments similar to that made by Thomas English (D-NJ): “while [a law for the regulation or supervision of voters engaged in electing members to Congress] may stand within the letter, it is in direct conflict with the spirit of the Constitution.” *Congressional Record*, 53rd Congress, 1st Session (October 6, 1893): 2236.

Enforcement Acts that were in danger of repeal (specifically, those that guaranteed suffrage rights for qualified voters and specified punishment for those who conspired to restrict the suffrage rights of qualified voters). Each was defeated on a pure party line vote.¹⁴ The House then turned to H.R. 2331, and it passed on a 201-102 vote. As Table 1 indicates, like the two amendment votes, the partisan distribution on final passage was firm – in this case, all Democrats (North and South) supported the bill, while all Republicans opposed it.¹⁵

[Table 1 about here]

The scene then shifted to the Senate. On December 14, 1893, Zebulon Vance (D-NC), Chair of the Committee on Privileges and Elections, referred H.R. 2331 (without amendment) to the floor and recommended its passage.¹⁶ William E. Chandler (R-NH) represented the group of four GOP dissenters on the committee,¹⁷ and pledged to fight the Democrats in their repeal attempt.¹⁸ Along with George F. Hoar (R-MA), James F. Wilson (R-IA), and Henry Cabot Lodge (R-MA), Chandler extended the debate on the repeal legislation into through late January 1894, countering the Democrats' states' rights arguments and strenuously opposing the Mississippi Constitution of 1890, which adopted the "Mississippi Plan" to disenfranchise African Americans through the biased administration of literacy tests. (Such literacy tests would be easier to administer without federal election supervisors present.)

Eventually, voting on H.R. 2331 was at hand. Chandler first tried to postpone further consideration of the bill until December (in the lame-duck session, after the 1894 midterms), but

¹⁴ The Burrows Amendment was defeated 101-197, with Northern Democrats voting 0-102, Southern Democrats 0-84, Republicans 101-0, Independent Democrats 0-2, and Populists 0-9. The Lacey Amendment was defeated 96-193, with Southern Democrats voting 0-97, Northern Democrats 0-87, Republicans 96-0, Independent Democrats 0-2, and Populists 0-7. *Congressional Record*, 53rd Congress, 1st Session (October 10, 1893): 2375-76, 2377.

¹⁵ *Congressional Record*, 53rd Congress, 1st Session (October 10, 1893): 2378.

¹⁶ *Congressional Record*, 53rd Congress, 2nd Session (December 14, 1893): 224

¹⁷ The other three were George F. Hoar (R-MA), Anthony Higgins (R-DE), and John Hipple Mitchell (R-OR).

¹⁸ For a description of Chandler's efforts in opposing the repeal of the Enforcement Acts, see Leon Burr Richardson, *William Chandler: Republican* (New York: Dodd, Mead & Company, 1940), 461-64.

his motion was defeated – with all Democrats opposing all Republicans.¹⁹ He then offered several amendments either to weaken the repeal effort or to maintain some aspect of federal oversight in elections. All of these were also defeated on pure party-line votes. Finally, on February 7, 1894, a vote on H.R. 2331 was taken, and it passed 39-28.²⁰ Once again, the Democrats voted as a united front against all Republicans. The next day, President Cleveland signed H.R. 2331 into law.²¹

Thus, the Democrats had achieved in the 53rd Congress what the Republicans could not in the 51st Congress – a significant, statutory change on voting rights enforcement. The Republicans had hoped to pass a new Enforcement Act, which would have established the potential for strong Federal control (through the courts) over Southern elections – more than a decade after the end of Reconstruction. The Democrats, on the other hand, had hoped to scuttle the existing Enforcement Acts that were on the books, so that they could never again be used against the South, which was now firmly in white hands. The Republicans in the 51st Congress were inevitably stymied by internal divisions – over the silver issue – which the Democrats were able to exploit. No such issue divided the Democrats in the 53rd Congress, which allowed them to steamroll the Republicans (who could only slow down the inevitable).

III. Reduction in Congressional Representation

As southern states began their systematic disenfranchisement of black voting rights in the 1890s, not all Republicans were willing to sit on the sidelines and watch the party's Civil War and Reconstruction legacy wither away. Beginning in 1899, a small movement sought to

¹⁹ *Congressional Record*, 53rd Congress, 2nd Session (January 27, 1894): 1583.

²⁰ *Congressional Record*, 53rd Congress, 2nd Session (February 7, 1894): 2406.

²¹ The full text of the Federal Elections Law Repeal Act, which was approved on February 8, 1894, is found in 28 *Stat.* 36-37. As to why Cleveland, a president who historians often extol for his “courage,” did not veto the bill, see Rayford W. Logan, *The Betrayal of the Negro: From Rutherford B. Hayes to Woodrow Wilson* (New York: Da Capo Press, 1997), 81-83.

confront the disenfranchisement issues head on – if white southerners wished to deny voting rights to black citizens, these Republicans argued, they should accept the consequences of their actions. And those consequences were laid out clearly in the Constitution, specifically in Section 2 of the Fourteenth Amendment:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Stated simply, southern states that pursued a systematic disenfranchisement campaign against black citizens would find their share of House seats reduced. White southerners could not have it both ways.

The first formal attempt to demand enforcement of Section 2 of the Fourteenth Amendment was pushed by Senators Marion Butler (P-NC) and Jeter C. Pritchard (R-NC) in late-1899, just as the state of North Carolina was preparing to follow Mississippi (1890), South Carolina (1895), and Louisiana (1898) in amending its constitution to limit blacks' voting rights.²² Both Butler and Pritchard had been elected on Populist-Republican fusion tickets, relying heavily upon the votes of the state's black residents, and both viewed the current

²² Earlier that year (January 1899), Rep. George H. White (R-NC), the last black member of Congress from the South during this era, alluded to a reduction in representation for southern states, but did not offer legislation to that end. During an extended floor speech, White stated: "If we are unworthy of suffrage, if it necessary to maintain white supremacy, if it necessary for the Anglo-Saxon to sway scepter in those States, then you ought to have the benefit only of those who are allowed to vote, and the poor men, whether they be black or white, who are disfranchised ought not to go into the representation of the district or the State. It is a question that this House must deal with some time, sooner or later." See *Congressional Record*, 56th Congress, 1st Session (January 26, 1899): 1125.

situation through a lens of self interest. Specifically, Butler and Pritchard “saw in the Democratic disenfranchisement efforts a threat to their base of political power.”²³

Butler would lay the early groundwork for a Fourteenth Amendment challenge in October 1899, arguing that North Carolina’s move toward Jim Crow was unconstitutional. Pritchard followed up in December 1899, by filling out more specific details, arguing that North Carolina’s decision to disenfranchise its black citizens was proof that the state did not possess a “republican form of government.”²⁴ This led to angry back-and-forth discussions between Butler, Pritchard, and southern Democratic leaders, mainly Sen. John T. Morgan (D-AL), regarding interpretations of the Constitution – as Butler and Pritchard relied upon the text of the Fourteenth Amendment to make their anti-republican case, while Morgan and his colleagues clung to the notion that states possessed the authority to determine suffrage requirements, based on the Constitution’s general silence on the matter (the Fourteenth Amendment notwithstanding).

After almost four months of off-and-on discussion, Pritchard’s resolution was referred to the Committee on Privileges and Elections in late-April 1900. In early June, Sen. William Eaton Chandler (R-NH), chairman of the committee, reported that a majority of the committee favored a weaker form of Pritchard’s resolution – and he sought on two occasions to have this weaker resolution considered on the Senate floor. But, each time, unanimous consent was blocked by multiple southern senators, and the committee’s resolution was buried on the Senate calendar.²⁵

While Pritchard and Butler were disappointed by the outcome, a more ominous sign emerged during the disenfranchisement debate. Only one fellow Republican – Chandler – supported Pritchard and Butler on the Senate floor. Every other Republican senator was silent

²³ Richard B. Sherman, *The Republican Party and Black America: From McKinley to Hoover, 1896-1933* (Charlottesville: University of Virginia Press, 1973), 16.

²⁴ See *Congressional Record*, 56th Congress, 1st. Session (December 12, 1899): 233.

²⁵ See *Congressional Record*, 56th Congress, 1st. Session (June 1, 1900): 6370; (June 7, 1900): 6865-66, 6875.

during the debate. A decade after the defeat of the Federal Elections bill, the “Party of Lincoln” no longer appeared to view the protection of blacks’ civil rights as a priority. The political lay-of-the-land, as November and the presidential election of 1900 neared, is nicely summarized by Richard B. Sherman:

A determined attempt by the Republicans to protect the Negro’s vote would have wrecked [President] McKinley’s efforts at reconciliation, and the immediate political gains for such a move would have compensated for the losses. Republicans could not control the South by Negro votes alone, and congressional interference would have destroyed the prospects of building up GOP strength among southern whites.²⁶

While Republican leaders’ dreams of a southern “lily white” movement in presidential elections would prove to be a chimera, their decision to forego active opposition to disenfranchisement would be maintained into the future.

Leadership strategies notwithstanding, some individual Republicans in Congress were unwilling to ignore the disenfranchisement issue. Shortly after McKinley’s reelection, in the lame-duck session of the 56th Congress (1899-1901), the issue of voting-rights restrictions was raised again, this time in the House. The locus of the debate revolved around new apportionment legislation, which was based on the recently completed Twelfth Census. Two attempts would be made to stem the tide of disenfranchisement: (a) an investigatory measure by Rep. Marlin E. Olmsted (R-PA) and (b) a punitive measure offered by Rep. Edgar D. Crumpacker (R-IN). Both dealt with limiting southern representation in the House, based on violations of the Fourteenth Amendment.

The Olmsted measure was offered on January 3, 1901, as the House began consideration of the apportionment bill. News reports suggest that Olmsted’s resolution – offered as a matter of privilege, to instruct the Committee on the Census to investigate suffrage

²⁶ Sherman, *The Republican Party and Black America*, 16.

restrictions/violations in the South and present such findings in a report to Congress (which could then be used, should Congress choose, to restrict representation by state in accordance with Section 2 of the Fourteenth Amendment) – took the Republican leadership by surprise, and, as a result, created some confusion on the House floor.²⁷ After some order had been restored, the roll call to consider Olmsted’s resolution failed 80-83, after which a move to adjourn, offered by Rep. Oscar Underwood (D-AL), passed 78-74.²⁸ Partisan data on these two votes appear in Table 2. And while it seems that the Republicans uniformly opposed the Democrats, the roll-call data tell only part of the story. In fact, twice as many Republicans abstained – “absent and unpaired” – as Democrats (32 to 16).²⁹ This indicates that a number of Republicans – including the leadership – did not view representational reduction as a serious goal, especially if it got in the way of a Republican-crafted apportionment plan.

[Table 2 about here]

The next day, January 4, a turnaround occurred. Rep. Albert Hopkins (R-IL), Chairman of the Committee on the Census, hinted at this about-face the evening before, when he predicted that the Olmsted measure would pass, even though “he did not think the idea of reducing the representation of the Southern States was practicable.”³⁰ Thus, once their initial surprise had dissipated, the Republican leadership decided that an effort was needed – even if only a symbolic one – to signal publicly that the party was solidly opposed to the practice of disenfranchisement.³¹ And, as Hopkins predicted, Olmstead offered his resolution again, and this time the outcome would be different. After an adjournment motion, offered again by

²⁷ *Dallas Morning News*, January 4, 1901, 2.

²⁸ *Congressional Record*, 56th Congress, 2nd Session (January 3, 1901): 521.

²⁹ *New York Times*, January 4, 1901, p. 5; *Washington Post*, January 4, 1901, 3.

³⁰ *The (Baltimore) Sun*, January 4, 1901, 2.

³¹ As a reporter for *The (Baltimore) Sun* noted: “The Republicans were placed in a bad hole because they did not want to adopt the resolution and feared they would be accused of cowardice if it were defeated” (January 5, 1901, 2).

Underwood, failed 84-105, a motion to consider passed 104-91, and a previous question motion succeeded 103-98. (See Table 1 for the marginals on these three roll calls.) On each of these votes, an additional thirty Republicans (roughly) participated and supported the pro-civil rights side on the roll call. Finally, a vote to refer the Olmstead measure to the Committee on the Census passed without even a recorded roll call.³²

These roll-call successes notwithstanding, the *real* benefits associated with the resolution were negligible. As a reporter for the *Washington Post* notes in his coverage of the events surrounding the Olmstead resolution: “it was well understood nothing definite will ever come of it... [while Olmstead] tried to persuade Chairman Hopkins to promise that a special meeting would be called within a week to consider the resolution... it is certain that the new apportionment of Representatives will be made before any such data as the resolution calls for can be collected.”³³ In short, the Republican leadership was willing to make a symbolic gesture to the nation’s black citizenry, but would take no meaningful action that would put its legislative policy goals – notably passage of new pro-GOP apportionment legislation – at risk.³⁴

Four days later, on January 8, the apportionment issue was considered on the House floor. As predicted, the Olmstead resolution had no bearing on the debate, as it was safely buried in committee – Chairman Hopkins seeing to this personally. And, after some wrangling, a GOP-supported apportionment bill passed.³⁵ Yet, the reduction-in-representation issue was not dead, as Rep. Crumpacker raised the disenfranchisement issue once again, moving to recommit the

³² *Congressional Record*, 56th Congress, 2nd Session (January 4, 1901): 559.

³³ *Washington Post*, January 5, 1901, 3.

³⁴ The strategic thinking of the Republican leadership is nicely summarized by a reporter for the *Birmingham Age Herald*: “the fact remains that if the Republicans had insisted on debating the Olmsted resolution at length and had finally passed it, the Democrats in retaliation would have seriously delayed the business of the House, and probably forced an extra session ... by insisting on roll calls on every proposition advanced and every amendment to each bill considered” (January 7, 1901, 2).

³⁵ In fact, the Hopkins bill (i.e., the bill reported out of the Census Committee) was rejected, and a substitute bill, proposed by Rep. Edwin Burleigh (R-ME), was passed instead.

apportionment bill to committee with instructions to ascertain which states had unconstitutionally abridged the right to vote and determine how much congressional representation (i.e., how many House seats) should be reduced as a result. Crumpacker's motion was thus one step beyond Olmstead's, which (as written) had been mainly informational. A contentious debate followed, with a number of southern Democrats denouncing the motion, but only two Republicans – Reps. George White (NC) and Charles Grosvenor (MA) – supporting Crumpacker.³⁶ Just as in the Olmsted case, the Republicans were unwilling to put their legislative agenda in jeopardy (and risk undoing the policy victory just achieved on the apportionment issue) to support a measure that would penalize disenfranchisement efforts and thus promote blacks' political rights.

Finally, debate ceased and Crumpacker's motion to recommit was considered via a division vote. It failed 94-136. Rep. James Stewart (R-NJ) demanded the yeas and nays, but only fourteen members seconded, thus falling short of the required minimum. While individual-level data does not exist on division votes, news reports suggested that “several Republicans, including Messres. Pearson (NC), Littlefield (ME), Allen (ME), Hill (CT), Jenkins (WI), and Joy (MO) voted with the Democrats against the motion.”³⁷

Thus, like the Senate Republicans earlier in the 56th Congress, the House Republicans had largely abandoned black voting rights, outside of strictly symbolic initiatives. Republican party leaders saw few benefits in being responsive to black voters – given the rise of Jim Crow, the South was considered beyond the party's reach, and too few blacks lived in the North to matter politically. Sporadic attempts to investigate suffrage restrictions and reduce southern

³⁶ *Congressional Record*, 56th Congress, 2nd Session (January 8, 1901): 731-48.

³⁷ *New York Times*, January 9, 1901, 7.

representation in Congress would be made in the next few years, but none made any headway.³⁸

This was due, in part, to the view of President Theodore Roosevelt, who opposed an activist approach in dealing with southern disenfranchisement and representational reduction more generally.³⁹

IV. The “Brownsville Affray”

In his 1905 inaugural address, Theodore Roosevelt did not make explicit reference to race or the status of black citizens. His silence was not an indication that of racial peace. Black southerners continued to live under the “lynch law” throughout the south; race riots exploded in Wilmington, NC in 1898, New York in 1900, and Atlanta just over one year after Roosevelt’s inaugural; widespread voter suppression gave the lie to the Fourteenth and Fifteenth amendments. Speaking in 1909, one participant in the National Negro Conference described the quickly deteriorating condition of the black citizens in stark terms: “he is standing on the very threshold of a physical slavery almost as bad and hopeless as that form which he was emancipated.”⁴⁰ Three divisions of black soldiers comprising part of the Twenty-fifth Infantry stationed in Brownsville, TX would soon learn that their service to the country did not guarantee them equal treatment. Indeed, their treatment at the hands of President Roosevelt and

³⁸ Sen. Thomas Platt (R-NY) introduced one such measure, which would have resulted in the Southern states losing 19 seats. But it was referred to the Committee on the Census, and no further action was taken on it. See Sherman, *The Republican Party and Black America*, 76; Perman, *Struggle for Mastery*, 243-44. On the whole, Crumpacker was the main initiator of this subsequent legislation. His closest brush with success came in May 1908, during the 60th Congress, when he successfully added a reduction amendment to a campaign-contribution reform bill. The amendment and amended bill passed in the House, but died in the Senate Committee on Privileges and Elections. For a description of the House events, see *Washington Post*, May 23, 1908, p. 4. For an overview of the proceedings on the Crumpacker amendment and the amended campaign-contribution reform bill, see *Congressional Record*, 60th Congress, 1st Session (May 22, 1908): 6763-68.

³⁹ Sherman, *The Republican Party and Black America*, 76-77. Later attempts at representational reduction in the early- and late-1920s, led by Rep. George H Tinkham (R-MA), met with similar opposition by Republican Presidents Harding and Coolidge. See Sherman, *The Republican Party and Black America*, 169-71, 221-22.

⁴⁰ Quoted in Ann J. Lane, *The Brownsville Affair: National Crisis and Black Reaction* (Port Washington, NY: National University Publications Kennikat Press, 1971), 7.

congressional Republicans demonstrates the extent to which the GOP had departed from its historic commitment to black civil rights.

In May 1906 the War Department announced that the 167 black soldiers who made up the First Battalion, Twenty-Fifth Infantry would replace a white division housed at Fort Brown in Brownsville, Texas. The white residents of Brownsville were displeased by the news. The fort's white surgeon, Benjamin J. Edgar, Jr., for example, told Congress that every resident he spoke with about the black soldiers claimed that they would not be welcome. Edgar even recalled the mayor of Brownsville claiming that residents "will not stand for colored troops; they do not like them."⁴¹ The troops, of course, did nothing to justify such hostility. This battalion won acclaim for its efforts against the Sioux Indians on the Plains, as well as in Cuba and the Philippines. Moreover, when responding to an outraged Brownsville business owner's complaint about his department's decision to move the troops to Fort Brown, Secretary of War William H. Taft explained that "while a certain amount of race prejudice between white and black seems to have become almost universal throughout the country...colored troops are quite as well disciplined and behaved as the average of other troops."⁴²

Despite Taft's admonition, residents proved hostile from the moment the black soldiers arrived in late-July 1906. Major Charles Penrose, the commanding officer at the fort, recalled that when the troops made their way into town "people were standing along the streets but there were no smiling faces or anything of that kind, as you might imagine when you are coming to a new post." More ominously, one of the departing soldiers testified that a white resident speaking on the night before the troops arrived, announced that "the first crooked move they [black

⁴¹ Edgar quoted in John D. Weaver, *The Brownsville Raid* (New York: W.W. Norton & Company, 1970), 21

⁴² Quoted in Weaver, *The Brownsville Raid*, 22.

soldiers] would make, they [townspeople] would annihilate” the entire battalion.⁴³ Sensing widespread hostility, Israel Harris—one of the soldiers stationed at Fort Brown—told Congress of his desire to leave Texas as soon as he was discharged. Townspeople “were unfriendly toward the soldiers,” he explained, “and that is why I did not want to stay there.”⁴⁴ Neither Harris nor any of the 166 additional members of his battalion would have this choice.

At approximately midnight on August 13, 1906, anywhere from 9-20 armed men ran through Brownsville indiscriminately shooting into the city’s homes and businesses. The marauders killed one bartender and wounded one police officer who had responded to the sound of gunfire. A nighttime attack in a poorly lit city, witnesses claimed, made it impossible to identify the guilty parties by sight. Yet suspicion immediately fell upon black soldiers. The area of the city that had been attacked was close to the section of Fort Brown that housed black soldiers. Empty bullet shells found along the attack route appeared to match those issued to the soldiers. While no townspeople interviewed in the aftermath of the shooting claimed to have seen any of the raiders, multiple witnesses told investigators that they heard “negro voices.”⁴⁵ Investigators were not, however, engaged in a dispassionate effort to identify the guilty parties. Most witness interviews, for example, started in the following way: “We are inquiring into the matter of last night with a view to ascertaining who the guilty parties are. We know they were negro soldiers. If there is anything that would throw any light on the subject we would like to have it.”⁴⁶

⁴³ Quotes in Weaver, *The Brownsville Raid*, 23-24.

⁴⁴ “Affray at Brownsville, Tex.,” Hearings before the Committee on Military Affairs, United States Senate, 1907: 42.

⁴⁵ “Report on the Brownsville Affray,” *U.S. Senate Docs.*, 60th Congress, 1st Session, doc. 402, pt. 1, 1908: 440-453.

⁴⁶ “Report on the Brownsville Affray,” 446.

The soldiers, meanwhile, maintained their innocence. Following publication of the government's initial inquiry into the shooting, the *New York Times* noted, "no evidence had been gathered to prove a conspiracy on the part of members of the battalion."⁴⁷ Advocates for the soldiers who were part of the interracial "Constitution League" also issued their own report defending the troops. According to the Constitution League, the bullet casings found at the scene need not have come from the soldiers housed in Fort Brown. They could have been collected from rifle ranges and dropped along the path taken by the shooters in order to incriminate the black troops.⁴⁸ The eyewitness accounts, they claimed, were also rendered problematic by the fact that old uniforms were discarded in a trash pile that was easily accessible to the public. Any town resident could have easily disguised himself as a member of the black battalion. In conclusion, the League argued, there existed "'fair reason' to believe that the commotion was created by civilians, partly to gratify a long harbored hatred against black soldiers and partly to punish their independence in boycotting the town's Jim Crow drinking saloons."⁴⁹

The Constitution League report was itself motivated by President Roosevelt's reaction to the government's investigation. The president did not respond to the many inconsistencies raised in the course of the government's investigation with circumspection. Instead, he took the advice of General E. A. Garlington, the government's inspector general, who suggested that all 167 soldiers be "discharged without honor" and "forever disbar[red] from reenlisting in the Army or Navy of the United States." Despite Garlington's repeated and harsh interrogations, not a single member of the battalion provided government investigators with reason to suspect their involvement. Garlington portrayed the soldiers' failure to incriminate one another as a

⁴⁷ "Roosevelt is Firm and Taft Gives Way," *New York Times*, November 22, 1906, 1.

⁴⁸ James A. Tinsley, "Roosevelt, Foraker, and the Brownsville Affray," *The Journal of Negro History* 41 (January 1956), 57.

⁴⁹ Constitution League report quoted in Lane, *The Brownsville Affair*, 29-31.

conspiracy to “stand together in a determination to resist the detection of the guilty.”⁵⁰ As a consequence, he argued, all 167 soldiers “should stand together when the penalty falls.”⁵¹

Roosevelt accepted this explanation, claiming in a statement to the Senate that the black soldiers “banded together in a conspiracy to protect the assassins and would-be assassins.”⁵² On November 5, 1906, he executed General Garlington’s recommendation, discharging all soldiers without honor. Roosevelt’s invocation of “discharge without honor” is notable. This was a “new and little-known administrative device” that is distinguishable from a “dishonorable discharge.” In order to be dishonorably discharged, a soldier must be afforded a constitutional right to counsel and trial by court martial. The status “discharge without honor,” however, carries with it no such requirement. This approach allowed Roosevelt to disband the black battalion without formally charging anyone. None of the 167 black troops, therefore, had an opportunity to defend themselves before a court of law or through a formal court martial proceeding.⁵³ This was collective punishment in response to a crime without a suspect.

The Roosevelt administration recognized that discharging the battalion carried with it significant political risks. Embarrassing black troops in this way threatened to generate anger among black voters, many of whom were relied upon to vote for Republicans in the 1906 midterm elections. Accordingly, public announcement of Roosevelt’s decision was not made until November 9, 1906 – three days after the election was held. Recognizing the political strategizing at work, the *Washington Post* noted that the election of Roosevelt’s son-in-law—who was running for a seat in the House in Ohio— “would not have been possible if the colored

⁵⁰ Quoted in Weaver, *The Brownsville Raid*, 95

⁵¹ “Report on the Brownsville Affray,” 182.

⁵² “Report on the Brownsville Affray,” 5-6.

⁵³ Weaver, *The Brownsville Raid*, 133.

voters in his district had been arrayed against him.”⁵⁴ In New York, black defections could have tipped the scale against Charles Evans Hughes with significant political consequences for the 1908 presidential election.⁵⁵ In short, Roosevelt expected black voters—in the north especially—to be outraged by his decision. He was right.

Speaking on behalf of his New York congregation, Dr. Charles S. Morris, declared, “we shall have two years to work and our slogan shall be a Republican congress to protect our people in the South, and a Democratic president to resent the insult heaped upon us.”⁵⁶ Morris was not alone. Black civic, political, and religious leaders from around the country condemned Roosevelt. T. Thomas Fortune’s *New York Age*, at the time one of the most widely read black newspapers, pilloried the administration for “carrying into the federal government the demand of the Southern white devils that innocent and law abiding black men shall help the legal authorities spy out and deliver practically to the mob black men alleged to have committed some sort of crime.”⁵⁷ Black citizens also condemned Booker T. Washington. Washington opposed Roosevelt’s decision but refused to make a public break with the president.⁵⁸ Even the Niagara Movement—forerunner to the NAACP—condemned Roosevelt. At its 1908 conference in Oberlin, Ohio, participants endorsed a platform calling on black citizens to “remember that the conduct of the Republican party toward Negroes has been a disgraceful failure to keep just promises. The dominant Roosevelt faction has sinned in this respect beyond forgiveness.”⁵⁹

Foraker, Roosevelt, and the Congressional Inquiry

⁵⁴ “Sharp Comment in New York,” *Washington Post*, November 22, 1906, 2.

⁵⁵ Tinsley, “Roosevelt, Foraker, and the Brownsville Affray,” 47.

⁵⁶ Quoted in Tinsley, “Roosevelt, Foraker, and the Brownsville Affray,” 48.

⁵⁷ Quoted in Emma Lou Thornbrough, “The Brownsville Episode and the Negro Vote,” *The Mississippi Valley Historical Review* 44 (December 1957): 471.

⁵⁸ Lane, *The Brownsville Affair*, 69-87.

⁵⁹ Quoted in Lane, *The Brownsville Affair*, 79.

The potential for black defections from the GOP presented Ohio Republican Senator Joseph Foraker with a political opportunity. As a veteran of the civil war, ex governor, and sometimes political ally of black citizens, Foraker saw the Brownsville incident as a vehicle for peeling enough Republican voters away from William H. Taft to deny him the GOP nomination in 1908.⁶⁰ With Taft out, Foraker saw himself as a likely second option. Accordingly, once the Constitution League published its report raising suspicions about the guilt of the black troops, Foraker began to call for a Senate-led investigation of the Brownsville shooting. The conflict Foraker instigated with Roosevelt would eventually backfire, costing Foraker his political career. More significantly, however, the Republican Party's defense of Roosevelt's decision, and the anger directed at Foraker's efforts, makes clear the extent to which the GOP had abandoned the political interests of black citizens by the early 20th century.

The conflict between Roosevelt and Foraker over Brownsville began on December 3, 1906—the first day of the Fifty-Ninth Congress. Aware of Foraker's plan to call for a Senate investigation into the evidence motivating Roosevelt's discharge, Pennsylvania Republican Bois Penrose—a Roosevelt ally in the Senate—broke with tradition when he introduced a resolution before the Senate had received the president's official message. Penrose's resolution called on President Roosevelt to communicate “to the Senate, if not incompatible with public interests, full information bearing upon the recent order” dismissing the black troops.⁶¹ Foraker, present in the chamber, immediately responded with his own resolution directing Secretary of War William H. Taft to provide all “official letters, telegrams, reports, orders, etc.” connected to Roosevelt's order. Foraker's resolution also directed the War Department to furnish information into how

⁶⁰ For more on Foraker, see Everett Walters, *Joseph Benson Foraker: An Uncompromising Republican* (Columbus, OH: The Ohio History Press, 1948).

⁶¹ *Congressional Record*, 59th Congress, 2nd Session (December 3, 1906): 2.

Roosevelt's discharge order materially harmed the discharged troops by denying them pensions, rights to enroll in a "national soldiers home," and to be buried in a national cemetery.⁶²

The difference between these two resolutions is notable. Where Penrose's would have granted Roosevelt the discretion to decide what he provided the Senate, Foraker's called on Taft—as an agent of Congress—to turn over all relevant information. Additionally, Foraker's inquiry into the status of pay, burial and accessibility to soldier's homes threatened to make clear that these troops were denied benefits without a trial or due process. Such harm could, in the future, justify calls for official court proceedings against the accused. By this point, it was clear that the administration was unlikely to win in court. Absent a suspect, court proceedings could not even begin.

Senate debate over these dueling resolutions continued through the first week of the session. Roosevelt's allies in Congress, led by Henry Cabot Lodge (R-MA), insisted on the importance of presidential discretion over what military information is provided to Congress.⁶³ In response, Foraker explained his intention to simply gain access to information already held by the War Department. "We want all of it," he explained, "and we want it without regard to whether somebody might think it was incompatible with the public interest or not."⁶⁴ Confronted by a difficult choice, Senate Republicans hedged their bets. On December 6, 1906 the Senate passed both resolutions by a voice vote.⁶⁵

Roosevelt's response came approximately two weeks later in his December 19 message to the Senate. Citing the investigations already undertaken by the government, Roosevelt condemned the "murderous conduct" of the black troops and the "conspiracy by which many of

⁶² *Congressional Record*, 59th Congress, 2nd Session (December 3, 1906): 2.

⁶³ *Congressional Record*, 59th Congress, 2nd Session (December 5, 1906): 55.

⁶⁴ *Congressional Record*, 59th Congress, 2nd Session (December 5, 1906): 55.

⁶⁵ *Congressional Record*, 59th Congress, 2nd Session (December 6, 1906): 106.

the other members of these companies saved the criminals from justice.”⁶⁶ After summarizing the facts of the case, and asserting his authority as commander-in-chief to discharge soldiers at will, Roosevelt directly addressed Foraker’s argument that the troops were punished without due process. “I deny emphatically that such is the case,” Roosevelt proclaimed, “because as punishment [discharge without honor] is utterly inadequate. The punishment for mutineers as murderers such as those guilty of the Brownsville assault is death...I would that it were possible for me to have punished the guilty men.”⁶⁷ Roosevelt’s aggressive response—described by the *Washington Post* as equal parts “defiance as explanation”—reflects the administration’s defensiveness over race issues.⁶⁸ According to the *New York Times*, the “Negro vote cast in a Republican National Convention is the greatest asset a politician can have.”⁶⁹ Foraker was making a play for those votes.

Immediately after the official reading of Roosevelt’s message, Foraker introduced a new resolution calling on the Committee on Military Affairs to “take further testimony to establish all facts connected with the discharge” of the troops.⁷⁰ Foraker wanted an official congressional investigation, and he wanted his committee to lead it. The following day, Foraker made a prolonged floor speech casting doubt upon the assertions Roosevelt made in his December 19 message, as well as the evidence on which those assertions were made. Henry Cabot Lodge once again stepped in to defend Roosevelt. “It is not conceivable,” Lodge asserted, “that either of them [Roosevelt or Taft] would be influenced in this matter by any local or race prejudice.”⁷¹ Roosevelt also mounted his own public defense by making it known to the *New York Times* that

⁶⁶ “Report on the Brownsville Affray,” 1-7.

⁶⁷ “Report on the Brownsville Affray,” 6.

⁶⁸ “The Brownsville Affair,” *Washington Post*, December 20, 1906, 6.

⁶⁹ “Mingo Sanders Centre of Fight on Roosevelt,” *New York Times*, December 25, 1906, 1.

⁷⁰ *Congressional Record*, 59th Congress, 2nd Session (December 19, 1906): 552.

⁷¹ *Congressional Record*, 59th Congress, 2nd Session (December 20, 1906): 579.

“not even to avoid impeachment” would he rescind the discharge order. Describing himself as “fighting mad,” the president went on to tell the paper that Foraker’s call for an official investigation represented the “most contemptible playing of politics” motivated by his desire to “damage Secretary Taft so as to make it impossible form him to obtain the support of the Ohio delegation” at the 1908 Republican National Convention.⁷²

Despite the president’s vehement opposition to a congressional investigation, the politics around the Brownsville incident made it impossible for Senate Republicans to formally oppose Foraker’s efforts. Debate over the precise wording of the resolution continued into late January. Over the course of the month, Roosevelt ally Henry Cabot Lodge introduced, and then withdrew, a resolution reaffirming the validity of Roosevelt’s decision.⁷³ Foraker also forced roll call votes to table two substitute resolutions. The first, offered by Stephen Mallory (D-FL) endorsed a full investigation. Preceding this endorsement, however, Mallory’s substitute proclaimed Roosevelt’s discharge “within the scope of his authority and power and a proper exercise thereof.”⁷⁴ All but three Republicans voted to table the Mallory substitute (see Table 3). Next, Senator Charles Culberson (D-TX) introduced a resolution stipulating that it was “the judgment of the Senate” that President Roosevelt “was authorized by law and justified by the facts” when he issued his discharge order. Senate Republicans voted unanimously to set aside Culberson’s substitute (see Table 3).⁷⁵ The Senate then adopted Foraker’s resolution by voice vote.⁷⁶ Hearings would begin one month later.

[Table 3 about here]

⁷² “Mr. Roosevelt Defies Negro Troops’ Friends,” *New York Times*, December 23, 1906, 1.

⁷³ *Congressional Record*, 59th Congress, 2nd Session (January 1, 1907): 626.

⁷⁴ *Congressional Record*, 59th Congress, 2nd Session (January 22, 1907): 1508.

⁷⁵ *Congressional Record*, 59th Congress, 2nd Session (January 22, 1907): 1510-1512.

⁷⁶ *Congressional Record*, 59th Congress, 2nd Session (January 22, 1907): 1512.

The Senate investigation of the Brownsville Affray ran from February-June 1907, then resumed for additional hearings from November 1907-March 1908. Over the course of these many months, the Committee on Military Affairs took testimony from 160 witnesses.⁷⁷ Unsurprisingly, the committee's final judgment was not clean cut. The majority report—signed by all of the committee's Democrats and four of eight Republicans—endorsed Roosevelt's position. According to these members, the weight of the evidence demonstrated that the attack was carried out by black troops stationed at Fort Brown. The majority also found with "reasonable certainty" that soldiers who did not personally aid in the attack itself helped protect the identities of those who did. The four Republicans who signed onto the majority also issued their own separate statement calling on Congress to write legislation that would allow reenlistment for any one of the discharged troops who, within one year, could demonstrate his innocence to the satisfaction of the president.⁷⁸ The four remaining Republicans issued two different minority reports. The first, signed by all members of the minority, argued that all 167 soldiers should be immediately reinstated pending any formal charges brought against specific individuals.⁷⁹ The second, signed by Foraker and Senator Morgan Bulkeley (R-CT), declared all of the soldiers innocent.

Not long after the Senate made public the findings of its investigation, Foraker took the floor to discuss new legislation motivated by the committee's findings. After denying that he aimed to use the Brownsville incident as an opportunity to "attack the President or Secretary Taft in connection with this matter," Foraker gave an impassioned defense of the troops. He poked holes in the evidence used against them, called into doubt the motives of the government

⁷⁷ For a summary of the hearings see: Lane, *The Brownsville Affair*, 34-52.

⁷⁸ Republicans signing onto the majority report include: Frances E. Warren (R-WY); William Warner (R-MO); Henry Cabot Lodge (R-MA); Henry A. Du Pont (R-DE)

⁷⁹ Republicans signing onto the minority report include: Nathan B. Scott (R-WV); Joseph Foraker (R-OH); Morgan Bulkeley (R-CT); James A. Hemenway (R-IN).

investigators, and defended the military records of those soldiers Roosevelt discharged. Foraker then went on to discuss S. 6206, legislation introduced by William Warner. Warner's proposal reflected the position of the Republicans who signed the majority report. It provided soldiers the opportunity for full enlistment "if at any time within one year after the approval of this act the president shall be satisfied that any former enlisted man...had no participation in the affray or guilty knowledge" of those who did.⁸⁰ Foraker attacked this proposal on the grounds that "practically every man of this battalion would have to provide his innocence before one [Teddy Roosevelt] who has over and over again formally and publicly adjudged him guilty."⁸¹ Foraker's substitute proposal—S. 5729—did not defer to the president. Instead, it would provide for reenlistment, cleared service records, and full back-pay for all soldiers willing to take an oath attesting to their innocence.⁸²

The Senate took no further action on Brownsville-related legislation in 1908. Indeed, it looked as though both bills were dead. Warner's bill lacked majority support and Roosevelt characterized Foraker's proposal as "a purely academic measure." Should it pass, Roosevelt intended to veto it. Should it pass over his veto, Roosevelt argued, "it would be clearly constitutional and I should pay not the slightest heed to it."⁸³ Meanwhile, Taft wrapped up the Republican nomination and Foraker's relentless attacks on the administration's decision to discharge the troops earned him Roosevelt's "virulent hostility."⁸⁴ Finally, on September 17, 1908, newspaperman William Randolph Hearst traveled to Ohio with the intent of proving that "the Republican Party has been for a long time the beneficiary of trust corruption." To make this point, Hearst publicized a number of letters between Foraker and Standard Oil making it seem as

⁸⁰ *Congressional Record*, 60th Congress, 1st Session (April 14, 1908): 4721.

⁸¹ *Congressional Record*, 60th Congress, 1st Session (April 14, 1908): 4723.

⁸² *Congressional Record*, 60th Congress, 1st Session (April 14, 1908): 4721.

⁸³ Quoted in Weaver, *The Brownsville Raid*, 191.

⁸⁴ Foraker's wife quoted in Weaver, *The Brownsville Raid*, 207.

though the senator was paid fifty thousand dollars to oppose anti-trust legislation. Roosevelt gleefully publicized Hearst's accusation. Writing one friend, Roosevelt described the letters as showing "what everyone on the inside knew, that Foraker was not really influenced in the least by any feeling for the Negro, but that he acted as the agent of corporations."⁸⁵ On January 2, 1909, as a consequence of Hearst's revelations, Ohio Republicans chose Theodore Burton to succeed Foraker. His career in the Senate was over.

Surprisingly, Foraker's political denouement did not also kill the discussion around Brownsville legislation. Instead, with his time in office winding down, Foraker pushed the Senate to debate two amended versions of S. 5729. The first version proposed empowering Foraker himself to name five military officers to a Court of Military Inquiry. This court would review the case materials under the assumption that some or all of the soldiers were innocent. It would then certify those soldiers available for reenlistment. The president would be bound by any decisions made by the court.⁸⁶ Lacking the votes to pass this version of the bill, Foraker agreed to a substitute proposal offered by Nelson Aldrich (R-NH). Aldrich proposed to empower the Secretary of War to constitute a similar Court of Inquiry comprised of five military officers. This Court would then determine *if* any of the discharged soldiers "qualified" for re-enlistment.⁸⁷ Aldrich's proposal, in other words, assumed the soldiers to be guilty. It simply provided them an opportunity to exonerate themselves for crimes they were assumed—absent any concrete evidence—to have committed.

On February 23, the Senate voted to pass S. 5729 by a 56-26 vote. As Table 4 makes clear, all Republicans voted against all Democrats to pass S. 5729.⁸⁸ The House followed suit on

⁸⁵ The Hearst incident and Roosevelt's reaction are described in Weaver, *The Brownsville Raid*, 209-212.

⁸⁶ *Congressional Record*, 60th Congress, 2nd Session (February 23, 1909): 2932-2933.

⁸⁷ *Congressional Record*, 60th Congress, 2nd Session (January 29, 1909): 1579.

⁸⁸ *Congressional Record*, 60th Congress, 2nd Session (February 23, 1909): 2948.

February 27 (See Table 4).⁸⁹ President Roosevelt signed the bill on March 2. Despite the enactment of this measure, the soldiers discharged by Roosevelt would not be cleared of all crimes until 1972.

[Table 4 about here]

V. Anti-Miscegenation in the District of Columbia

After the Democrats returned to power – controlling the presidency and both chambers of Congress during the first six years of President Wilson’s administration – the subject of black civil rights reemerged, this time focused on curtailment. That is, efforts were made by Democrats in Congress to enact additional civil rights *restrictions*. Not content with maintaining the harsh Jim Crow system in the former Confederacy, many Democrats sought to further subjugate the nation’s black citizenry by limiting their civil rights in other parts of the nation. The focus during the early Wilson years would be segregating the races in areas of federal jurisdiction – examples would include the federal civil service, the military, and public transportation in Washington, DC.⁹⁰ But the most prominent attempt at segregation occurred in the social domain, specifically on racial intermarriage between blacks and whites, or “miscegenation.” This would be the Democrats’ prime focus between 1912 and 1915.

In December 1912, during the lame-duck session of the 62nd Congress (1911-13), Rep. Seaborn Roddenberry (D-GA) gained the House floor and offered a proposal to amend the Constitution of the United States by prohibiting interracial marriage.⁹¹ Roddenberry’s proposal came at a time of racial unrest, as race riots had broken out throughout the country in 1912 – this unrest was tied to the athletic success of Jack Johnson, the black boxing champion who recently

⁸⁹ *Congressional Record*, 60th Congress, 2nd Session (February 27, 1909): 3400

⁹⁰ See King, *Separate and Unequal*, 20-27.

⁹¹ Roddenberry’s amendment was H.J. Res. 368. See *Congressional Record*, 62nd Congress, 3rd. Session (December 11, 1912): 507.

retained his title against Jim Jeffries, the white former world champion. If Johnson's athletic triumph was not enough for white southerners to stomach, he also pursued a risqué personal life with his many affairs with (and two marriages to) white women. Roddenberry even mentioned Johnson by name in his floor diatribe, laying the blame at the foot of the northern states that allowed intermarriage and thus Johnson's racially subversive behavior.⁹² Roddenberry, while likely grandstanding, hoped to force southern views on the rest of the nation – or, at a minimum, pressure additional northern states to pass anti-miscegenation legislation. (At the time of Roddenberry's proposal, twenty-nine of the forty-eight states possessed anti-miscegenation laws.) In the end, Roddenberry's proposal went nowhere, as it was referred to the Judiciary Committee and was not reported out.⁹³ Moreover, his attempt to push additional northern states to adopt anti-miscegenation laws would prove to be a failure, as only one additional state – Wyoming in 1913 – adopted such legislation (though many state legislatures did consider it).

While Roddenberry's efforts were in vain, the issue of miscegenation emerged again later in the lame-duck session. On February 10, 1913, H. R. 5948, a bill introduced by Rep. Thomas Hardwick (D-GA) that would “prohibit in the District of Columbia the intermarriage of whites with negroes or Mongolians” and make intermarriage a felony (with penalties up to \$500 and/or 2 years in prison) was called up and considered on the House floor.⁹⁴ Thus, the Democratic opponents of black civil rights narrowed the scope of their attack; rather than a sweeping constitutional amendment, they pushed a proposal that would ban interracial marriage specifically within the District of Columbia. Unlike Roddenberry's prior proposal, a

⁹² For the full text of Roddenberry's floor speech, see *Congressional Record*, 62nd Congress, 3rd. Session (December 11, 1912): 502-504.

⁹³ Roddenberry would strike again in January 1913, raising the subject of miscegenation and pushing for the passage of his constitutional amendment. While earning applause for his forceful appeal, he made no further progress on his proposal. See *Congressional Record*, 62nd Congress, 3rd Session (January 30, 1913): 2312.

⁹⁴ See *Congressional Record*, 62nd Congress, 3rd Session (February 10, 1913): 2929.

constitutional amendment would not be necessary to alter policy in this case, since Article 1, Section 8, Clause 17 of the Constitution gave Congress explicit jurisdiction to govern on matters involving the District of Columbia.

Somewhat surprisingly, the Hardwick anti-miscegenation bill was passed in “less than five minutes,” with absolutely no debate.⁹⁵ Moreover, a simple voice vote was going to decide the matter, before Rep. James Mann (R-IL) asked for a division – whereupon it was reported that there were 92 votes in favor and 12 votes opposed.⁹⁶ In explaining the outcome and general lack of debate on the bill, a correspondent for the *New York Times* reported: “Almost every State has a law prohibiting such marriages, and the feeling generally among House members is that the Nation’s capital should be in line with the general sentiment of the States on this subject.”⁹⁷ Thus, Republicans in the House, perhaps intimidated by the Democrats’ bluster and worried about shifting public opinion and further state-legislative activism in the North, quietly acquiesced and allowed the Democrats to quickly pass their D.C. anti-miscegenation bill. But, in the end, nothing would come of the legislation, as it was referred to the Senate Judiciary Committee and never reported out before the session expired less than a month later.⁹⁸

Just two years later, in the lame-duck session of the 63rd Congress (1913-15), the Democrats would push D.C. anti-miscegenation legislation yet again. This time, the bill (H.R. 1710) was offered by Rep. Frank Clark (D-FL), and it would be even more draconian than the

⁹⁵ *Washington Post*, February 11, 1913, 1; *New York Times*, February 11, 1913, 7.

⁹⁶ *Congressional Record*, 62nd Congress, 3rd Session (February 10, 1913): 2929. Individual-level vote data for division roll calls were not recorded. However, a reporter for the *Chicago Tribune* (who mistakenly counted 8 nay votes instead of 12) identified the following members voting in opposition: Madden (R-IL), Mann (R-IL), Fowler (D-IL), Mondell (R-WY), Hamilton (R-MI), Bartholdt (R-MO), La Follette (R-WI), and Kendall (R-IA).

⁹⁷ *New York Times*, February 11, 1913, 7. In addition, the continued influence of boxer Jack Johnson on the Southern mind was apparent in an editorial in the *Charlotte Daily Observer*: “Passage through the National House of Representatives of a bill prohibiting intermarriage of whites with negroes, Chinese, Japanese or Malays in the District of Columbia is the latest evidence of the good which the abominable Jack Johnson case brought forth” (February 13, 1913, 4).

⁹⁸ *Congressional Record*, 62nd Congress, 3rd Session (February 11, 1913): 2972.

1913 version – with penalties for miscegenation escalating to \$5,000 and/or 5 years in prison.⁹⁹

Clark’s anti-miscegenation bill was considered on January 11, 1915, and, unlike the Hardwick bill two years earlier, elicited a short discussion.¹⁰⁰ Clark argued that enactment of his bill “was in the interest of both of the races,” and that maintaining racial purity was paramount – this was especially important, as Clark believed “the future of the world is dependent upon the preservation of [the white race’s] integrity.”¹⁰¹ Rep. Mann (R-IL) answered Clark for the Republican side, stating that while he opposed interracial marriage, he also opposed making such marriages a crime. Moreover, Mann articulated what he believed the more basic intent of the anti-miscegenation legislation was: “The purpose of this law is to further degrade the negro, to make him feel the iron hand of tyranny so long practiced against his race.”¹⁰² After a few additional brief remarks, the previous question was ordered, which carried 175-119; Mann quickly moved to recommit the legislation to committee, which failed 90-201; and Clark’s anti-miscegenation bill was then passed 238-60.¹⁰³

Before examining these votes in detail, a brief discussion of the differences in context surrounding the Hardwick and Clark anti-miscegenation bills is warranted. Whereas the Hardwick bill was adopted without debate and via a simple division vote, the Clark bill elicited some sharp debate and necessitated three roll-call votes before an outcome was generated. What explains these contextual differences? There is considerable evidence to suggest that pressure

⁹⁹ H.R. 1710 was “An act to prohibit the intermarriage of persons of the white and negro races within the District of Columbia; to declare such contracts of marriage null and void; to prescribe punishments for violations and attempts to violate its provisions.”

¹⁰⁰ Clark introduced H.R. 1710 on April 7, 1913, during the first session of the 63rd Congress, and it was reported to the Committee on the District of Columbia; on March 21, 1914, during the second session, it was reported out of committee and placed on the House calendar. See *Congressional Record*, 63rd Congress, 1st Session (April 7, 1913): 86; 2nd Session (March 21, 1914): 5268. For the full debate and roll-call votes on H. R. 1710, see *Congressional Record*, 63rd Congress, 3rd Session (January 11, 1915): 1362-68.

¹⁰¹ *Congressional Record*, 63rd Congress, 3rd Session (January 11, 1915): 1362.

¹⁰² *Congressional Record*, 63rd Congress, 3rd Session (January 11, 1915): 1363.

¹⁰³ *Congressional Record*, 63rd Congress, 3rd Session (January 11, 1915): 1366-68.

from black citizens – via newspaper editorials along and individual and group initiatives – increased after the passage of the Hardwick bill and ramped up considerably after Clark re-introduced the miscegenation issue. For example, a number of public meetings were scheduled post-Hardwick, to insure that additional segregationist legislation would meet active resistance.¹⁰⁴ And groups like the Independent Equal Rights League, led by civil-rights luminaries like Ida B. Wells, were actively engaged, lobbying Congress generally and individual House Republicans specifically during Clark’s anti-miscegenation mission.¹⁰⁵ Thus, black voices had raised the visibility of the issue and, thus, the stakes in Washington, forcing members of both parties to reveal – through public statements and recorded roll-call votes – their preferences to their constituents.

A breakdown of the three roll calls appears in Table 5. All three were cross-regional “party votes”: a majority of northern Democrats joined with a majority (all) southern Democrats against a majority of Republicans. However, some interesting variation appears within the two parties. Roughly a quarter of northern Democrats opposed shutting off debate on H.R. 1710; this opposition largely melted away across the remaining two votes.¹⁰⁶ And while Republicans were nearly unanimous in opposing the initial previous question motion, the party’s solidarity crumbled thereafter – on the final-passage roll call, almost half (44.4%) of the Republican membership defected and voted in favor of the anti-miscegenation legislation.

[Table 5 about here]

¹⁰⁴ *The Chicago Defender*, February 15, 1913, 1.

¹⁰⁵ *The Chicago Defender*, January 16, 1913, 1, 8.

¹⁰⁶ Why this small group of Northern Democrats opposed shutting off debate is unclear. But one possibility is that they wanted more time to debate the issue and “position take” (or grandstand). That is, they wanted to be able to go on the record with public statements, for their constituents’ benefit and consumption, and this could not happen if debate was shut off (in their minds prematurely).

Republican voting on the final-passage roll call is broken out further in Table 6, based on type of state represented (i.e., with or without a state-level anti-miscegenation law). More than half of the Republican votes in favor of the federal anti-miscegenation legislation – 21 of 40 – came from members who represented states with an anti-miscegenation law on the books. In total, a majority of Republican House members from states with anti-miscegenation laws (21 of 27, or 77.8%) voted for the federal legislation, while a minority of Republican House members from states without anti-miscegenation laws (19 of 63, or 30.2%) supported the measure. Thus, when push came to shove, many Republicans eschewed the party’s historical connection to black voters and focused on representing the (anti-miscegenation) interests of the whites who elected them.

[Table 6 about here]

The following day, January 12, 1915, the Senate received H.R. 1710 from the House and referred it to the (Senate) Committee on the District of Columbia. It was never reported out of committee before the lame-duck session ended. Thus, the House Democrats’ actions were for naught. While a symbolic victory was achieved, a federal anti-miscegenation policy was not produced. The District of Columbia would continue to be a haven for interracial couples in the South who wished to marry. Indeed, Richard and Mildred Loving, the interracial (white-black) couple who would be at the center of the *Loving v. Virginia* (1967) Supreme Court Case that struck down state-level anti-miscegenation laws, were married in the District of Columbia in 1958.

Conclusion

The nearly three decades after the failure of the Lodge Bill in 1891 witnessed black Americans struggling to have their voices heard and their (remaining) civil rights protected.

Neither party in Congress was receptive to their needs – the Republicans, aside from a few individual members, no longer considered them an important or vital electoral coalition, while the Democrats were overtly hostile. In the post-slavery era, these three decades were probably the bleakest for black Americans, as they were truly wandering alone in the “political wilderness.”

Beginning in 1918, however, black Americans’ fortunes would take a turn for the better. Their status as an “unimportant electoral coalition” would begin to change, as many Southern blacks began migrating to the North after World War I. These new demographic patterns would first make Republicans in Congress take notice, and later, Democrats as well. For the succeeding two decades – from the end of World War I to 1940 – civil rights would reemerge on the Congressional agenda, and would follow the same basic form. That is, the goal of black leaders, and their Congressional supporters, would be to pass a federal anti-lynching bill. This would be the litmus test for civil-rights success prior to World War II, and would serve as the early foundation for the construction of a civil-rights coalition.

Table 1: Roll Calls to Repeal the Enforcement Acts, 53rd Congress

Party	House		Senate	
	Yea	Nay	Yea	Nay
Northern Democrat	101	0	15	0
Southern Democrat	89	0	20	0
Republican	0	102	0	28
Ind. Democrat	2	0	-	-
Silver	-	-	1	0
Populist	9	0	3	0
Total	201	102	39	28

Source: *Congressional Record*, 53rd Congress, 1st Session (October 10, 1893): 2378; 2nd Session (February 7, 1894): 2406.

Table 2: House Roll Calls on Voting Rights Restrictions in the South, 56th Congress

Party	Consider Res.		Adjourn		Adjourn		Consider Res.		Prev. Question	
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Dem	0	28	24	1	27	2	1	32	0	36
Southern Dem	0	48	47	1	51	1	0	53	0	56
Republican	80	1	1	72	0	102	103	0	103	1
Populist	0	4	4	0	4	0	0	4	0	3
Silver Repub	0	1	1	0	1	0	0	1	0	1
Silver	0	1	1	0	1	0	0	1	0	1
Total	80	83	78	74	84	105	104	91	103	98

Source: *Congressional Record*, 56th Congress, 2nd Session (January 3, 1901): 521; (January 4, 1901): 553-55.

Table 3. Senate Votes on Brownsville Resolutions, 59th Congress

	Mallory Substitute Resolution		Culberson Substitute Resolution	
Party	Yea	Nay	Yea	Nay
Northern Democrat	1	4	0	4
Southern Democrat	1	15	3	15
Republican	41	3	43	0
Total	43	22	46	19

Source: *Congressional Record*, 59th Congress, 2nd Session (January 22, 1907), 1510-1512.

Table 4. House and Senate Votes on Foraker Bill (S. 5729), 60th Congress

	Senate		House	
Party	Yea	Nay	Yea	Nay
Northern Democrat	1	4	30	15
Southern Democrat	0	22	1	86
Republican	55	0	179	1
Ind. Republican	-	-	1	0
Total	56	26	211	102

Source: *Congressional Record*, 60th Congress, 2nd Session (February 23, 1909), 2948; 60th Congress, 2nd Session (February 27, 1909), 3400.

Table 5: House Roll Calls on Anti-Miscegenation Legislation, 63rd Congress

Party	Prev. Question		Recommittal		Final Passage	
	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	77	26	11	88	95	7
Southern Democrat	96	0	0	99	102	0
Republican	2	89	76	13	40	50
Progressive	0	4	3	1	1	3
Total	175	119	90	201	238	60

Source: *Congressional Record*, 63rd Congress, 3rd Session (January 11, 1915): 1366-68.

Table 6: Republican Breakdown on Final Passage of Anti-Miscegenation Legislation

Republican Member Type	Final Passage	
	Yea	Nay
From State with Anti-Miscegenation Law	21	6
From State without Anti-Miscegenation Law	19	44
Total	40	50

Source: *Statistical Abstract of the United States*, various years, for racial composition changes.