

## Between Reconstructions: Congressional Action on Civil Rights, 1891-1940

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**Abstract:** Prior analyses of congressional action on the issue of African-American civil rights have typically examined either of the two major Reconstructions. Our paper attempts to fill 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. Using a variety of sources – bill-introduction data, statements by members in the *Congressional Record*, roll-call votes, and newspaper reports, among others – we challenge the common assumption that civil rights largely disappeared from the congressional agenda between 1891 and 1940. Instead, we document continuing contestation over racial issues in the national legislature with important implications for the development of the modern civil-rights movement. Uncovering a largely untold history of civil-rights activity, our investigation helps us better understand congressional politics on race between the First and Second Reconstructions, but also provides important clues into how and when the two political parties reorganized around race and highlights the importance of institutional rules in limiting congressional initiatives on race. By examining several failed legislative initiatives, we find that the party switch on race happened earlier than is commonly understood.

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## I. Introduction

The policy of Southern Reconstruction (1865-1877) after the American Civil War was a noble experiment in social and political equality.<sup>1</sup> 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 seats in 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,<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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 who former slaves, and some who 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 political and social 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.<sup>3</sup> 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.<sup>4</sup> 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* reigns of government in 1892.

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<sup>3</sup> 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 Matthew D. McCubbins (Stanford: Stanford University Press, 2007), 78-90.

<sup>4</sup> 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.

Historical scholarship often suggests that the Lodge Bill was the last nail in the coffin of the Republicans' grand Reconstruction experiment. Moreover, the Lodge Bill is typically viewed as the last major effort to promote black civil rights until the mid-Twentieth Century. In many ways, the five decades between the failure of the Lodge Bill in 1891 and the early civil rights forays begun under FDR and extended by Truman in the 1940s are something of a mystery – scholars typically ignore this period in their discussion of civil rights policy, leading readers perhaps to infer that national lawmakers completely ignored the plight and demands of black citizens during these years. Our goal in this paper is to shed some light on this mysterious period, specifically to investigate the role Congress played in civil rights policy during the 1891-1940 era. In doing so, we will explore how (and when) the partisan landscape shifted on the issue of black interests: at the beginning of this period, the Republicans were the protectors and purveyors of black interests, but by the end of this period, the Democrats had taken on that role and responsibility.

The paper proceeds as follows. In Section II, we discuss the two decades after the failure of the Lodge Bill, focusing on Republican efforts to combat disenfranchisement by seeking to reduce southern representation in the House and Democratic efforts to pass a federal anti-miscegenation law after their return to power during the Wilson Administration. In Section III, we discuss the first major anti-lynching bill passed in the House – the Dyer bill in 1921 – the politics surrounding it, and its eventual failure in the Senate. In Section III, we discuss two additional anti-lynching bills that passed in the House in 1937 and 1940, but, like the Dyer bill that preceded them, were subsequently stymied in the Senate. In discussing the politics over these 50 years, and across the various sections, we also pay close attention to the changing nature

of the partisan coalitions. What began as a Republican coalition in favor of blacks' civil rights transformed into a Democratic-led coalition by the 1930s.

## II. The Aftermath of the Lodge Bill, 1891-1918

The early-1890s were an especially difficult time for black citizens in the South. Apart from the failed Lodge Bill, two other developments were occurring that would shape southern life – and black citizens' 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 Republicans' Reconstruction policy. The three Enforcement Acts passed between May 1870 and April 1871, which provided for federal supervision of state elections, were repealed in February 1894.<sup>5</sup> While these laws had not been enforced for some time,<sup>6</sup> the 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, and perhaps more importantly, southern state legislatures and constitutional conventions began systematically disenfranchising black voters, beginning in 1890.<sup>7</sup> While violence and intimidation had been the Democrats' major tactic to dampen black voter participation in the 1870s and 1880s, party leaders sought legal remedies thereafter. These legal remedies – which included poll taxes, literacy tests, residency

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<sup>5</sup> The full text of the Federal Elections Law Repeal Act, which was approved on February 8, 1894, is found in 28 *Stat.* 36-37.

<sup>6</sup> 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.

<sup>7</sup> 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).

requirements, and grandfather clauses, among others – would form the basis of Jim Crow rule in the South, which lasted into the 1960s.

Thus, as black Americans entered the Twentieth Century, their fortunes had changed considerably in a few short decades. They had gone from a state of slavery, to a state of political equality with whites, to a state of semi-citizenship in less than two generations. And while the Republicans regained a firm hold on the national government following the elections of 1896, maintaining a partisan foothold in the South would no longer be considered an electoral necessity. The agrarian revolt within the Democratic Party, and the selection of William Jennings Bryan (D-KS) as the Democratic standard bearer, resulted in a partisan realignment throughout the country; “Bryanism” was summarily rejected outside of the South and parts of the West, as the Republicans made strong inroads throughout the country, even in former Democratic strongholds like the Border South. As a result, Republican leaders in Congress believed that the South could be written off, as the benefit of maintaining a “southern strategy” no longer exceeded the cost. While Republicans would continue to add a few southern congressional seats via contested-election seat flips through the late-1890s, this practice would no longer continue after President McKinley’s reelection in 1900.<sup>8</sup>

Despite the Republican leadership effectively ceding the South to the Democrats and eschewing its responsibilities to black citizens in the South and throughout the country, attempts would be made over the first two decades of the Twentieth Century to rekindle the party’s historic origins. Such attempts would be sporadic, and voiced by individual or small groups of Republicans. In addition, when the Democrats returned to power during the Woodrow Wilson years, the issue of black civil rights was also on their minds, albeit not in a progressive sense.

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<sup>8</sup> Richard M. Valelly, “National Parties and Racial Disenfranchisement,” in *Classifying by Race*, ed. Paul E. Peterson (Princeton: Princeton University Press); Jenkins, “The First ‘Southern Strategy.’”

## 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 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.<sup>9</sup> Both Butler and Pritchard had been elected on Populist-Republican fusion tickets,

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<sup>9</sup> 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.

relying heavily upon the votes of the state's black residents, and both viewed the current situation through a lens of self interest. Specifically, both Butler and Pritchard "saw in the Democratic disenfranchisement efforts a threat to their base of political power."<sup>10</sup>

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."<sup>11</sup> 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.<sup>12</sup>

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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, p. 1125.

<sup>10</sup> Richard B. Sherman, *The Republican Party and Black America: From McKinley to Hoover, 1896-1933* (Charlottesville: University Press of Virginia, 1973), 16.

<sup>11</sup> See *Congressional Record*, 56th Congress, 1st. Session, December 12, 1899, p. 233.

<sup>12</sup> See *Congressional Record*, 56th Congress, 1st. Session, June 1, 1900, p. 6370; June 7, 1900, pp. 6865-66, 6875.

While Pritchard and Butler were obviously 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 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.<sup>13</sup>

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. Vesla check for discussion on this in black newspapers

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 were related and dealt with limiting southern representation in the House, based on violations of the Fourteenth Amendment.

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<sup>13</sup> Sherman, *The Republican Party and Black America*, 16.

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 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.<sup>14</sup> 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.<sup>15</sup> Partisan data on these two votes appear in Table 1. And while it appears 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).<sup>16</sup> 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.

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.”<sup>17</sup> Thus, once their initial surprise had dissipated, the Republican leadership decided that an effort needed to be made – even if only a symbolic one – to signal publicly that the party was solidly opposed to the practice of

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<sup>14</sup> *Dallas Morning News*, January 4, 1901, p. 2.

<sup>15</sup> *Congressional Record*, 56th Congress, 2nd Session, January 3, 1901, p. 521.

<sup>16</sup> *New York Times*, January 4, 1901, p. 5; *Washington Post*, January 4, 1901, p. 3.

<sup>17</sup> *The (Baltimore) Sun*, January 4, 1901, p. 2.

disenfranchisement.<sup>18</sup> And, as Hopkins predicted, Olmstead offered his resolution again, and this time the outcome would be different. After an adjournment motion, offered again by 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.<sup>19</sup>

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.”<sup>20</sup> 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.<sup>21</sup>

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-

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<sup>18</sup> 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, p. 2).

<sup>19</sup> *Congressional Record*, 56th Congress, 2nd Session, January 4, 1901, p. 559.

<sup>20</sup> *Washington Post*, January 5, 1901, p. 3.

<sup>21</sup> 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, p. 2).

supported apportionment bill passed.<sup>22</sup> Yet, the reduction-in-representation issue was not dead, as Rep. Crumpacker raised the disenfranchisement issue once again, moving to recommit the 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.<sup>23</sup> 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.”<sup>24</sup>

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,

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<sup>22</sup> In fact, the Hopkins bill (i.e., the bill reported out of the Census Committee) was rejected, and a substitute bill, proposed by Edwin Burleigh (R-ME), was passed instead.

<sup>23</sup> *Congressional Record*, 56th Congress, 2nd Session, January 8, 1901, pp. 731-48.

<sup>24</sup> *New York Times*, January 9, 1901, p. 7.

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 representation in Congress would be made in the next few years, but none made any headway.<sup>25</sup> 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.<sup>26</sup>

### 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.<sup>27</sup> 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' focal point between 1912 and 1915.

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<sup>25</sup> 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, pp. 6763-68.

<sup>26</sup> Sherman, *The Republican Party and Black America*, 76-77.

<sup>27</sup> See Desmond King, *Separate and Unequal: Black Americans and the US Federal Government* (New York: Oxford University Press, 1995), 20-27.

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.<sup>28</sup> 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 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.<sup>29</sup> 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.<sup>30</sup> 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 vein, the issue of miscegenation emerged again later in the lame-duck session. On February 10, 1913, H. R. 5948, a bill introduced by Thomas Hardwick (D-GA) that would “prohibit in the District of Columbia the intermarriage of whites

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<sup>28</sup> Roddenberry's amendment was H.J. Res. 368. See *Congressional Record*, 62nd Congress, 3rd. Session, December 11, 1912, p. 507.

<sup>29</sup> For the full text of Roddenberry's floor speech, see *Congressional Record*, 62nd Congress, 3rd. Session, December 11, 1912, pp. 502-504.

<sup>30</sup> Roddenberry would again, in January 1913, raise the subject of miscegenation and push for the passage of his constitutional amendment. While earning applause for his forceful appeal, there was no further progress on his proposal. See *Congressional Record*, 62nd Congress, 3rd Session, January 30, 1913, p. 2312.

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.<sup>31</sup> 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 Roddenbery’s prior proposal, a 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.<sup>32</sup> 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.<sup>33</sup> 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.”<sup>34</sup> 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

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<sup>31</sup> See *Congressional Record*, 62nd Congress, 3rd Session, February 10, 1913, p. 2929.

<sup>32</sup> *Washington Post*, February 11, 1913, p. 1; *New York Times*, February 11, 1913, p. 7.

<sup>33</sup> *Congressional Record*, 62nd Congress, 3rd Session, February 10, 1913, p. 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 (IL), Mann (IL), Fowler (IL), Mondell (WY), Hamilton (MI), Bartholdt (MO), La Follette (WI), and Kendall (KS).

<sup>34</sup> *New York Times*, February 11, 1913, p. 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, p. 4).

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.<sup>35</sup>

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 1913 version – with penalties for miscegenation escalating to \$5,000 and/or 5 years in prison.<sup>36</sup>

Clark’s anti-miscegenation bill was considered on January 11, 1915, and, unlike the Hardwick bill two years earlier, elicited a short discussion.<sup>37</sup> 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.”<sup>38</sup> 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.”<sup>39</sup> After a few additional brief remarks, the previous question was ordered, which carried 175-119; Mann

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<sup>35</sup> *Congressional Record*, 62nd Congress, 3rd Session, February 11, 1913, p. 2972.

<sup>36</sup> 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.”

<sup>37</sup> 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, p. 86; 63rd Congress, 2nd Session, March 21, 1914, p. 5268. For the full debate and roll-call votes on H. R. 1710, see *Congressional Record*, 63rd Congress, 3rd Session, January 11, 1915, pp. 1362-68.

<sup>38</sup> *Congressional Record*, 63rd Congress, 3rd Session, January 11, 1915, p. 1362.

<sup>39</sup> *Congressional Record*, 63rd Congress, 3rd Session, January 11, 1915, p. 1363.

quickly moved to recommit the legislation to committee, which failed 90-201; and the Clark anti-miscegenation bill was then passed 238-60.<sup>40</sup>

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 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.<sup>41</sup> 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.<sup>42</sup> 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 2. 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

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<sup>40</sup> *Congressional Record*, 63rd Congress, 3rd Session, January 11, 1915, p. 1366-68.

<sup>41</sup> *The Chicago Defender*, February 15, 1913, p. 1.

<sup>42</sup> *The Chicago Defender*, January 16, 1913, pp. 1, 8.

opposition largely melted away across the remaining two votes.<sup>43</sup> 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. Republican voting on the final-passage roll call is broken out further in Table 3, 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.

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

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<sup>43</sup> 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).

struck down state-level anti-miscegenation laws, were married in the District of Columbia in 1958.

### Coda

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, and the Democrats were overtly hostile. In the post-slavery era, these three decades were probably the bleakest for black Americans, as they were truly 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.

### **III. Campaign for the Dyer Bill in Congress, 1918-1922**

The first Federal anti-lynching proposals concerned the protection of citizens of foreign governments, after the high-profile lynchings of eleven Italians in New Orleans in 1891 led to

the U.S. government having to make indemnity payments.<sup>44</sup> With regard to the crime of lynching against *blacks* specifically, two initiatives around the turn-of-the-twentieth century were attempted, but both failed. Rep. George H. White (R-NC), the sole black member in the House, proposed an anti-lynching measure in 1900 for U.S. citizens generally (H.R. 6963). The bill never emerged from the Judiciary Committee and White left Congress shortly thereafter. Rep. William H. Moody (R-MA) and Senator George Frisbie Hoar (R-MA) proposed another anti-lynching bill later the next year (H.R. 4572) based on a proposal by Albert Pillsbury, former Attorney General of Massachusetts and future leader of the NAACP. The Judiciary Committee report on the Moody-Hoar bill was negative due to constitutionality issues, even though the GOP controlled the Judiciary Committee in both chambers. Two decades would pass before successful measure made it through the House.

The first serious consideration of a federal anti-lynching bill was a matter of foreign policy, deriving from concerns regarding black soldiers in World War I. Officials in the War Department worried that the brutal and frequent lynchings occurring in domestic life would create disgruntled black soldiers or possibly even dissension from the Army; soldiers could not be expected to adequately defend the United States abroad if they were worried about their family members being given summary justice at home. It was from this concern that two members of the Army General Staff and Military Intelligence submitted a bill to protect “potential soldiers and their relatives” during war time from the crime of lynching. The Hornblower-Spingarn bill was proposed in 1918 by Rep. Warren Gard (D-OH), and gave the federal government the power to protect black soldiers and their families because lynching

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<sup>44</sup> David O. Walter, “Legislative Notes and Reviews: Proposals for a Federal Anti-Lynching Law,” *American Political Science Review* 28 (1934): 436-42.

threatened its constitutional power to “raise and maintain armies.”<sup>45</sup> While the initiative was soon dropped without any action by Congress, the foreign policy concerns provoked by lynching remained, and in July 1918, President Wilson delivered a speech condemning mobs and vigilante violence against blacks: “Every mob contributes to German lies about the United States what her gifted liars can not improve upon by the way of calumny.”<sup>46</sup> Early bills tied to the war effort were soon expanded and would seek to protect not only black soldiers and their families during war time but all black citizens regardless of wartime necessity.

The series of anti-lynching bills proposed in the next decade depended on several important historical shifts – from the growth of the black press to the return of WWI servicemen. Perhaps none is as important as the political empowerment that resulted from the migration of a few million blacks to urban centers of the North. Blacks prevented from exercising their suffrage in the South immediately became important voting blocs in many of their new northern destinations. Black voters would be a key group in several states in the 1920 election, including Kentucky, Illinois, Indiana, Maryland, Michigan, New Jersey, New York, and Ohio. In fact, the *Crisis* magazine sent a detailed questionnaire on issues important to black voters to over a dozen potential presidential candidates and several congressional candidates in the lead up to the 1920 election, which was as much a signal to candidates of their potential voting bloc as a genuine request for information on their positions.<sup>47</sup>

In part resulting from black migration, the NAACP saw their membership rolls swell during these years, ballooning from a mere nine thousand members in 1916 to *ninety* thousand

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<sup>45</sup> Claudine L. Ferrell, *Nightmare and Dream: Antilynching in Congress 1917-1922* (New York: Garland Publishing, Inc., 1986). Joel Spingarn was a member of the NAACP’s Board of Directors. William B. Hixson, Jr., “Moorfield Storey and the Defense of the Dyer Anti-Lynching Bill,” *New England Quarterly* 42 (1969): 65-81.

<sup>46</sup> Robert Paul Goldstein, “The Dyer Anti-Lynching Bill: The Movement for Federal Control of Lynching 1900-1922” (PhD diss., University of Wisconsin, 1966), 50.

<sup>47</sup> Many of the latter responded “especially in districts with large Negro populations.” Goldstein, “The Dyer Anti-Lynching Bill,” 56.

just four years later.<sup>48</sup> The relatively new NAACP began a campaign to bring the horrors of lynching to the conscience of Americans, organizing a national anti-lynching conference in Carnegie Hall where the key speaker was Charles Evans Hughes (the 1916 Republican presidential nominee).<sup>49</sup> The conference carried the endorsement of several governors, state attorney generals, and other influential politicians, including some from the South, and adopted resolutions demanding that Congress investigate mob violence and produce legislation making lynching a federal crime. The conference also produced the report, 'An Address to the Nation on Lynching,' signed by former-President Taft. The same year the NAACP published its first book, *Thirty Years of Lynching in the United States, 1889-1919*, which would become an important source of statistics used by legislators in congressional hearings on lynching over the next few years.

Largely reflecting the growing importance of the black electorate and the NAACP influence, anti-lynching bills in the 1920s were exclusively sponsored by Republicans, specifically those Republicans from districts that had seen their black populations increase substantially during the first black migration north (Table 4). For example, Rep. Martin Ansorge (R-NY) represented the district in Manhattan that included the largely black area of Harlem; his district was the same one that the later anti-lynching crusader Joseph Gavagan (D-NY) would represent (by that time, it was over 15 percent black). Reps. Joseph McCormick and Martin Madden (who was not a sponsor but was a crucial supporter in the House) represented the 1st congressional district in Illinois, which encompassed the southside of Chicago, the district today

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<sup>48</sup> Phillip Dray, *At the Hands of Persons Unknown: The Lynching of Black America* (New York: Modern Library, 2002), 257.

<sup>49</sup> John Hope Franklin and Alfred A. Moss, Jr, *From Slavery to Freedom: A History of African Americans* (New York: Knopf, 2000).

with the highest proportion of blacks residing in its boundaries; this district has been continuously represented by blacks since 1929, when Oscar de Priest (R-IL) was elected.

Blacks' newfound political influence in the North occurred alongside increasingly brutal racial violence against African Americans and the tremendous post-war growth of the Ku Klux Klan to a membership of four million. As Figure 1 shows, lynchings rose from 60 in 1918 to 76 in 1919 (ten of the 76 were returning black soldiers), their highest level since 1909. These episodes were often public events, announced in advance by local papers, with local authorities playing an active role and hundreds of spectators, including women and children, in attendance. In addition to lynchings, white mobs rioted against blacks in at least 25 cities in the "Red Summer" of 1919, which, according to John Hope Franklin, "ushered in the greatest period of interracial strife the nation had ever witnessed."<sup>50</sup> Black soldiers faced lynching in Georgia and Mississippi for appearing in public in military attire.<sup>51</sup> Over 3,000 spectators attended a lynching in Tennessee after it had been advertised in the local paper as a burning of a "live Negro."<sup>52</sup> John Shillady, the Executive Secretary of the NAACP, was brutalized by a local mob in Austin, TX, that included local court officials, leading him to later resign his position.<sup>53</sup> And in a particularly gruesome case in Georgia, a woman mourning her lynched husband was burned alive in front of a crowd. As Mary White Ovington, who investigated the case, observed: "She was pregnant, and as she burned, the infant fell to the ground and was trampled under a white man's heel."<sup>54</sup>

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<sup>50</sup> Franklin and Moss, Jr., *From Slavery to Freedom*, 385.

<sup>51</sup> Charles Kellogg, *NAACP, A History of the National Association for the Advancement of Colored People* (Baltimore: Johns Hopkins Press, 1973), 235.

<sup>52</sup> Franklin and Moss, Jr., *From Slavery to Freedom*, 380.

<sup>53</sup> Hixson, Jr., "Moorfield Storey and the Defense of the Dyer Anti-Lynching Bill." Dray, *At the Hands of Persons Unknown*.

<sup>54</sup> Ovington, *The Walls Came Tumbling Down*, (New York: Harcourt, Brace, 1947), 152.

Increasing black electoral influence and increasingly pervasive violence against blacks were both important considerations for one politician in particular in 1918: Rep. Leonidas Dyer (R-MO), who sought (with the help of the NAACP) to sponsor the first serious anti-lynching proposal since the Hornblower-Spingarn bill. Dyer represented the 12th congressional district, which comprised a heavily black area of St. Louis – 28% of blacks in Missouri lived in St. Louis at the time and were mostly concentrated in Dyer’s district.<sup>55</sup> Between 1911, Dyer’s inaugural year in Congress, and 1920, approximately 26,000 blacks had relocated to St. Louis, a 58% increase over the decade.<sup>56</sup> Dyer’s district was also important because it was adjacent to East St. Louis, IL – a city that experienced a threefold increase in its black population from the turn of the century to 1910<sup>57</sup> – which was the site of a horrific riot in 1917, where whites unleashed a wave of violence against blacks, with over 100 blacks killed in the attack (including several lynchings and a particularly horrific scene of a black baby being shot and thrown in a burning building) and several thousand left homeless.<sup>58</sup> Following the riot, black “refugees” relocated to Dyer’s district.<sup>59</sup> After a visit to the riot area, Dyer was moved by the plight of blacks victimized by vigilante violence; he subsequently sought to form a committee to investigate the East St. Louis riot and to establish federal power over the riot area.<sup>60</sup> Dyer would become the strongest advocate of a federal anti-lynching program in Congress and voice for the NAACP.

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<sup>55</sup> Goldstein, “The Dyer Anti-Lynching Bill.”

<sup>56</sup> Statistical Abstract of the United States.

<sup>57</sup> *Black Americans in Congress, 1870-2007*.

<sup>58</sup> Barnes, *Never Been a Time*.

<sup>59</sup> Hixson, Jr., “Moorfield Storey and the Defense of the Dyer Anti-Lynching Bill.”

<sup>60</sup> Charles Curtis (KS) proposed a resolution in the Senate in 1919 after a campaign by NAACP to investigate lynchings in the nation and investigate the Washington, DC riot (Dyer did the same in House); both measures failed to come out of committee. Rep. Henry Emerson of OH introduced similar bill, which likewise died in committee. Dyer had also supported monument for black soldiers service and made statements about the patriotism of black soldiers and the “educational and economic progress of the race as a whole.” Goldstein, “The Dyer Anti-Lynching Bill.”

In early 1918, during the 65th Congress (1917-19), Dyer introduced the first of several anti-lynching bills in the House. This bill (H.R. 11279) cast lynching as a denial of the “equal protection of the laws,” thereby making lynching a federal crime to be prosecuted in federal court, punishable up to five years in prison.<sup>61</sup> The bill also provided for the punishment of negligent local officials for not acting to stop the crime and for collecting a fee (to be given to the victim’s family) from counties where the lynching occurred or where the mob had passed through.<sup>62</sup> A similar bill (H.R. 11354) was introduced by Rep. Merrill Moores (R-IN), significant because it included seven sections to *prevent* lynching, in addition to establishing penalties for the crime; the bill allowed for potential victims to petition for federal protection if they had “reasonable cause” to think they would not be given equal protection by the state, after which the petitioner would then be taken into custody by federal marshals.<sup>63</sup> The Dyer and Moores bills also indicated that the anti-lynching issue had evolved – these anti-lynching proposals rested not on justifications related to war but on the Equal Protection clause of the Fourteenth Amendment, an important change that subjected the bills to difficult constitutional terrain.

Unfortunately for Dyer, Southerners controlled key House committees through which any anti-lynching bill would have to travel. The year of Dyer’s first bill, the House Judiciary Committee consisted of twelve Democrats, nine of whom were from the South, and only nine Republicans. Not surprisingly, Dyer’s bill was buried in the committee and never reported out.

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<sup>61</sup> At the time, no state had a law that allowed participants in a lynch mob to be held criminally liable. Several states had passed laws against lynching that would provide for the removal from office of officials who handed those in custody over to the mob. Specifically, antilynching laws had been enacted in NC, GA, SC, TX, OH, TN, AL, IL in the late 1800s and early 1900s. However, these statutes were generally not enforced and only one lyncher had ever been convicted in court.

<sup>62</sup> County liability measures would be contentious later; for more detail see Goldstein, “The Dyer Anti-Lynching Bill,” 43-46.

<sup>63</sup> Ferrell, *Nightmare and Dream*, 123.

This situation was soon altered by the 1920 elections (to the 67th Congress), in which Republicans secured major gains and now commanded solid majorities in both chambers (299 members in the House, 59 in the Senate). Soon after the election, James Weldon Johnson, the Executive Secretary of the NAACP and one of the few blacks on the National Advisory Committee to the GOP, urged President Harding to make good on the 1920 platform promise regarding lynching that stated, “We urge Congress to consider the most effective means to end lynching in this country which continues to be a terrible blot on our American civilization.”<sup>64</sup> President Harding obliged and raised the issue in his first annual message to Congress in 1921, saying: “Congress ought to wipe the stain of barbaric lynching from the banners of a free and orderly, representative democracy.”<sup>65</sup> His statement was followed by three new bills, introduced by Reps. Dyer, Moores, and Frank Dallinger (R-MA). The simple fact that anti-lynching bills were introduced exclusively by members of the Republican Party would become a major weapon in the arsenal of the Southern Democrats. A rhetorical “narrative” would begin to form, which Southern Democrats would use effectively into the future – the gist being that the Congress was complicit in supporting a conspiracy of Republicans, who were only proposing anti-lynching legislation in order to secure black votes, a partisan electoral ploy that would have the dire effect of encouraging black criminality.

Faced with a sizeable Republican advantage in the House, Southern Democrats, with a few allies from the North and West, offered a range of arguments against the Dyer bill, often raising the specter of black criminality and rape of white women.<sup>66</sup> However, none was as

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<sup>64</sup> Republican Party Platform of 1920, John and Gerhard Peters. *The American Presidency Project* [online]. Santa Barbara, CA: University of California (hosted), Gerhard Peters (database). Available from World Wide Web: <http://www.presidency.ucsb.edu/>

<sup>65</sup> Robert L. Zangrando, *The NAACP Crusade Against Lynching, 1909-1950* (Philadelphia: Temple UP, 1980), 57.

<sup>66</sup> Finnis Garrett (D-TN), leader of House opposition, along with Edward William Pou of (D-NC) recommended that the bill be titled “a Bill to encourage rape.” They argued that without threat of lynching, black “brutes” would not be restrained from attacking white women.

crucial to the bill's fate as the constitutionality question. Led by Rep. Lee Overman (D-NC), opponents argued that the anti-lynching measure was a violation of the Constitution, as it infringed on the sovereign power of states to police crime within their borders. Of course, it was not simply the power of states that Southerners were concerned about, if their previous action in other areas of federal intrusion is any guide – namely prohibition.<sup>67</sup> As one expert notes, “What hypocrisy when they sanctified state police power in arguing against the Dyer bill, whose invasion of state jurisdiction was not as great as that effected by the Eighteenth Amendment.”<sup>68</sup> However, congressional supporters, including Dyer himself, might have anticipated the importance of constitutionality, given the fate of the bill's predecessor in 1901, which had been negatively reported by the Judiciary Committee largely on constitutional grounds.

The constitutional argument was particularly important to Southern Democrats because if anti-lynching legislation was passed and upheld as constitutional, such a measure would “accustom the nation to federal antilynching jurisdiction;” moreover, by logical extension, this meant that “southerners faced not just a threat to Lynch Law but to their segregationist society which federalism, in theory and in practice, guarded.”<sup>69</sup> Thus, the congressional battle over lynching was seen as determining the future path of civil rights and viability of federal action.

The constitutional arguments were largely on the side of the anti-lynching opponents, as the Supreme Court had established a powerful doctrine in the Civil Rights Cases (1883) that the Fourteenth Amendment only applied to official state actions. Opponents argued that lynching was an individual action, like murder, and as such should be dealt with at the state level. Federal intrusion would thus be a breach of the Constitution. This rhetorical strategy provided anti-

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<sup>67</sup> For an interesting discussion of the hypocritical stance on federal power in state affairs on several issues during this time, see Barbara Holden-Smith, “Lynching, Federalism, and the Intersection of Race and Gender in the Progressive Era” *Yale Journal of Law and Feminism* 31 (1996): 31-78.

<sup>68</sup> Goldstein, “The Dyer Anti-Lynching Bill,” 71.

<sup>69</sup> Ferrell, *Nightmare and Dream*, 116.

lynching opponents with a unique cover so as not to appear to sanction or celebrate the burning and maiming of black citizens. No matter how much they abhorred the lawlessness of lynching, they liked sacrificing the supreme law of the land even less – or so the argument went.

Anti-lynching supporters recognized the difficult constitutional minefield and sought to create a solid rationale for federal action. Attorney General Harvey Daugherty argued that the absence of state action to protect lynching victims or prosecute lynchers amounted to the same denial of equal protection as an official state law. If the Court struck down the law, they could propose it as a constitutional amendment. It was indeed curious that proponents did not utilize Sections 51 and 52 of the 1870 Enforcement Act and Civil Rights Act of 1866, which prohibited (and punished) individuals or authorities “acting under color of law” from interfering with the constitutional rights of others; these sections would later be the basis on which the Civil Rights Service of the Department of Justice would seek to prosecute lynchers.<sup>70</sup>

The Dyer bill now had the backing of several strong proponents in the House, including the chair of the Appropriations Committee, Rep. Martin Madden (R-IL), who had gained a reputation for helping blacks. The bill also faced a more favorable House Judiciary Committee, which now included fifteen Republicans and only six Democrats (all of whom were from the South, including the leader of the opponents, Hatton Sumners of Texas). Moreover, the committee was chaired by Rep. Andrew Volstead (R-MN), a prominent and vocal supporter, and Dyer was chair of the subcommittee on lynching. But this Republican dominance was marred by two party members who refused to support the bill – C. Frank Reavis (NE) and Ira Hersey (ME), who thought their GOP colleagues were being unduly pressured by black constituents. Hersey

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<sup>70</sup> Capeci, Jr. “Lynching of Cleo Wright” in the Finkelman book. (redo this cite)

refused to be convinced by Moorfield Storey or his fellow Republicans, saying “we as a party owe the colored people nothing, and for one I refuse to be politically blackmailed.”<sup>71</sup>

Hersey was right about the importance of the (increasingly strained) hold of the Republican Party on black votes. The NAACP also knew that black votes could be used as a credible threat and undertook a major campaign urging the bill’s passage in the lead-up to the midterm elections. James Weldon Johnson lobbied House members in 1921, warning them that slowing the bill, watering it down with amendments, or abandoning it would be seen as a “betrayal” of blacks.<sup>72</sup> In addition, twenty-seven state branches of the NAACP sent letters to 87 representatives demanding action on Dyer’s bill, and the *Crisis* magazine issued a strong warning to its readers that a vote against the bill was a vote for lynching: “If your Congressman votes against the Dyer Bill mark him down as your betrayer in the hour of trial and defeat him by every legitimate means when he asks your suffrage next fall. In the same way, reward those who met the tests without flinching.”<sup>73</sup>

As the bill was readied for floor consideration, the Republicans succeeded in limiting debate to ten hours, with five minutes per speaker, through a special resolution introduced by Philip Campbell (R-KS), to the great consternation of southerners who tried unsuccessfully to have the bill recommitted to the Judiciary Committee. Southern representatives also attempted to leave the House without enough bodies present for a quorum; however, the Speaker ordered the chamber locked and dispatched the Sergeant at Arms to locate the missing members and expedite their return. And on January 26, 1922, with a cheering crowd of black onlookers, the Dyer bill (H.R. 13) was passed 231 to 119.<sup>74</sup> As illustrated in Table 5, the vote was a straight

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<sup>71</sup> Quoted in Ferrell, *Nightmare and Dream*, 195.

<sup>72</sup> Zangrando, *The NAACP Crusade Against Lynching*, 62-63.

<sup>73</sup> Ferrell, *Nightmare and Dream*, 193.

<sup>74</sup> *Congressional Record*, 67th Congress, 2nd Session, January 26, 1922, pp. 1795-96

party line and sectional vote: only eight Democrats – all northern, except one from the border state of Kentucky – voted for the bill, and seven of these were from the urban areas of Boston, Buffalo, Chicago, and New York; 103 Democrats voted against the bill, all from the South, border areas, or California. Of the Republicans, one southerner from Texas voted for the bill and only 17 of the almost 300 Republicans voted against it, including Hersey from Maine.

One important, and heretofore unnoticed (based on our investigation of the literature), point deserves mention here: a bare majority of those Northern Democrats who participated on the Dyer roll call voted in favor of passage (7 in favor, 6 against). This illustrates the early movement of a small number of Northern Democrats in support of black civil rights; more generally, this indicates that, as early as 1921, a portion of the Democratic Party in the North began reaching out to black voters in key districts where the black population was beginning to have electoral clout. This is considerably earlier than most historians document, as the typical accounts suggest this Democratic courting of black voters first began in the mid-1920s.<sup>75</sup>

Once in the Senate, Dyer, Johnson, and other proponents of the anti-lynching bill expressed confidence in its prospects for passage. According to Martin Madden, President Harding had said: “If the Senate of the United States passes the Dyer anti-lynching bill, it won’t be in the White House three minutes before I’ll sign it; and having signed it, I’ll enforce it.”<sup>76</sup> Proponents believed the threat of a filibuster was a remote possibility, and the 1920 elections had given the Republicans a majority of 22 seats in the Senate. But even with every Republican senator behind the measure – itself not likely – the anti-lynching bill would need votes from five Democratic senators to achieve the necessary two-thirds to invoke cloture and thus overcome a filibuster. (Still, this was considered possible given that eleven of the 36 Democratic senators

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<sup>75</sup> See, for example, Franklin D. Mitchell, *Embattled Democracy: Missouri Politics, 1929-1932* (Columbia: University of Missouri Press, 1968), 98.

<sup>76</sup> Ferrell, *Nightmare and Dream*, 236.

were not from the South). However, other problems also existed. While Republicans were the majority on the Senate Judiciary Committee, none came from states with large black constituencies (CT, RI, ID, IO, SD, NE) and none was supportive of the NAACP. Moreover, the subcommittee that would handle the bill was comprised of members from states where blacks were either not a large constituency or were populous but effectively disenfranchised (Vermont, Rhode Island, Idaho, North Carolina, and Tennessee). More generally, Senate Republicans were less responsive to black interests than their House counterparts, in part because blacks were concentrated in House districts but less influential in state-wide elections – and few Republican senators were up for reelection in 1922 anyway.

In fact, Dyer, Johnson, and White would encounter difficulty maintaining support for the bill in the Senate. One notable example was the Majority Leader, Henry Cabot Lodge, once a friend of black interests and sponsor of the famous Lodge Bill in 1891, who was lukewarm toward the bill and had to be coerced into toeing the line. On the whole, the weak support of Northern Republican senators stood in bold contrast to the unwavering and disciplined opposition of Southern Democrats, which together sealed the bill's fate.

Among Senate Republicans, there were many who were indifferent to the bill and a few powerful senators who were strongly opposed on constitutional grounds. One such senator was William Borah (R-ID), whose opposition might not have been a major obstacle had he not been the most important member of the five-person subcommittee that would report the bill and affect the timing of Senate action. Borah told Moorfield Storey and James Weldon Johnson that he would not support the anti-lynching bill unless he could be assured of its constitutionality. After several failed attempts by Storey and Johnson to make the case for its constitutionality – a difficult undertaking given that the Supreme Court's reigning doctrine on civil rights cases did

not make their upholding a federal anti-lynching measure likely – Borah remained steadfastly opposed, saying that he “would do anything possible to stop lynching short of violating the Constitution.”<sup>77</sup> The subcommittee under Borah’s leadership expressed negative support for the bill to the full Judiciary Committee. At while there seemed to be a narrow majority on the Judiciary Committee in favor of the bill, Borah postponed consideration for several months until Henry Cabot Lodge, pressured by a petition from the NAACP, forced his hand. Finally, the bill was released from the full committee with an 8-6 favorable vote, but only after Borah joined two Southern Democrats, Overman and John Shields (D-TN), in voting against it.<sup>78</sup> Borah’s vote, the committee report, the narrow committee margin, and the fact that some Senators on the Judiciary Committee reserved the right to change their vote under full Senate consideration signaled to opponents that Republicans were not unified in their defense of the bill and that doubts about its constitutionality could be exploited. In this weakened condition, the bill was not brought to the floor for three months after being reported.<sup>79</sup>

Electoral considerations were important and bill advocates understood this. Walter White and Moorfield Storey of the NAACP would try to take advantage of the approaching 1922 midterms in which one-third of Senators would be up for reelection. Republican leaders’ aggressiveness in the struggle for the anti-lynching bill’s passage would become a test of their loyalty to the black vote. Because many rightly believed that the lukewarm support of Lodge would evaporate further without significant electoral incentive, if the lynching bill did not get

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<sup>77</sup> Goldstein, “The Dyer Anti-Lynching Bill,” 84.

<sup>78</sup> Borah wanted to unseat Lodge so he could take over the prestigious Foreign Affairs Committee – if he made Lodge look like he was breaking a GOP party platform pledge against lynching, it might hurt Lodge’s reelection.

<sup>79</sup> Senator Samuel Shortridge (R-CA) introduced the bill in the Senate on July 28, 1922. See *Congressional Record*, 67th Congress, 2nd Session, July 28, 1922, p. 10735. Senator Joseph France (R-MD), attempted to move for the bill’s consideration on the floor on September 16, 1922, but was not granted the floor. See *Congressional Record*, 67th Congress, 2nd Session, September 16, 1922, p. 12737.

voted on until after November, there would be little chance of passage. Thus, bill advocates sought to have it come to a vote before the election cycle had passed. According to Storey:

We must get it passed before the election if at all. Nothing can be expected at the short session, and our main weapon, the Negro vote, will be gone.... Our policy is to unite that vote there and elsewhere in the announced resolve to vote against every republican who does not do his bit to pass the bill. The Republicans have an overwhelming majority, and unless they use their power and keep their promise, they are not our friends.<sup>80</sup>

In this context, the NAACP engaged in a multi-faceted lobbying effort for the legislation.<sup>81</sup>

James Weldon Johnson drafted a petition obtaining the signatures of prominent politicians and leaders throughout the country, including 39 mayors, 24 governors, 30 editors, 88 preachers, two attorney generals, 47 prominent lawyers and judges, 29 university professors and presidents, and many other influential writers and editors.<sup>82</sup> This petition, along with newspaper accounts and NAACP reports about lynching, were sent directly to senators' DC offices. The NAACP also reminded the GOP of its platform promise at the annual convention: "Unless the pledge is kept we solemnly pledge ourselves to use every avenue of influence to punish the persons who defeated it."<sup>83</sup> And, in June 1922, thousands of blacks marched in Washington, DC, for passage of the bill.

Dyer also campaigned for his bill. He recognized Lodge's wavering support, and in an "extraordinary move against a senior member of his own party" he courted an audience in Lodge's home state recommending they vote against him if he didn't pass the anti-lynching bill.<sup>84</sup> Lodge faced a difficult reelection battle in Massachusetts, which had a relatively sizable black electorate; though only 1.2 percent of the total state population was black, over half of all

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<sup>80</sup> Ferrell, *Nightmare and Dream*, 267.

<sup>81</sup> For an excellent account of the NAACP's lobbying efforts, see Megan Ming Francis, "Crime and Citizenship: The NAACP's campaign to end racial violence, 1909--1923" (Ph.D. diss., Princeton University, 2008).

<sup>82</sup> Dray, *At the Hands of Persons Unknown*.

<sup>83</sup> Goldstein, "The Dyer Anti-Lynching Bill," 91.

<sup>84</sup> Zangrando, *The NAACP Crusade Against Lynching*, 66.

New England blacks resided in his state and the population had grown since the last census. Other Senate Republicans were in a similar spot as Lodge. Senators Joseph France (R-MD) and Charles Townsend (R-MI) were also up for reelection – France in a state where 17 percent of the population was black, and Townsend in a state which had seen its black population more than triple in size from the 1910 to 1920 Census (though blacks were still only 1.6 percent of the population).<sup>85</sup>

Republicans in the Senate were in a difficult position. They acutely understood that they needed to do something on the lynching bill to keep their promise to black voters by delivering on their 1920 platform promise of halting lynching through federal action. However, they also knew that if the vote on the bill could be stalled until after the November elections, they could avoid black voting power in several important states including Indiana, Illinois, Michigan, New York, and Pennsylvania. If they could appear to genuinely endorse the Dyer bill amidst Southern opposition and obstruction, they could curry favor with blacks at the polls while not creating unnecessary delays on their other legislative priorities (the ship subsidy bill, for example), provoking hostility from white constituents, or destroying any possibility of improving the weak position of their party in the south. In the words of one historian who observed this latent motivation: “A constitutional reason for killing the bill or avoiding a vote on it could benefit political careers as well as the Republican party’s hope of cracking the Solid South.”<sup>86</sup>

Even though the bill only had lukewarm support in the Senate, there were several other reasons for it languishing there. As in the House, there were lingering concerns over the constitutionality of the bill that often favored Southern white supremacist Senators. The institutional rules of the Senate also favored opponents of the bill, who would enjoy unlimited

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<sup>85</sup> These statistics are from the *Statistical Abstract of the United States*.

<sup>86</sup> Ferrell, *Nightmare and Dream*, 237.

debate unless Republican leaders could marshal the necessary votes for cloture. Southern Democrats in the House, defeated, fully expected their counterparts in the Senate to use all the parliamentary tactics at their disposal to block the bill's passage. Southern Democrats believed that much more consequential legislation would follow if the federal anti-lynching measure passed, perhaps even the end of segregation itself. As Keith Finley notes, southern members of Congress viewed the federal anti-lynching proposal as

the initial act in a play that might culminate in the demise of Jim Crow... southern senators believed that by defeating bills that threatened only the periphery of the Jim Crow edifice, such as antilynching legislation, they could halt a broadening of the civil rights agenda by preventing the formation of an 'opening wedge' through which more sweeping proposals would flow.<sup>87</sup>

Moreover, the responsibility for shepherding the bill on the floor was given not to a senator experienced in overcoming obstructionism but (curiously) to a political neophyte and unseasoned floor leader, Senator Samuel Shortridge (R-CA), who was serving in his very first Congress.

Shortridge performed his role diligently, but after moving to take up the bill on November 27, 1922, he was quickly interrupted by several other senators who wished to have other business considered (e.g., an irrigation project, employee pay, and the Liberian loan).<sup>88</sup> Shortridge and France protested, struggling to maintain order; when Shortridge finally regained the floor, dozens of senators had left the chamber. While a quorum was present at the start of Shortridge's speech, only 27 senators remained once the procedural dust had settled – which meant that his motion would not get consideration.<sup>89</sup> Even Lodge, the Majority Leader and erstwhile supporter, was absent. Only Howard Sutherland (R-WV) protested and asked members to remain to consider the bill, saying that “if there is any one thing which is distinctly a blot upon

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<sup>87</sup> Keith M. Finley, *Delaying the Dream: Southern Senators and the Fight against Civil Rights, 1938-1965* (Baton Rouge: Louisiana State University Press, 2008).

<sup>88</sup> *Congressional Record*, 67th Congress, 2nd. Session, September 21, 1922, p. 13075.

<sup>89</sup> *Congressional Record*, 67th Congress, 2nd. Session, September 21, 1922, p. 13086.

our boasted civilization, it is the crime of lynching” and calling on his colleagues in an impassioned speech.<sup>90</sup>

[Lynching] begets a contempt for law and breeds a disposition upon the part of those inflamed by passion, even on account of minor offenses, to commit murder under the guise of wreaking vengeance for the protection of society. If we admit this principle, how can any one of us or our families be safe?

Despite Sutherland’s avowals that the bill was constitutional, national (and not sectional), and necessary to preserve the “fundamental principles of government,” none of the senators responded. As a result, the Senate adjourned and the Dyer bill was pushed to the next session *after the election*.

The NAACP was deeply disappointed in the disappearance of their supposed Republican allies. Moorfield Storey observed that “so many of the persons supposed to be our active supporters did not take enough interest to remain in their seats when the bill was called.”<sup>91</sup> It was a significant setback for NAACP leaders, who publicized their disappointment in the *Crisis*, listing the names of every senator who did not respond to the quorum call and warning GOP senators that if the bill was not passed in the post-election session, they would consider it as a broken promise to blacks. This marked beginning of black disaffection with the GOP and foreshadowed their outright revolt in the 1930s.<sup>92</sup>

When the Senate reconvened in late November 1922, consideration of the Dyer bill began again, and it faced a precarious situation. The November elections had resulted in the loss of some anti-lynching proponents, including Volstead and Ansorge in the House and Sutherland, France, Townsend, and William Calder (R-NY) in the Senate. Overall, Republicans lost eight Senate seats and 74 House seats, reducing the GOP majority in the Senate from 22 to 6 and 167

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<sup>90</sup> *Congressional Record*, 67th Congress, 2nd Session, September 22, 1922, p. 288.

<sup>91</sup> Quoted in Ferrell, *Nightmare and Dream*, 273.

<sup>92</sup> Richard B. Sherman, “Republicans and Negroes: The Lessons of Normalcy,” *Phylon* 27 (1966): 63-79.

to 15 in the House. For a federal anti-lynching bill to be passed, therefore, it had to be brought up for a vote while Republicans still had a large numerical advantage in the few remaining weeks of the 62nd Congress (i.e., the lame-duck session). In order to pressure the lame-duck Republicans in the Senate, the NAACP ran a page-length advertisement in nine major newspapers including the *New York Times* and the *Atlanta Constitution* about lynching, entitled “The Shame of America,” encouraging constituents to contact their senators with telegrams. They unleashed a massive publicity campaign and extensive use of the press to pressure the Senate to pass the Dyer bill – examples included open letters to the Senate, press releases, editorials, canvassing congressional offices, and even banners saying “a man was lynched today.” Their objective now was to prevent the GOP from abandoning the bill. If it failed now, the anti-lynching bill would have to be reintroduced and passed by the House again in the following (68th) Congress.

The NAACP and proponents of the Dyer bill faced a determined Senate filibuster led by Senate Minority Leader Oscar Underwood (D-AL), Pat Harrison (D-MS), and Thaddeus Caraway (D-AR), who threatened to halt any Senate business unless the matter was put to rest, repeatedly referring to the antilynching measure as a “force” bill.<sup>93</sup> In recognition of the filibuster, Underwood proclaimed that:

We are not disguising what is being done on this side of the chamber. It must be apparent, not only to the Senate, but to the country, that an effort is being made to prevent the consideration of a certain bill, and I want to be perfectly candid about it.... We are going to transact no more business until we have an understanding about this bill..... If you gentlemen want to continue, after this candid statement of the case, and keep this bill before the Senate, when you know it is going to be blocked and can not be passed,.... Go ahead, and we will have roll calls and move adjournments day and night..... we might as well come to an understanding and lay the bill aside, because you can not pass it. You know you can not pass it.<sup>94</sup>

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<sup>93</sup> *Congressional Record*, 67th Congress, 3rd Session, November 28, 1922, p. 332.

<sup>94</sup> *Congressional Record*, 67th Congress, 3rd Session, November 28, 1922, p. 332.

They unleashed several parliamentary tactics, including skirting quorums, reading the daily journal *ad nauseum*, adding amendments to the journal, and introducing procedural motions to delay the proceedings. Ultimately, the GOP yielded to the filibuster, as a caucus of Republican senators met in the evening of December 2, 1922 and voted to abandon the Dyer bill; while debate in the caucus was contentious, only nine of the over 50 Republicans supported continuing the fight against the filibuster.<sup>95</sup> The Republican Conference minutes document that only a few days prior (November 28) the caucus had met and decided to keep pressing for passage of the anti-lynching legislation; not one of the Republican senators voted against it. The fact that only a few days later, the caucus met and decided to abandon the bill, in order to resume Senate business, suggests that the Senate Republicans had become wary of its prospects for passage and worn down by the filibuster. Lodge thanked the caucus for being willing to sacrifice the anti-lynching bill so that the Senate could resume its business.

When the Republicans to the Senate on December 4, 1922, Lodge announced that he would not seek any further action on the Dyer bill. In an embarrassing moment on the floor, he was pressed by Underwood to promise not to raise the bill again in the future. Lodge responded that while he believed that the bill *ought* to pass, he also felt that “[t]he bill could not pass, as it would be impossible to change the rules now; and the conference decided that they would not press the bill further” in the expiring session or the following one.<sup>96</sup> Underwood reminded Lodge that if the Dyer bill came up again, “we would renew the fight.”<sup>97</sup>

The NAACP immediately blamed both parties for the failure of the anti-lynching measure. Blacks were even more embittered towards Senate Republicans, however, whose non-

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<sup>95</sup> Wendy Wolf and Donald A. Ritchie (eds.), *Minutes of the Senate Republican Conference, Sixty-second Congress through Eighty-eighth Congress, 1911-1964* (Washington: U.S. Government Printing Office, 1999), 135-36.

<sup>96</sup> *Congressional Record*, 67th Congress, 3rd Session, December 4, 1922, p. 450.

<sup>97</sup> *Congressional Record*, 67th Congress, 3rd Session, December 4, 1922, p. 450.

action and indifference was deemed a betrayal.<sup>98</sup> The Republicans had a sizeable in the Senate, but only five had given speeches to advance the bill – Shortridge, Walter Edge (NJ), Frank Willis (OH), Harry New (IN), and Albert Cummins (IA) – and only nine had supported holding out against the filibuster until March of the next year (the end of the session) if necessary.<sup>99</sup> Not one senator had stood when Kenneth McKellar (D-TN) asked that any and all lawyers on the Senate floor (aside from Shortridge) rise if they thought the bill was constitutional; Shortridge himself could not answer McKellar’s challenge to give the name of another senator who believed the bill was entirely constitutional.<sup>100</sup> And, finally, President Harding had failed to actively support the bill in the final moments. The *New York Times* even suggested that Senate Republicans were relieved by the emergence of the filibuster, because it allowed them to blame southern obstructionism for the defeat of a bill that they did not care much for anyway.<sup>101</sup>

The belief that the Republican Party had sacrificed the lynching fight through sheer disinterest would not go unpunished by the NAACP. James Weldon Johnson, who had to this point concealed his frustration, was now openly chilly to the party; he wrote an “Open Letter to Every Senator of the United States,” wherein he indicated that several lynchings had occurred after the Dyer fiasco and blamed obstructionism and Republicans’ legislative impotence for those deaths.<sup>102</sup> In addition to this symbolic effort, the NAACP aggressively campaigned against several Republicans who had been absent in the Senate on the crucial roll call or had voted against the bill in either chamber, including Senators Joseph Frelinghuysen (NJ) and Joseph McCormick (IL), and Reps. C. Bascom Slemph (R-VA), E. Wayne Parker (NJ), Caleb R. Layton

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<sup>98</sup> Johnson, *Along this Way*; White, *Rope and Faggot*.

<sup>99</sup> Mary Lu Nuckols, “The NAACP and the Dyer Anti-Lynching Bill: A Barometer of Emerging Negro Political Power” (PhD diss, University of North Carolina at Chapel Hill, 1963).

<sup>100</sup> *Congressional Record*, 67th Congress, 3rd Session, November 28, 1922, p. 334.

<sup>101</sup> *New York Times*, December 4, 1922, p. 16.

<sup>102</sup> Dray, *At the Hands of Persons Unknown*, 272.

(DE), and Patrick H. Kelley (R-MI).<sup>103</sup> All of them ultimately lost. Kelley ran against Charles Townsend for a Senate seat and the NAACP threw their support to Townsend.

The failure of the Dyer bill marked the beginning of black disaffection with the GOP, which would continue throughout the decade. In an article entitled, “Political Effect of the Dyer Bill – Delay in Enacting Anti-Lynching Law Diverted Thousands of Negro Voters,” Ernest Harvier of the *New York Times* discussed the black disaffection at length:

The action of the Republicans in passing the bill was regarded by their negro followers as belated and the delay over its adoption as an evidence of bad faith. Hence their defection last year from the Republicans in New York City and in many other cities throughout the country and this year in Chicago, Kansas City and Philadelphia.<sup>104</sup>

As blacks began to view the Republicans as largely indifferent in the handling of a bill that was a matter of life or death for members of their race, they began to search for new allies and reevaluate their ties to the GOP. The year after the Dyer bill’s defeat, a new group called the Non-Partisan National Association of Colored Voters convened in Chicago with delegates representing 17 states. As Zangrando notes: “Designed to break black voters from Republican ranks, the conference sent messages.”<sup>105</sup> One of the messages was a resolution regarding the defeat of the Dyer bill, and another commended the actions of several *Democrats* in Indiana, Maryland, and New York who had signed on to the conference in support of anti-lynching legislation. Another group of leading black Republicans from several states convened under the direction of Dr. George Cannon, in charge of the National Colored Republican Conference, which had become upset about the Dyer bill failure.<sup>106</sup>

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<sup>103</sup> Zangrando, *The NAACP Crusade Against Lynching*, 74.

<sup>104</sup> *New York Times*, July 9, 1922, p. 33.

<sup>105</sup> Zangrando, *The NAACP Crusade Against Lynching*, xx.

<sup>106</sup> Richard B. Sherman, “The Harding Administration and the Negro: An Opportunity Lost,” *Journal of Negro History* 49 (1964): 151-168.

This was the last gasp of anti-lynching action for another decade and a half. After defeat of H.R. 13, ten more anti-lynching bills were introduced, including three by Dyer himself, but none generated much momentum – as no lynching bill would pass again for another 15 years.<sup>107</sup> The 1924 and 1928 Republican platforms contained requests for congressional legislation on lynching, and President Coolidge asked Congress for a bill after being elected in 1924, but these were largely pro forma. While the anti-lynching initiative ultimately failed to successfully navigate the Congress, it was one of the only pieces of civil rights legislation in this period.<sup>108</sup>

Perhaps the Dyer bill's greatest legacy was in helping to reduce blacks' allegiance to the Republican Party. While Republicans had been the sole sponsors of anti-lynching legislation, the lukewarm support of Republican rank-and-file members and leaders like Lodge during the campaign for the Dyer bill generated resentment towards the GOP among prominent black leaders. This disaffection grew at a time when black political power was on the rise, thanks to the expansion of the black electorate in northern states and large urban centers. The diminished reputation of the GOP among black elites soon trickled down to black voters, who by the 1928 election had begun to defect. By the end of the 1920s, blacks had no alliance and were not "captured" (in Paul Frymer's language).<sup>109</sup> As Congressional Democrats reemerged in the North in 1930s, thanks to FDR's coattails, they would be poised to be the "friendly party" to blacks, a title they could not compete for given their small numbers in the 1920s. Related to shifting black

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<sup>107</sup> Based on a table, "Antilynching bills introduced in Congress from Dec. 4, 1865, to May 26, 1947," in the Appendix of Hearings Before Subcommittee No. 4 of the House Judiciary Committee on various anti-lynching bills, 80th Congress, 2nd Session, 185-88 (1948).

<sup>108</sup> Lynching measures, while certainly the most prominent, were not the only pieces of legislation introduced during the 1920s to aid the plight of blacks in the United States. Others included: efforts for to reduce Southern representation in the House, ala Republican efforts around the turn-of-the-twentieth century; congressional investigations into disenfranchisement; a memorial to blacks for "negros' contribution to the achievements of America"; congressional investigations of the Klan and mob violence against blacks; and a bill to exclude blacks from immigrating to the United States, as part of Immigration bill in senate, which passed 29-25.<sup>108</sup> For a good discussion, see *Black Americans in Congress*.

<sup>109</sup> Paul Frymer, *Uneasy Alliances: Race and Party Competition in America* (Princeton: Princeton University Press, 1999).

party alliances, the party line votes in the Dyer years would become more bipartisan, with more and more Democratic sponsors and supporters of anti-lynching legislation, much to the chagrin of the Southern wing of the party.<sup>110</sup> These successors to the Dyer bill would expose a widening rift in the Democratic Party. It is to this later episode that we now turn.

#### **IV. The Second Congressional Campaign for Anti-Lynching Legislation, 1930-1940**

As the preceding sections have noted, the push for civil-rights legislation did not disappear with the failure of the Lodge Bill and then reappear, as some have argued, because of World War II.<sup>111</sup> Instead, as African-American political influence grew over the course of the early-20th century, political agents from both parties would pursue black votes by offering federal anti-lynching legislation. The political battle for these voters culminated in the 1930s with a “switch in time” wherein the historic ties between African-American voters and the Republican Party broke down and the Democratic Party emerged as party-of-choice for most blacks. Here, we will argue that the 1930s legislative battle over federal anti-lynching legislation serves as an indicator of the shift in party loyalty. We will also demonstrate that prior to the WW II, African-American voters did not embrace the Democratic Party simply as a consequence of Roosevelt’s economic policy; rather, they were fought for by Democrats who used federal anti-lynching legislation as a tool to gain their support.

Research by Sociologist Douglas McAdam on the development of the civil rights movement identifies factors that “undermine[d] the politico-economic conditions on which the

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<sup>110</sup> George C. Rable, “The South and the Politics of Antilynching Legislation, 1920-1940,” *Journal of Southern History* 51 (1985): 201-20; Finley, *Delaying the Dream*.

<sup>111</sup> Daniel Kryder, *Divided Arsenal: Race and the American State During World War II* New York: Cambridge University Press, 2000; Doug McAdam, *Political Process and the Development of Black Insurgency, 1930-1970* (Chicago: University of Chicago Press, 1999); Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy* (New York: Harper, 1944); Jennifer Brooks, *Defining the Peace: World War II Veterans, Race, and the Remaking of Southern Political Tradition* (Chapel Hill: The University of North Carolina Press, 2005); Mary Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton: Princeton University Press, 2002).

racial status quo had been based.<sup>112</sup> The “push-pull” effect he identifies precipitated the “Great Migration” between 1910 and 1960, during which time 5 million African-Americans left Southern states for northern cities. As McAdam documents, the North and West saw exponential increases in African-American population over this half-century. More specifically, however, he reports that large numbers of African-American migrants settled in seven “key northern (or western) industrial states.”<sup>113</sup> Table 6 documents the total number of migrants entering these key states. Moreover, both McAdam and Political Scientist Alan Ware identify these states as highly contested, and ones that that proved necessary for the construction of winning electoral college coalitions for both parties.<sup>114</sup> The drive to pass anti-lynching legislation emerges as one strategy for winning the loyalty of these new votes.

Beginning in the 1930s, politicians in a number of northern cities responded to the influx of African-American migrants by “actively courting the black vote.”<sup>115</sup> Michael Klarman argues that within Southern states themselves, anti-lynching legislation emerged as one “ameliorative policy” promoted by some planters who sought to prevent additional out-migration. However, where Klarman discusses state-level anti-lynching legislation, a federal strategy – led by the new Democratic majorities in Congress – also emerged as the political influence of African-Americans continued to grow.<sup>116</sup> Indeed, as Figure 2 illustrates, the first piece of anti-lynching legislation introduced by a Democrat in the House of Representatives occurred in 1934, and by 1937 individual Democrats had introduced 40 anti-lynching bills. Additionally, as Figure 3

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<sup>112</sup> McAdam, *Political Process*, 77.

<sup>113</sup> McAdam, *Political Process*, 78.

<sup>114</sup> McAdam, *Political Process*, 82; Alan Ware, *The Democratic Party Heads North, 1877-1962* (New York: Cambridge University Press, 2006), 189.

<sup>115</sup> McAdam, *Political Process*, 82.

<sup>116</sup> Michael Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004), 111.

demonstrates, members from pivotal states authored much of the anti-lynching legislation introduced in the 1930s.

This quantification of the number of anti-lynching bills and the location of their authors provides some indirect evidence that the political influence of African-Americans was growing. Indeed, as we detail below, the NAACP and other advocacy groups launched campaigns to secure anti-lynching legislation even as public opinion throughout the country was shifting toward a more favorable view of a federal law banning lynching. It does not, however, demonstrate that Democrats were serious about passing a federal law, and since this legislation never made it out of the Senate, it might raise doubts about how much political influence African Americans had in the early years of the New Deal. By looking at the legislative wrangling over this legislation we can see that both doubts should be set aside. Specifically, an analysis of the process that stalled this legislation demonstrates that (a) the effort had determined support but was stymied by the institutional rules of the Senate, and (b) that the effort to pass the bill and win African-American votes precipitated the “party switch” that led Democrats to embrace a pro-civil-rights agenda and for African Americans to embrace the Democratic Party.

Racial violence in the South intensified as the Great Depression worsened. While the total number of lynchings had steadily decreased throughout the 1920’s – to as few as 7 in 1929 – the number increased as the 1930s began with 28 occurring in 1933.<sup>117</sup> As a consequence, a number of civil-rights advocacy organizations pressed Congress for federal legislation to prevent and punish the crime.<sup>118</sup> In 1933, the Committee on Interracial Cooperation called attention to the problem of lynching by publishing two tracts – *The Tragedy of Lynching* and *Lynching and*

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<sup>117</sup> Harvard Sitkoff, *A New Deal for Blacks: The Emergence of Civil Rights as a National Issue: The Depression Decade* (New York: Oxford University Press, USA, 2008), 202.

<sup>118</sup> Sitkoff, *A New Deal for Blacks*, 205; Zangrando, *The NAACP Crusade Against Lynching*, 105.

*the Law* – which they distributed to “every Southern editor library and college.”<sup>119</sup> In addition, a number of advocacy organizations including the Young Women’s Christian Association, the Federal Councils of Churches of Christ, the Women’s Missionary Council of the Methodist Episcopal Church, the American Civil Liberties Union, and the Writers’ League Against Lynching also made public appeals for federal legislation.<sup>120</sup> The support offered by religious organizations proved particularly important. For in a speech to the Federal Councils of the Churches of Christ, President Roosevelt offered his first thoughts on lynching through a denunciation of the practice as a “vile form of collective murder” and the claim that “America...seeks a government of its own that will be sufficiently strong to protect the prisoner and at the same time to crystallize a public opinion so clear that government of all kinds will be compelled to practice a more certain justice.”<sup>121</sup> While Roosevelt famously withheld support for a federal law, legislators would use indirect shows of support like the one above as they fought to pass a lynching bill.

The most influential advocacy organization pushing for a federal anti-lynching legislation was the NAACP. Walter White, now Executive Secretary of the NAACP, spearheaded a campaign for federal anti-lynching legislation through a public education campaign. White believed such a campaign could “mobilize support within and beyond the black community” that would pressure legislators to pass a federal law.<sup>122</sup> White also publicly declared that he had asked Senator Edward P. Costigan (D-CO), a former member of the Progressive Party, to introduce legislation that would enhance federal authority to punish lynching.<sup>123</sup> According to T.H. Watkins, the efforts of White and the NAACP to demonstrate widespread support for the

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<sup>119</sup> Sitkoff, *A New Deal for Blacks*, 204.

<sup>120</sup> *New York Times*, May 31, 1934, p. 1.

<sup>121</sup> *New York Times*, December 7, 1933, p. 1.

<sup>122</sup> Zangrando, *The NAACP Crusade Against Lynching*, 111.

<sup>123</sup> *New York Times*, December 17, 1933, p. N1.

measure, when combined with his ideological predispositions, “persuaded” Costigan to offer a bill.<sup>124</sup>

On January 4, 1934, during the Second Session of the 73rd Congress, Costigan and Robert Wagner (D-NY) introduced S. 1978 – the first piece of anti-lynching legislation sponsored by Congressional Democrats.<sup>125</sup> This bill largely reflected the goals first elucidated by the 1922 Dyer proposal.<sup>126</sup> It also became the model used by anti-lynching legislation advocates in both the Senate and the House in the proceeding years. The Costigan-Wagner bill empowered the federal government to “invade state jurisdictions” when state or local officials “fail or refuse” to prevent a lynching; created a federal penalty of five years in prison or \$5,000 fine for any officer “failing to exercise diligence in preventing or punishing mob violence; mandated “imprisonment of from five years to life for any state officer who affirmatively abets such mob violence” and that “any county in which a lynching occurs is to be liable for a \$10,000 fine, to be devoted to the victims family;” and gave federal courts “jurisdiction where state instrumentalities give evidence of failure.”<sup>127</sup> It thus represented an effort to expand federal police power into the individual states – a fact that did not go unnoticed by Southern Democrats.

On February 20-21, 1934, the Senate Judiciary Committee held hearings on the bill, taking testimony from a wide range of witnesses including spokespeople from the American Civil Liberties Union (ACLU), Young Women’s Christian Association, Women’s International League for Peace and Freedom as well as academics, lawyers, and state officials from around the country. Also testifying were Walter White and other representatives from the NAACP. White

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<sup>124</sup> T.H. Watkins, *The Hungry Years: A Narrative History of the Great Depression in America* (New York: Henry Holt and Company, 1999), 498.

<sup>125</sup> *Congressional Record*, 73rd Congress, 2nd Session, January 4, 1934, p. 58.

<sup>126</sup> George C. Rable, "The South and the Politics of Anti-Lynching Legislation, 1920-1940," *The Journal of Southern History* 51 (1985): 209.

<sup>127</sup> *Chicago Tribune*, January 5, 1934, p. 6.

sought to demonstrate the political support for anti-lynching legislation by highlighting the NAACP's membership numbers – 378 branches and 85,000 individual members – as well as by presenting letters of support from the governors of 12 states.<sup>128</sup> He went on to invoke the “long, drawn out filibuster” that had brought down the Dyer bill in 1922, but suggested that “far-reaching and subtle changes” had taken root in the succeeding 12 years which simultaneously increased the importance of the bill and its potential to be passed. Specifically, White cited shifting public opinion in the South on the acceptability of lynching as well as changing views on the appropriate size of the federal government.<sup>129</sup> Here he anticipated the appeal to “states rights” that members frequently used to undermine civil-rights legislation by arguing that “no ‘state rights’ arguments are ever raised when the states seek financial aid for relief, public works, and other boons for the federal government.”<sup>130</sup>

On April 12, 1934 the Judiciary Committee favorably reported the Costigan-Wagner bill to the floor.<sup>131</sup> By the end of May, however, the Senate still had not taken on the bill. With summer and adjournment looming, Costigan took to the floor and – citing the “approximately 40,000,000 American citizens” who voiced support for the measure either directly or indirectly through the spokesmen of supportive organizations – sought to demonstrate the political risks facing those who worked to prevent consideration of his measure.<sup>132</sup> Walter White echoed this appeal in a *New York Times* letter to the editor which highlighted broad public support for the

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<sup>128</sup> Hearing Before the Subcommittee of the Committee of the Judiciary United States Senate on S. 1978, 73rd Congress, 2nd Session, February 20, 1934, p. 14, 21. White provided letters of support from the governors of Ohio, Wisconsin, Wyoming, Kansas, Colorado, New Jersey, New York, Minnesota, Pennsylvania, North Dakota, Florida, and Utah.

<sup>129</sup> Hearing Before the Subcommittee of the Committee of the Judiciary United States Senate on S. 1978, 73rd Congress, 2nd Session, February 20, 1934, p. 12.

<sup>130</sup> Hearing Before the Subcommittee of the Committee of the Judiciary United States Senate on S. 1978, 73rd Congress, 2nd Session, February 20, 1934, p. 14.

<sup>131</sup> *Congressional Record*, 73rd Congress, 2nd Session, April 12, 1934, p. 6453.

<sup>132</sup> *Congressional Record*, 73rd Congress, 2nd Session, May 28, 1934, p. 9654.

bill and Roosevelt's December speech.<sup>133</sup> Yet, even with language changes and these direct appeals, Southern Senators threatened to filibuster and Senate leadership refused to take up the bill for full debate. As a consequence, the Senate adjourned in June without considering the measure.<sup>134</sup>

Not to be deterred, Costigan and Wager reintroduced their bill (S. 24) on January 4, 1935, a day after the 74th Congress opened, and on February 12, they made a fifteen minute radio address on CBS radio network.<sup>135</sup> Two days later, the Senate Judiciary Committee again held hearings to discuss the bill. Walter White appeared with other supporters of the bill including Charles H. Houston, Dean of Howard University, H.L. Mencken, Reps. Caroline O'Day (D-NY) and Thomas Ford (D-CA), and Senator Joseph Guffey (D-PA). White used his testimony to demonstrate broad support for the bill, presenting the committee with a petition signed by "327 prominent Americans" that asked President Roosevelt "to make the Costigan-Wagner lynching bill a 'must' piece of legislation."<sup>136</sup>

While the committee reported the Costigan-Wagner bill to the floor with full consideration scheduled for April, Southern senators would not acquiesce. Led by Josiah Bailey (D-NC), Ellison Smith (D-SC), and Tom Connolly (D-TX), a week-long filibuster was instituted. Senator Bailey even invoked Northern General Ulysses Grant when he stated his readiness to "fight it out on this line if it takes all summer."<sup>137</sup> The filibuster effort was strategic, as it prevented consideration of legislation deemed important to the Democratic majority –

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<sup>133</sup> *New York Times*, May 5, 1934, p. 16.

<sup>134</sup> Whelan, "The Politics of Federal Anti-Lynching Legislation," 20; Zangrando, *The NAACP Crusade Against Lynching*, 120.

<sup>135</sup> Zangrando, *The NAACP Crusade Against Lynching*, 126.

<sup>136</sup> Hearing Before the Subcommittee of the Committee of the Judiciary United States Senate on S. 1978, 74th Congress, 1st Session, February 24, 1935, p. 33. The signers included "10 governors and former governors, 28 mayors of cities in the United States, North and South, 109 bishops and prominent churchmen, by 64 college presidents and professors, both North and South...by 12 lawyers, by 90 prominent editors and writers, and 14 other distinguished American citizens."

<sup>137</sup> *Washington Post*, April 28, 1935, p. 1.

specifically a bill to provide cash assistance to veterans. As a consequence, the Majority Leader Joseph Robinson (D-AR) sought to displace the Costigan-Warner bill by scheduling adjournment votes, which, if passed, would clear the legislative agenda for consideration of other measures. On April 26, 1935, supporters of the bill narrowly defeated this tactic, 33-34. By May 1, however, the filibuster effort led to vote switching and a second effort to adjourn passed by a vote of 48-32.<sup>138</sup>

As a tactic of procedural delay, adjournment votes benefit the filibustering minority, because as “adjournment looms the resolve level required to kill legislation falls considerably” since the time necessary to obstruct is limited by a procedural rule.<sup>139</sup> In this way, the threats made by Southern members to filibuster all summer likely convinced many members to switch sides and vote for adjournment.<sup>140</sup>

Yet, as tables 7 and 8 demonstrate, the effort to displace the Costigan-Warner bill could not have succeeded without the support of northern Democrats who, up to that point, had fought to ensure full consideration of the bill. While no single account can explain the rationale behind each member’s decision to switch, *The New York Times* reported that with Senator William Borah’s (R-ID) decision to support adjournment, other marginal members also switched their votes.<sup>141</sup> Despite his opposition to the underlying bill, Borah had previously supported full consideration of the measure. As the filibuster proceeded, however, he had come to believe that the bill “would never be brought to a final vote” so it was necessary to “consider other

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<sup>138</sup> *Congressional Record*, 74th Congress, 1st Session, May 1, 1935, p. 6687.

<sup>139</sup> Gregory J. Wawro and Eric Schickler, *Filibuster: Obstruction and Lawmaking in the U.S. Senate* (New York: Princeton University Press, 2007), 37.

<sup>140</sup> Wawro and Schickler, *Filibuster*, 36. These authors argue that demonstrations of intent can serve as effective signaling strategies for both those interested in obstructing and those interested in opposing obstructive efforts.

<sup>141</sup> *New York Times*, May 2, 1935, p. 1.

matters.”<sup>142</sup> As a result, advocates of the Costigan-Wagner bill had no choice but to wait and reintroduce it in the next session.

On January 3, 1935, Rep. Joseph Gavagan (D-NY) followed the lead of Senators Costigan and Warner by introducing similar anti-lynching legislation in the House.<sup>143</sup> Gavagan represented a district that included Harlem and had won his seat in 1929 against Hubert Delaney, “a black lawyer and future NAACP Board member.”<sup>144</sup> Gavagan’s reelection interests were thus bound up with support from the African-American community. Indeed, as NAACP member Roy Wilkins recounts in his autobiography, Gavagan emerged as one of the “main allies” of the NAACP within Congress.<sup>145</sup> Accordingly, he worked with White and the NAACP to push for federal legislation. Gavagan was not the lone supporter of a federal ban, however, as House members from New York, Kansas, California, Indiana, Illinois, Connecticut, Pennsylvania, Ohio, New Jersey, and Minnesota – states that saw the largest influx of African-American migrants between 1910 and 1940 – introduced 19 additional pieces of anti-lynching legislation in 1935 alone. Thus, like Gavagan, these members likely saw their reelection interests tied to African-American votes.

As the debate over anti-lynching legislation began in the House, members in both parties acknowledged the shifting partisan allegiance of African-American citizens. In 1936, Arthur Mitchell (D-IL), the only African-American member of the House, took to the floor and called for “the early passage of a bill which will make...[lynching] punishable by a Federal law enacted by Congress.”<sup>146</sup> In the same speech, however, he also declared that “for more than 50 years my people have been almost solidly registered in the Republican Party. It is only during the past 4

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<sup>142</sup> *Congressional Record*, 74th Congress, 1st Session, May 1, 1935, p. 6677.

<sup>143</sup> *Congressional Record*, 74th Congress, 1st Session, January 3, 1935, p. 42.

<sup>144</sup> Zangrando, *The NAACP Crusade Against Lynching*, 141.

<sup>145</sup> Roy Wilkins, *Standing Fast: The Autobiography of Roy Wilkins* (New York: Da Capo Press, 1994), 131.

<sup>146</sup> *Congressional Record*, 74th Congress, 2nd Session, Wednesday April 22, 1936, p. 5888.

or 5 years that Negroes have found that the Democratic Party is a safe place to live and vote.”<sup>147</sup> He went on to argue that the Republican Party had “abused the Negroes more than it [had] abused the country” and that in the 1936 election African-American voters would “give the Democratic Party and the great President...the largest vote that any Negro group has ever given a President of the United States.”<sup>148</sup>

This speech sparked a defensive response from Rep. Albert Engel (R-MI), who, in a speech of his own, challenged Mitchell’s claims by recounting the history of Democratic Party-sponsored oppression forced upon African-Americans.<sup>149</sup> He also pointed out that

when the Costigan-Wagner anti-lynching bill came up at the last session of Congress in the other body, it was defeated by a filibuster conducted by Democratic members...that there are 315 Democrats and only 103 Republicans in the House and 70 Democrats and only 23 Republicans in the Senate; that the Committee on the Judiciary, which has the bills under consideration, consists of 18 Democrats and 7 Republicans. If the Democratic Party is such a good friend of the Negro, why has it buried this legislation in which the Negro race is so deeply interested?

With this response to Mitchell, Engel gave voice to Republican concerns over the shifting partisan allegiance of African-American voters. As a representative of the state that received the 5th highest number of African-American migrants, Engel himself must have been concerned with the political ramifications of a wholesale African-American party switch. Indeed, in his own reelection campaign in 1936, Engel defeated his Democratic Party opponent by a slim 580 votes out of 81,085 votes cast.<sup>150</sup> In 1934 he had won by 2,709 votes out of 63,940 votes cast.<sup>151</sup> This is a lesson that could not have been lost on other members.

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<sup>147</sup> *Congressional Record*, 74th Congress, 2nd Session, Wednesday April 22, 1936, p. 5887.

<sup>148</sup> *Congressional Record*, 74th Congress, 2nd Session, Wednesday April 22, 1936 p. 5887.

<sup>149</sup> *Congressional Record*, 74th Congress, 2nd Session, June 18, 1936, pp. 9961-66.

<sup>150</sup> Michael J. Dubin, *United States Congressional Elections, 1787-1997* (Jefferson, NC: McFarland, 1998), 514.

<sup>151</sup> Michael J. Dubin, *United States Congressional Elections, 1787-1997* (Jefferson, NC: McFarland, 1998), 503.

Yet, despite the back-and-forth over who best represented African-American interests, Engel's observation about the Democrats being responsible for blocking anti-lynching legislation rang true – as the Gavagan bill was bottled up in the Judiciary Committee, due to the opposition of its Chairman, Representative Hatton Sumners (D-TX).<sup>152</sup> Sumners had a long history of opposing anti-lynching measures, going back to the Dyer proposal in the early-1920s. More recently, in the 1934 Senate hearings on the Costigan-Wagner bill, Sumners appeared as the only witness testifying in opposition to the bill, as he rehashed states' rights arguments and attempted to make the case that federal legislation would undermine state level efforts to curb lynching.<sup>153</sup> Now, Sumners would strike yet again, using his committee influence to stall legislative action on the Gavagan measure for the remainder of the 74th Congress

But all was not lost for the anti-lynching forces. For while Sumners was operating as a procedural roadblock, Walter White continued to cultivate support by using the anti-lynching battle as a fundraising tool and by getting members to publicly declare their support for the bill.<sup>154</sup> This effort proved to be critical, as Gavagan reintroduced his bill (H.R. 1507) in 1937, during the 75th Congress. He also took steps to circumvent opponents on the Judiciary and Rules Committees by filing a discharge petition to release his bill from both committees.<sup>155</sup> On March 29, 1937, he filed the petition with the signatures of 218 House members – cultivated in part thanks to White's efforts – and on April 12, 1937, the House took up consideration of H.R. 1507. At the same time, the lynching of two African Americans in Mississippi focused the nation's attention on the brutality of this crime. White and Gavagan both used this murder to

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<sup>152</sup> Whelan, "The Politics of Federal Anti-Lynching Legislation," 35-36; Rable, "The South and the Politics of Anti-Lynching Legislation, 213; Klarman, *From Jim Crow to Civil Rights*, 112.

<sup>153</sup> Hearing Before the Subcommittee of the Committee of the Judiciary United States Senate on S. 1978, 73rd Congress, 2nd Session, March 10, 1934, p. 248.

<sup>154</sup> Zangrando, *The NAACP Crusade Against Lynching*, 141.

<sup>155</sup> With a discharge petition, a member can force a bill out of committee and onto the floor for consideration by securing 218 signatures (i.e., a majority of the House).

highlight the importance of federal legislation, and on April 15, 1937, the House passed Gavagan's bill by a vote of 277-120.<sup>156</sup>

This vote is important because it represented the first Democrat-sponsored anti-lynching bill to pass the House. The roll-call data appear in Table 9 and illustrate a sentiment expressed by one member who noted "not in fifteen years...had there been such a display of sectional feeling,"<sup>157</sup> as Northern Democrats and Republicans voted overwhelmingly against Southern Democrats. Also interesting is that this vote came after Chairman Sumners sought to undermine Gavagan's legislation by bringing to the floor a weaker bill, authored by the lone African-American House member, Arthur Mitchell (D-IL). Sumners later admitted to Walter White that "quite frankly ... he had not believed that...[the NAACP] would have the nerve to oppose passage of a bill introduced by the one Negro member of Congress."<sup>158</sup> The NAACP did, however, oppose the Mitchell bill because

[it] applied only to victims seized from official custody; the Gavagan bill covered all instances of mob violence against life and person. For officials found guilty of conspiring or cooperating within the mob, the Mitchell bill proposed imprisonment from two to ten years; the Gavagan bill carried a term of from five to twenty-five years. While Mitchell's bill remained silent about initial federal jurisdiction, Gavagan's invoked action by the United States District Court thirty days after the crime, if state and local officials had failed to respond. The Mitchell bill provided only for a \$2,000 to \$10,000 fine on the county of death; Gavagan's version held both the county of abduction and the county of death liable. Finally, unlike Mitchell's the Gavagan bill explicitly exempted from creditors' claims any damages assessed against the county(s) on behalf of the victim's survivors.<sup>159</sup>

As the roll-call data in Table 10 illustrate, the Mitchell bill split the Democratic Party – Northerners supporting and Southerners opposing it – while the Republicans demonstrated near

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<sup>156</sup> *Congressional Record*, 75th Congress, 1st Session, April 15, 1937, p. 3563.

<sup>157</sup> *Chicago Tribune*, April, 15, 1937, p. 1.

<sup>158</sup> Zangrando, *The NAACP Crusade Against Lynching*, 141.

<sup>159</sup> Zangrando, *The NAACP Crusade Against Lynching*, 141.

uniform opposition to the “compromise” measure. Here again, we continue to see Republican support for strong anti-lynching legislation.

While Gavagan’s measure became the primary vehicle through which the anti-lynching effort would operate, it is important to remember that in 1937, individual House members introduced 58 pieces of anti-lynching legislation (see Figure 2). Further, Democrats authored a vast majority of these bills, thus demonstrating their increasing willingness to embrace ameliorative civil rights policy. This was due in large part to the new constituency demands placed on these members by African-American voters. As the Appendix illustrates, those House members who offered anti-lynching legislation represented districts with an above average population of African-American citizens.<sup>160</sup> Additionally, as Engel’s reelection demonstrated, those House members from states facing an influx of African-American residents could not afford to rely on their traditional reelection coalitions.

The increasing political influence of African-American voters also did not go unnoticed by opponents of the bill. Specifically, Southern Democrats couched their opposition as a defensive move against Northern members who aimed to use African-American voters as a tool to supplant the Southern coalition. For example, Rep. Rankin (D-MS) argued that Gavagan’s bill represented a “demagogic aspersion on the south” and that it was designed to “make Harlem safe for Tammany,” while Rep. Sumners (D-TX) argued that the bill undermined the “70 year effort” to stop lynchings in the South.<sup>161</sup> Other Southern Democrats classified the bill as “the collection of a bill for services rendered,” as Northern Democrats sought to repay a debt they owed to African-Americans for their support in the 1936 elections.<sup>162</sup>

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<sup>160</sup> Whelan, “The Politics of Federal Anti-Lynching Legislation,” 35; See Appendix (District Level Data is based on [Scott Adler’s Dataset](#)).

<sup>161</sup> *New York Times*, April 16, 1937, pp. 1-2.

<sup>162</sup> *Los Angeles Times*, April 25, 1937, p. C6.

With House approval of the Gavagan bill, the scene shifted to the Senate. In June 1937, the Senate Judiciary Committee successfully reported out the bill, and debate was scheduled for August.<sup>163</sup> As the session wound down, Senator Wagner fought to ensure consideration before adjournment. In August, as the Senate began debate on the District of Columbia Airport bill, after which the chamber would begin an “orderly adjournment free of controversy,” Wagner secured the floor and called for consideration of the anti-lynching bill.<sup>164</sup> Senate Majority Leader Alben Barkley (D-KY) immediately called for adjournment, but anti-lynching advocates prevented the measure from passing. Intra-party squabbling then broke out, threatening further legislative action and the previously hoped-for “orderly adjournment.” White and Wagner then worked with Barkley to postpone debate and have the Senate begin consideration during a special session called for November – whereupon the anti-lynching bill would be made a special order of business.<sup>165</sup> Upon return, however, Southern members began a six-week filibuster, sustained by a coalition of Southern Democrats and Republicans. Republican cooperation in this obstruction effort, combined with increasing Northern Democratic support for anti-lynching proposals, is illustrative of the civil-rights initiated party switch.

The rhetoric used by Southern Democrats in the Senate during the filibuster echoed the House debate insofar as those opposing the bill railed against the political influence of African-American voters within the Democratic Party. Senator Byrnes (D-SC) warned that if Walter White of the NAACP could “order” this bill to pass, “what legislation will he next demand of Congress and the United States?”<sup>166</sup> Senator Carter Glass (D-VA) argued that the bill was

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<sup>163</sup> Whelan “The Politics of Federal Anti-Lynching Legislation,” 25. In 1937, the language of the Costigan-Warner bill was replaced by the House-passed Gavagan language and because Senator Costigan had retired in 1936; Senator Fredrick Van Nuys (D-IN) co-sponsored this version with Senator Wagner (D-NY).

<sup>164</sup> Zangrando, *The NAACP Crusade Against Lynching*, 144.

<sup>165</sup> Zangrando, *The NAACP Crusade Against Lynching*, 145-46.

<sup>166</sup> Zangrando, *The NAACP Crusade Against Lynching*, 150.

“merely for the purpose of aiding Negrophilists to gain Negro votes in doubtful states.”<sup>167</sup>

Senator Theodore Bilbo (D-MS) also contributed to this line of argument by asserting “we are now confronted by...rising generations of discontented and trouble-making hybrids, mulattos, quadroons, and octroons, seeking the elective franchise and conniving with deluded whites, negrophilists, and miscegenationists, for the balance of power in determining political issues.”<sup>168</sup>

Republican Minority Leader Charles McNary (R-OR) couched his opposition to the measure in different terms. He claimed that the effort to invoke cloture amounted to the imposition of a “gag rule” on the minority party.<sup>169</sup> The right to uninterrupted debate, he argued, represented the “last barrier to tyranny.”<sup>170</sup> He also made clear that his party’s opposition to cloture did not indicate opposition to the underlying bill. Indeed, he argued that Republican members supported the anti-lynching measure but were unwilling to relinquish their minority rights to support it.<sup>171</sup> While McNary’s claims may have been sincere, some observers have viewed Republican opposition as an effort to split the Democrats, win African-American votes by blaming the Democrats for not passing an anti-lynching bill, and oppose FDR’s New Deal. For example, Robin Balthrope quotes one African-American newspaper editorial arguing that Republicans were “out to cut short the Democratic Party’s growing allure to Negro voters by blaming the overwhelmingly Democratic seventy-fifth Congress with failure to enact anti-lynching legislation.”<sup>172</sup> Similarly, Keith Finley argues that Republican opposition to the anti-lynching measure represented the emergence of a “conservative coalition born of political

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<sup>167</sup> *Congressional Record*, 75th Congress, 3rd Session, January 27, 1938, p. 1164.

<sup>168</sup> *Congressional Record*, 75th Congress, 3rd Session, January 27, 1938, p. 893.

<sup>169</sup> *New York Times*, January 26, 1938, p. 6.

<sup>170</sup> *Congressional Record*, 75th Congress, 3rd Session, January 27, 1938, p. 1165.

<sup>171</sup> “Filibuster Gets In Senate’s Hair After 16 Days,” *Chicago Daily Tribune* 26 Jan. 1938: 1.

<sup>172</sup> Robin Balthrope, “Lawlessness and the New Deal: Congress and Anti-Lynching Legislation, 1934-1938” (PhD diss., Ohio State University, 1995), 211.

necessity” as Republicans realized that they would need Southern Democratic allies to oppose FDR.<sup>173</sup>

The first cloture vote, held on January 27, 1938, failed 37-51 along sectional and party lines with every Southern Democrat and all but two Republicans opposing the cloture.<sup>174</sup> A second cloture measure failed on February 16, 1938 by a vote of 42-46 with two Republicans and three Democrats switching sides to support it.<sup>175</sup> These cloture votes, details of which appear in Tables 11 and 12, are particularly important because they represent a dramatic reversal in party positioning on the anti-lynching issue. In its reporting on the failed cloture votes, the *Chicago Tribune* noted that with Republican opposition to cloture “the historic roles of the Republican and Democratic parties were reversed” because for the first time since the end of the Civil War, the Republican Party opposed federal anti-lynching legislation.<sup>176</sup>

Despite these failures, anti-lynching advocates did not give up. On January 3, 1939, Rep. Gavagan once again introduced an anti-lynching bill (H.R. 801) that had the backing of the NAACP.<sup>177</sup> (Overall, twenty-two anti-lynching bills were introduced in 1939, during the first session of the 76th Congress; see Figure 2). As with his previous effort, Gavagan would successfully use the discharge petition to force his bill out of the Judiciary Committee and onto the floor for consideration. The NAACP aided in this effort by sending letters to 326 representatives, asking them to support the discharge motion.<sup>178</sup> Yet, before Gavagan’s petition could garner the necessary 218 signatures, Rep. Hamilton Fish (R-NY) submitted his own

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<sup>173</sup> Keith M. Finley, *Delaying the Dream: Southern Senators and the Fight Against Civil Rights, 1938-1965* (Baton Rouge: Louisiana State University Press, 2008), 50.

<sup>174</sup> *Congressional Record*, 75th Congress, 3rd Session, January 27, 1938, p. 1166; Whelan, “The Politics of Federal Anti-Lynching Legislation,” 29.

<sup>175</sup> *Congressional Record*, 75th Congress, 3rd Session, January 27, 1938, p. 2007; Whelan, “The Politics of Federal Anti-Lynching Legislation,” 30.

<sup>176</sup> *Chicago Tribune*, January 26, 1938, p. 1.

<sup>177</sup> *Congressional Record*, 76th Congress, 1st Session, January 3, 1939, p. 31.

<sup>178</sup> Zangrando, *The NAACP Crusade Against Lynching*, 161.

discharge motion that split supporters of the underlying bill.<sup>179</sup> On July 18, 1939, Fish introduced a letter into the *Congressional Record* requesting signatures from fellow Republicans and outlining a dual purpose for pursuing a discharge motion. In July, the House had passed legislation forbidding President Roosevelt from sending munitions to Europe. Roosevelt responded to this legislation by calling on the Senate to reverse the House's action even if it meant continuing the legislative session until September.<sup>180</sup> Angered by Roosevelt's request, Fish's letter declared that

if we are to be kept in session any longer, because President Roosevelt is mad at the decisive action of the House in favor of retaining an arms embargo, I suggest we take steps at once to provide Speaker Bankhead and Majority Leader Rayburn with such an important piece of legislation as the federal anti-lynching bill.<sup>181</sup>

He went on, in a "sardonic vein" to argue that passing the bill would give the Senate "plenty to talk about."<sup>182</sup> In this way, therefore, the lynching bill served a dual partisan purpose: it was beneficial for those Republicans like Fish, who represented states with large African-American populations, and it could be used as a tactic for undermining Roosevelt's agenda. Despite this wrangling, by July 28, 1939, Gavagan and Fish had worked out a compromise, and the bill was discharged from the House Judiciary Committee.<sup>183</sup>

Debate over the anti-lynching measure did not begin in the House until January 1940, but when it did, the political implications of the bill took center-stage. For on January 9, 1940, Rep. Arthur Mitchell (D-IL) took the floor and once again launched an attack on the Republican Party for using the anti-lynching bill as a tool to manipulate African-American voters. Specifically, he accused Republicans of "trying to buy back the Negro vote" with votes in support of Gavagan's

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<sup>179</sup> Zangrando, *The NAACP Crusade Against Lynching*, 161.

<sup>180</sup> *New York Times*, July 5, 1939, p. 1.

<sup>181</sup> *Congressional Record*, 76th Congress, 1st Session, July 18, 1939, p. 9421.

<sup>182</sup> *Chicago Tribune*, July 19, 1939, p. 8.

<sup>183</sup> *Congressional Record*, 76th Congress, 1st Session, July 28, 1939, p. 10388.

measure. When Rep. Fish responded by asking Mitchell if “the Negro vote is for sale,” Mitchell responded by claiming that Republicans “had been very busy during the last 3 or 4 months trying to find some approach by which they can bring the Negro vote back to their party” but that the day had come when Republicans “cannot fool the Negro” like they “used to.”<sup>184</sup> This claim, bolstered by Fish’s decision to use the anti-lynching bill as a tool to undermine FDR, suggests that Republicans by 1940 were beginning to give up on a sincere out-reach effort to African-Americans. Indeed, Robert Zangrando notes, by the end of the 1930s, reports emerged suggesting that leaders in the Republican Party had “decided against any further efforts to woo black voters...[and to] make a bid instead for white Southerners.”<sup>185</sup>

Despite the partisan battles between House Democrats and Republicans, Gavagan’s bill passed by a vote of 252-131 on January 10, 1940, with the same party and geographic splits that characterized previous votes on this bill (see Table 13).<sup>186</sup> The bill then moved to the Senate where the Judiciary Committee held yet another round of hearings on February 6-7 and March 5, 12, and 13 to discuss it. At these hearings, members heard testimony in support of the bill from Arther Raper, Field Secretary of the Commission on Interracial Cooperation, as well as from citizen supporters and from Walter White. White once again tried to make the case for a federal law by arguing that the states could not be relied upon to punish lynching. Recognizing the precarious international position facing the U.S., he also highlighted how those hostile to American interests in Japan and Europe were using lynching as a propaganda tool.<sup>187</sup> Despite

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<sup>184</sup> *Congressional Record*, 76th Congress, 3rd Session, January 9, 1940, p. 176-77.

<sup>185</sup> Zangrando, *The NAACP Crusade Against Lynching*, 159.

<sup>186</sup> *Congressional Record*, 76th Congress, 3rd Session, January 10, 1940, p. 253.

<sup>187</sup> Hearing Before the Subcommittee of the Committee of the Judiciary United States Senate on H.R. 801, 76th Congress, 3rd Session, February 6-7, March 5, 12, and 13, 1940, p. 56-60.

facing tough questions from Senator Thomas Connally (D-TX), the Committee once again voted to send the bill to the floor for consideration by the full Senate.<sup>188</sup>

Despite the Committee's favorable vote and a series of communications between the NAACP and Majority Leader Alben Barkley regarding the Association's hope that the bill would be brought up for consideration, H.R. 801 languished in the Senate. On three different occasions between April and September, it was "passed over" despite being next on the agenda,<sup>189</sup> as Barkley conceded to pressure from those who threatened to tie up the Senate if he moved to schedule the bill. More specifically, Southern Democrats threatened that any effort to debate the bill would "waste about half of the time of this session," and based on the history of Republican support for such actions, they knew that a filibuster would successfully bring all other Senate business to a halt.<sup>190</sup> Even newspapers editorialized that "to avoid another filibuster and serious disruption of their legislative program," Senate leaders should keep the bill off the agenda.<sup>191</sup> By October, with the NAACP continuing to call for a vote, Barkley took the floor and declared that "in the midst of our international situation, our defense program, and the condition in which the world and our country find themselves, it is impractical at this time to make a futile effort to obtain a vote on the bill when it is known in advance that a vote cannot be had."<sup>192</sup> With this decision, Barkley brought to a close a continuous, decade-long effort to pass federal anti-lynching law.

This section has attempted to demonstrate that by tracking the effort to pass federal anti-lynching legislation, we can also follow the transformation of African-American partisan

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<sup>188</sup> *Congressional Record*, 76th Congress, 3rd Session, April 8, 1940, p. 4108.

<sup>189</sup> *Congressional Record*, 76th Congress, 3rd Session, April 22, 1940, p. 4819; May 28, 1940, p. 6983; September 27, 1940, p. 12746.

<sup>190</sup> *Congressional Record*, 76th Congress, 3rd Session, January 20, 1940, p. 560.

<sup>191</sup> "Anti-Lynching Politics," *Washington Post* 9 Jan. 1940.

<sup>192</sup> *Congressional Record*, October 8, 1940, p. 13354.

affiliation and observe the growing influence of African-American voters. As the decade opened, African-Americans remained loyal to the Republican Party its Civil War legacy. By the end of the decade, however, Democrats in both the House of Representatives and the Senate had worked with the NAACP to pass federal anti-lynching legislation. At the same time, African-American migration to northern cities gave these citizens newfound political influence which Democrats sought to win over by demonstrating a willingness to push for civil rights. As a consequence, Republicans proved willing to sacrifice these voters and instead align with Southern Democrats in an effort to oppose New Deal legislation. In this way, we see that the civil rights coalition that would emerge in the 1960s was not forged as a consequence of the war or New Deal economic policies alone, but was instead generated far earlier by Congressional entrepreneurs who used anti-lynching legislation to win the support of African-American citizens.

## **V. Conclusion**

The collapse of the First Reconstruction brought with it nearly six decades of black inequality institutionalized in legal norms and practices until the Second Reconstruction. However, it is a mistake to conclude that the issue of black equality disappeared from the political agenda. From 1900 until 1940, the Congress considered over a hundred bills to ensure the protection of blacks from mob violence. In three of those many cases, Congress came within reach of actually providing federal punishments for lynching, passing measures in the House which did not overcome obstruction by Southern Democrats protective of racial arrangements in their states. The national legislature also wrangled over whether black and white citizens should be able to marry and what to do about the disenfranchisement of blacks in the states of the former Confederacy. In short, as the preceding analysis shows, legislation that was pivotal to

black equality was again and again introduced by legislative entrepreneurs and taken up by the Congress. While these interim years were a dark period of Jim Crow segregation, eugenics and race science, widespread disenfranchisement, and state-sanctioned terrorism against blacks in the south, legislators were quite responsive to black interest groups and efforts to lobby for legislation that would protect them from summary justice. Yet, scholarship on racial politics, parties, and American political development has passed over these failures as unimportant, placing most of their emphasis on the symbolic efforts of presidents and leaving the impression that congressional action on civil rights was effectively ended after the First Reconstruction, not to return until the movement for civil rights half a century later.

These failed episodes did not leave the racial landscape untouched or the development of party politics unchanged. Rather, the legislative initiatives on black equality during this early era demonstrate important partisan shifts and the rising influence of the black electorate. This paper argues that the parties' reorientation on racial issues happened both earlier and differently than the received wisdom implies. Republican initiatives transformed into Democratic-led campaigns for anti-lynching legislation by the 1930s. These Democratic efforts would ramp up in the 1940s, with congressional battles over the poll tax and the Fair Employment Practices Committee. By the 1950s, civil rights legislation was back on the congressional agenda, and in 1957 a civil-rights bill was passed into law, the first since 1875. This was followed up with another Civil Rights Act in 1960, and then two major Acts in the mid-1960s: the 1964 Civil Rights Act and the 1965 Voting Rights Act. The battles over civil-rights legislation in the first four decades of the 20th century, especially those over anti-lynching legislation – and their failures – laid the groundwork for the later civil-rights successes of the mid-20th century.

In 2005, the Senate again took up the issue of anti-lynching legislation. This time, however, leaders passed a resolution apologizing for their institution's inability to pass a federal anti-lynching measure when this tactic was still being used to intimidate and terrorize African-American citizens.<sup>193</sup> This analysis has attempted to consider the institutional and partisan dynamics that made such an apology appropriate. In so doing, however, it has also attempted to demonstrate that the failed efforts to pass a federal anti-lynching law represent an early attempt to enact civil-rights legislation generated by the increasing electoral influence of African-American citizens. The legislative wrangling over each bill and the tendency for a specific subset of members to use anti-lynching legislation as a tool for winning African-American votes demonstrates an early indication of the partisan "switch in time" that would pick up steam in the 1940s as African-Americans increasingly gravitated toward the Democratic Party. And, as noted, the emergent coalition that is identified here would prove influential in later, and more successful, civil-rights battles.

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<sup>193</sup> *USA Today*, June 13, 2005.

## Appendix

Representative	Party	State	Cong. District	% Black 1940
George Edmonds	R	PA	4 <sup>th</sup>	12.9%
Oscar De Priest	R	IL	1 <sup>st</sup>	7.2%
Ulysses S. Guyer	R	KS	2 <sup>nd</sup>	9.1%
Joseph Gavan	D	NY	21 <sup>st</sup>	15.9%
Herman Kopplemann	D	CT	1 <sup>st</sup>	2.0%
Emmanuel Celler	D	NY	10 <sup>th</sup>	4.0%
Thomas Ford	D	CA	14 <sup>th</sup>	2.7%
Martin Sweeney	D	OH	20 <sup>th</sup>	7.1%
James Mead	D	NY	42 <sup>nd</sup>	1.6%
Louis Ludlow	D	IN	12 <sup>th</sup>	2.5%
Arthur Mitchell	D	IL	1 <sup>st</sup>	7.2%
Samuel Pettengill	D	IN	3 <sup>rd</sup>	1.7%
William Schulte	D	IN	1 <sup>st</sup>	9.3%
Hamilton Fish	R	NY	26 <sup>th</sup>	1.7%
John Kinzer	R	PA	10 <sup>th</sup>	0.2%
Thomas Hennings	D	MO	11 <sup>th</sup>	13.3%
William Hess	R	OH	2 <sup>nd</sup>	10.3%
Ernest Lundeen	FL	MN	3 <sup>rd</sup>	0.6%
David Powers	R	NJ	4 <sup>th</sup>	7.0%
Clare Fenerty	R	PA	3 <sup>rd</sup>	12.9%
Michael Stack	D	PA	6 <sup>th</sup>	12.9%
William Sutphin	D	NJ	3 <sup>rd</sup>	6.0%
James Wolfenden	R	PA	8 <sup>th</sup>	12.9%
John Daly	D	PA	4 <sup>th</sup>	12.9%
Edward Kenney	D	NJ	9 <sup>th</sup>	2.4%
Charles Wolverton	R	NJ	1 <sup>st</sup>	8.0%
Carl Mapes	D	MI	5 <sup>th</sup>	0.1%
John Tolan	D	CA	7 <sup>th</sup>	2.4%
Robert Bacon	R	NY	1 <sup>st</sup>	4.1%
James McGranery	D	PA	2 <sup>nd</sup>	12.9%

Matthew Merritt	D	NY	At-Large	
Melvin Maas	R	MN	4 <sup>th</sup>	1.3%
George Seger	R	NJ	8 <sup>th</sup>	2.2%
Caroline O'Day	D	NY	At-Large	
Edward O'Neill	D	NJ	11 <sup>th</sup>	8.2%
Leon Sacks	D	PA	1 <sup>st</sup>	12.9%
Alexander Barry	R	OR		
William P. Connery	D	MA	7 <sup>th</sup>	1.1%
Albert Rutherford	R	PA	15 <sup>th</sup>	0.6%
Jesse Wolcott	R	MI	7 <sup>th</sup>	1.1%
Charles Clason	R	MA	2 <sup>nd</sup>	0.9%
Fred Hildebrandt	D	SD	1 <sup>st</sup>	0.1%
Earl Michener	R	MI	2 <sup>nd</sup>	2.6%
Thomas O'Malley	D	WI	5 <sup>th</sup>	1.2%
<b>Matthew Dunn</b>	<b>D</b>	<b>PA</b>	<b>34<sup>th</sup></b>	
Horace Voorhis	D	CA	12 <sup>th</sup>	2.7%
Charles Millard	R	NY	25 <sup>th</sup>	1.7%
James Lanzetta	D	NY	20 <sup>th</sup>	1.6%
William Ashbrook	D	OH	17 <sup>th</sup>	1.6%
Michael Bradley	D	PA	3 <sup>rd</sup>	12.9%
Thomas Jenkins	R	OH	10 <sup>th</sup>	2.7%
Dudley White	R	OH	13 <sup>th</sup>	1.2%
James Shanley	D	CT	3 <sup>rd</sup>	2.2%
Anthony Fleger	D	OH	22 <sup>nd</sup>	6.5%
Herbert Bigelow	D	OH	2 <sup>nd</sup>	10.3%
Aime Forand	D	RI	1 <sup>st</sup>	1.7%
Elmer Wene	D	NJ	2 <sup>nd</sup>	12.3%
Joseph Dixon	D	OH	1 <sup>st</sup>	10.3%
Frank Dorsey	D	PA	5 <sup>th</sup>	12.9%
Clarence McLeod	R	MI	13 <sup>th</sup>	8.1%
Lee Geyer	D	CA	17 <sup>th</sup>	2.7%

**Source:** Scott Adler, [Congressional District Level Dataset](#)

**Note:** The average African-American population in non-southern Congressional districts was 3.7%. It is calculated using Adler's dataset by dividing the total black population in all non-Southern Congressional districts by the total population in non-Southern Congressional districts.

**Table 1: Roll Calls on Voting Rights Restrictions in the South, 56th Congress (1899-1901)**

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, p. 521; January 4, 1901, pp. 553-55.

**Table 2: Roll Calls on Anti-Miscegenation Legislation, 63rd Congress (1913-15)**

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, p. 1366-68.

**Table 3: 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

**Table 4: Primary Sponsors of Anti-lynching Bills in the House**

Representative	Party	State	Congressional District	% Black		
				1910	1920	1930
Frank Dallinger	R	MA	8th (Boston)	2.2	2.3	2.9
Merrill Moores	R	IN	10th (Indianapolis)	9.4	11.1	12.1
Martin Ansorge	R	NY	21st (Manhattan)	2.0	2.9	5.0
Leonidas Dyer	R	MO	12th (St. Louis)	6.5	9.1	11.6
Harry Gahn	R	OH	21st (Cleveland)	1.6	4.4	8.1
Joseph McCormick	R	IL	1st (Southside Chicago)	2.1	4.2	7.7
Henry Emerson	R	OH	21st (Cleveland)	1.6	4.4	8.1

\*In addition to members in the House, Senators William McKinley (R-IL) and Joseph France (R-MD) also sponsored bills.

**Table 5: H.R. 13 (Dyer Bill), January 26, 1922**

Party	Yea	Nay
Northern Democrat	7	6
Southern Democrat	1	97
Republican	221	17
Socialist	1	0
Farmer-Labor	0	1
Total	230	120

**Table 6: African-American Migration Patterns, pre-World War II**

State	Total Number of Migrants 1910-1940
Pennsylvania	204,500
New York	371,800
Illinois	238,500
New Jersey	101,000
Michigan	152,800
Ohio	180,800
California	93,700

Source: McAdam (1999), p. 80.

**Table 7: Adjournment Roll Call, April 26, 1935**

Party	Yea	Nay
Northern Democrat	14	16
Southern Democrat	17	2
Republican	2	14
Progressive	0	1
Farmer-Labor	0	1
Total	33	34

**Table 8: Adjournment Roll Call, May 1, 1935**

Party	Yea	Nay
Northern Democrat	21	14
Southern Democrat	22	0
Republican	4	17
Progressive	0	1
Farmer-Labor	1	0
Total	48	32

**Table 9: H.R. 1507 (Gavagan Bill), April 15, 1937**

Party	Yea	Nay
Northern Democrat	183	16
Southern Democrat	6	101
Republican	75	3
Progressive	8	0
Farmer-Labor	5	0
Total	277	120

**Table 10: H.R. 2251 (Mitchell Compromise Bill), April 7, 1937**

Party	Yea	Nay
Northern Democrat	102	82
Southern Democrat	13	90
Republican	7	74
Progressive	0	7
Farmer-Labor	1	4
Total	123	257

**Table 11: Cloture (H.R. 1507), January 27, 1938**

Party	Yea	Nay
Northern Democrat	31	15
Southern Democrat	4	22
Republican	1	12
Progressive	1	0
Independent	0	1
Farmer-Labor	0	1
Total	37	51

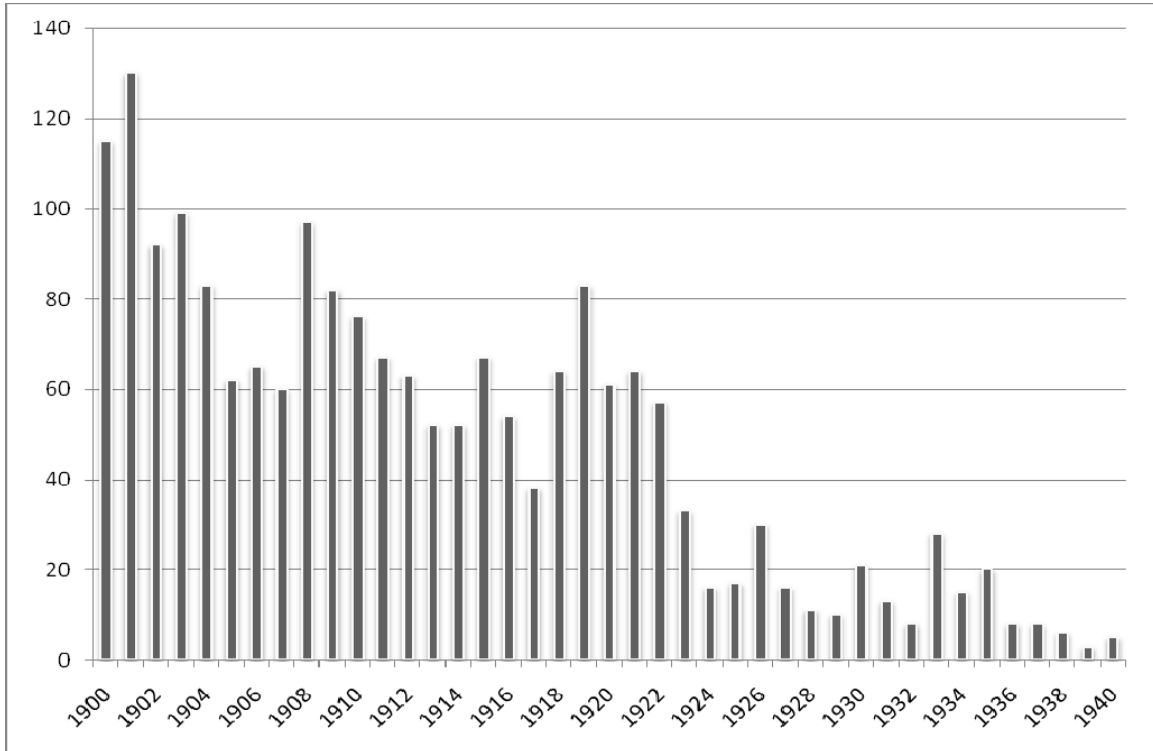
**Table 12: Cloture (H.R. 1507), February 16, 1938**

Party	Yea	Nay
Northern Democrat	34	12
Southern Democrat	4	22
Republican	3	10
Progressive	1	0
Independent	0	1
Farmer-Labor	0	1
Total	42	46

**Table 13: H.R. 801 (Gavagan Bill), January 10, 1940**

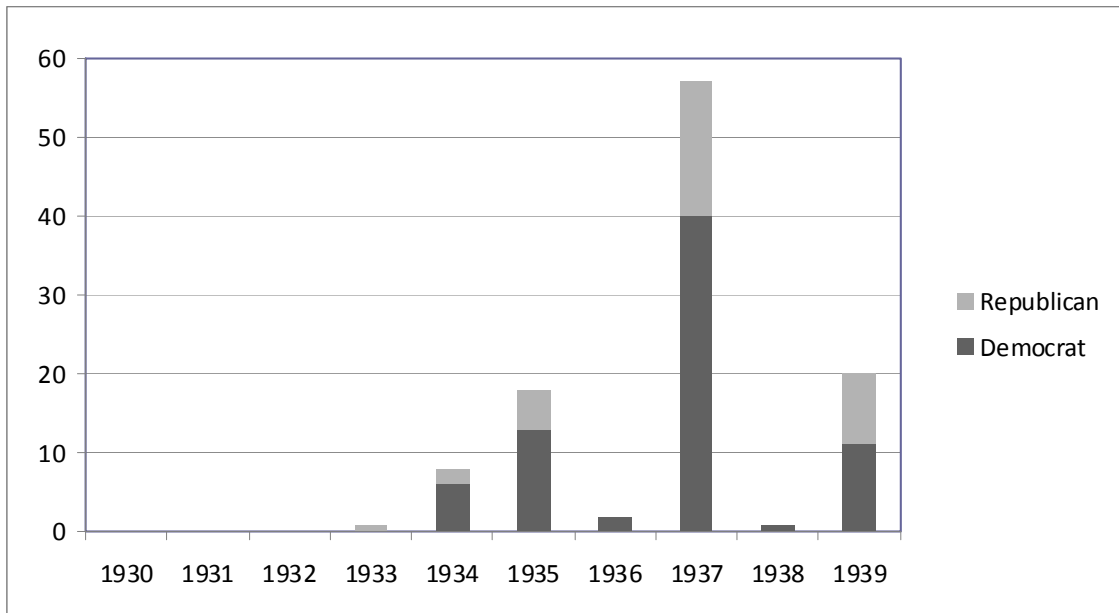
Party	Yea	Nay
Northern Democrat	108	21
Southern Democrat	1	102
Republican	140	8
Progressive	2	0
American Labor	1	0
Total	252	131

**Figure 1: Frequency of Lynching, 1900-1940**



Source: Tuskegee Institute statistics published in the *Negro Year Book*.

**Figure 2: Anti-Lynching Legislation Bills Introduced by Party, 1930-1939**



**Figure 3: Anti-Lynching Legislation Bills by Author's Home State, 1930-1939**

