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American Ethnocracy:  
Origins and Development of Legal Racial Exclusion  
in Comparative Perspective, 1600s to 1900s

A dissertation submitted in partial satisfaction of the  
requirements for the degree Doctor of Philosophy  
in Sociology

by

Wesley Hiers

2013

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ABSTRACT OF THE DISSERTATION

American Ethnocracy:  
Origins and Development of Legal Racial Exclusion  
in Comparative Perspective, 1600s to 1900s

by

Wesley Hiers

Doctor of Philosophy in Sociology

University of California, Los Angeles, 2013

Professor Andreas Wimmer, Chair

This dissertation directs sociology's political-institutional turn to the puzzle of *legal racial exclusion* (LRE)—a social phenomenon wherein states classify their populations by race and assign unequal rights to dominants and subordinates on this basis. Spanning from colonial times to the civil rights era, this dissertation offers a long-run perspective on how political institutions—modes of imperial rule, party systems and coalitions, and legislative arrangements—have shaped the emergence, endurance, and demise of LRE.

Chapter one uses a macro-comparative analysis to explain why LRE emerged in some former European settlement colonies but not others. The basic argument links the emergence of LRE in the independence era to colonial legacies of settler self-rule: where European settlers established autonomous, representative governments during the colonial period, LRE later developed. Focusing on the United States, the next three chapters then examine the political

institutions and alliances that sustained LRE until the 1960s. Compared to other cases of LRE, the United States is the only one where LRE became an object of significant political contestation several decades before this exclusion was actually overcome. This contestation produced changing patterns of legal racial exclusion over time and space during the nineteenth century. The second chapter examines how the dynamics of the party system produced this contestation, shaped these patterns of LRE, and ensured that exclusion would endure well into the next century.

The Democratic Party's century-long, inter-regional alliance for white supremacy lies at the heart of chapter two's analysis. Once this exclusionary alliance broke apart in the 1930s, LRE returned to the national political agenda. Based on an analysis of political developments at the national, state, and local levels, the third chapter explores the break-up of this alliance. Chapter four then examines how, even after this dissolution, the structure of coalitions and legislative arrangements in the Senate prolonged LRE and fundamentally shaped the process by which it was eventually overcome. Chapter four's analysis is based to a large degree on a new roll call data set compiled by the author.

In relation to explanatory approaches that emphasize working class competition, elite conflict, racial demography, or public opinion, this dissertation demonstrates the indispensable explanatory contribution that a political-institutional approach makes to our understanding of the emergence, endurance, and demise of LRE.

The dissertation of Wesley Hiers is approved.

Rogers Brubaker

Michael Mann

Michael Ross

Andreas Wimmer, Committee Chair

University of California, Los Angeles

2013

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## PUBLICATIONS

“Transcending the Limited Educational Vision Implied by the Consumer Metaphor.” *Journal of General Education* 44(4):201-222 [1995] (co-authored with M. Neil Browne and J. Kevin Quinn)

"From Ostensible Voluntarism to Interventionism in Malaysian Industrial Relations: the Colonial Experience as an Important Variable," in Sarosh Kuruvilla and Bryan Mundell, eds., *Colonialism, Nationalism, and the Institutionalization of Industrial Relations in the Third World*. Monographs in Organizational Behavior and Industrial Relations, Volume 25. Stamford, CT: JAI Press, 1999 (co-authored with Ponniah Arudsothy).

*Globalization and Industrial Relations in India: A Study of Industries and Firms*. Bangkok: ILO, Regional Office for Asia and the Pacific, 2000 (co-authored with Sarosh Kuruvilla).

“Is Nationalism the Cause or Consequence of the End of Empire?” in John Hall and Sinisa Malesevic, eds., *Nationalism and War*. Cambridge: Cambridge University Press, 2013 (first author, with Andreas Wimmer).

“Party Matters: Racial Closure in the Nineteenth-Century United States.” forthcoming in *Social Science History* 37(2) [2013].

## INTRODUCTION

### RACIAL ETHNOCRACY AND POLITICAL INSTITUTIONS

This dissertation examines the origins, endurance, and demise of racial ethnocracy. Chapter one uses a comparative analysis of 25 countries in order to address the question of racial ethnocracy's colonial-era origins. The subsequent three chapters focus on the United States in the nineteenth and twentieth centuries. All four chapters endeavor to show the explanatory payoff of directing sociology's political-institutional turn (Amenta 2005) toward the long-run dynamics of racial ethnocracy. After discussing what it means to conceptualize the United States and similar cases as "racial ethnocracies," the introduction then turns to a consideration of this dissertation's political-institutional approach.

#### THE UNITED STATES AS A RACIAL ETHNOCRACY

None of the historical cases of racial ethnocracy examined in this dissertation—the United States, South Africa, Australia, Rhodesia (Zimbabwe), Canada—are typically conceptualized as 'ethnocracies'. The United States and South Africa have been the two most important cases in comparative-historical studies of 'race' and in this role have shaped the terminology used to apprehend and summarize regimes of racial exclusion. What I call "racial ethnocracies" in this dissertation usually have been classified by the names or nicknames of specific racial policies in these two cases—e.g. apartheid (South Africa), Jim Crow (United States), or *de jure* segregation (South Africa and the United States)—or less often in accordance with concepts crafted for more general applicability such as "*herrenvolk* democracy" (van den

Berghe 1967), “racial domination” (Greenberg 1980) or, in order to signal a specifically legal dimension, “formal racial domination” (Marx 1998).

My intent in classifying the United States and like cases as racial ethnocracies is not to add further to concept proliferation but rather to stem it. None of the above terms has become widely used in the comparative race and ethnicity literature. As a consequence, using any of these terms, even the most useful among them, empirically and conceptually detaches cases such as the pre-1960s United States from the larger set of ethnically/racially divided societies in which one ‘ethnos’ (or ‘people’ in the Greek) controls the polity in a way that advances its dominance in relation to other ‘ethnic’ or ‘racial’ groups—i.e. from the larger set of ethnocracies. Moreover, in contrast to nearly all of the other terms, ethnocracy conjures a mode of rule linked to modern statehood, which, I argue, lies at the heart of racial exclusion’s institutionalization.<sup>1</sup>

A brief review of ethnocracy’s conceptualization in the recent comparative race/ethnicity literature demonstrates the applicability of this concept to the cases in this dissertation.<sup>2</sup> An ethnocracy is “a regime that expresses the identity and aspirations of one ethnic group in an ethnically divided society, based on rule over other ethnic groups who are accorded only qualified rights to citizenship. Ethnocracy’s *raison d’être* is to secure the key instruments of state power for the dominant ethnic collectivity ...” (Sautmann 2004:117). Ethnocracies “enhance a rule by, and for, a specific ethnos” (Yiftachel and Ghanem 2004:666), and such regimes “do not allow [ethnic/racial] minorities any feasible path of inclusion. ... [C]ontrary to most nation-states, ethnocratic regimes actually work against the project of universal citizenship” (Ibid:656). In the context of the United States until the 1960s, as well as the other racial ethnocracies examined in

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<sup>1</sup> “Herrenvolk democracy” is a partial exception, though one of limited usefulness—e.g. the U.S. South was not a ‘democracy’ even for the ‘herrenvolk’ between the 1890s and 1950s.

<sup>2</sup> These conceptualizations emerge from engagement with cases such as Myanmar (Burma), Sri Lanka, pre-1994 Rwanda, Israel, and Saddam-era Iraq (see Yiftachel 2006).

chapter one, people of European descent—‘whites’—were the “dominant ethnic collectivity” or the “specific ethnos” by and for whom the state ruled at the expense of non-white collectivities who were also born on the territory but for whom there was no “feasible path of inclusion” to full citizenship and equality under the law.

As the above discussion implies, ethnocracies are characterized by a highly consequential social boundary that is largely impermeable. This boundary firmly divides those for whom the state rules from those who are ruled. The permeability issue is crucial, because when boundary crossing is an easy or at least reasonable option, then it makes little sense to conceptualize ethnos as “bounded collectivit[ies]” (Brubaker 2011:1805) between which there exists a dominant-subordinate relationship (though it might make sense to speak of dominant and subordinate cultural practices): with a reasonable degree of boundary permeability, there exists exactly the “feasible path of inclusion” that ethnocracies deny.<sup>3</sup>

Uncertainty about how much boundary permeability exists is one reason that classifying a regime as ethnocratic can be difficult and subject to debate (see Brown 1994 for a discussion of Burma, for example). Most ethnocratic regimes enforce a boundary that *strictu sensu* is based on *behavioral* criteria (e.g. religion or language), even though, practically speaking, the boundary is characterized by low permeability (else the regime would not be ‘ethnocratic’).<sup>4</sup> The

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<sup>3</sup> The significance of boundary permeability is well-acknowledged in the general comparative literature on ethnicity. In his classic article on “deeply divided societies” Lustick (1979) makes low permeability a defining criterion of such societies. Wimmer (2004:41) notes the generally inverse relation between boundary permeability and the degree of domination. Brubaker (2011:1789) links differences in boundary permeability to whether policies of nationalizing states have the effect of “enlarging the core nation” (high permeability) as in contemporary Ukraine or of “strengthen[ing] and empower[ing] the core nation at the expense of clearly distinct minority populations” (low permeability) as in Kazakhstan. My boundary-based characterization of ethnocracy brings the aforementioned works into dialogue with existing efforts to conceptualize ethnocracy (see esp. Yiftachel 2006 as well as Yiftachel and Ghanem 2004, but also Ghanem 2009; Mann 2005; Sautmann 2004; Brown 1994).

<sup>4</sup> It is important to note, however, that boundary permeability is not synonymous with low degrees of ethnic coercion. This is evident from the situation of Kurds during most of republican-era Turkey. Rather than not being allowed to cross the boundary into Turkishness, Kurds were in fact prohibited from *not* doing so (e.g. self-

ethnocracies in this dissertation, however, were based on a “racial” boundary. It was “racial” in the sense that there was a discourse of race and practices of racial classification, to be sure. But it was also “racial” in the analytically more important sense that for individuals under these regimes there was no type of behavior that would allow them to pass openly from the subordinate into the dominant category. For given individuals under these ethnocratic regimes, the boundary that divided the dominant and subordinate statuses into which they were born was not just difficult to cross; it was impermeable except through surreptitious means.<sup>5</sup>

The boundary in these racial ethnocracies was also highly consequential. In every ethnocracy, law and state administrative practices play a key role in enforcing the boundary between dominants and subordinates. This role is often ambiguous, which also contributes to debates about whether specific regimes are properly conceptualized as ethnocracies.<sup>6</sup> In the case

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identification as Kurdish was banned, as was speaking Kurdish) (Akturk 2011; Peleg and Waxman 2007). This is a very coercive form of assimilation (see Miley 2007), but it is not ethnocracy. In fact, the Kurdish situation in Turkey and “Jim Crow” in the US South respectively represent two ends of a continuum that runs from the most coercive form of inclusion to the purest form of exclusion.

<sup>5</sup> There are many situations that exist on the frontier that divides “racial” and “non-racial” in these analytical terms, some very close to the “racial” side of the territory (in the sense of establishing a boundary that cannot be crossed save by surreptitious means). A state might demand the boundary-crossing of a subordinate ethnos, as was the predicament of Jews in medieval Spain, but the population at large, including some state officials, do not believe that those who have assimilated have in fact “really” assimilated, or (and here one crosses definitively into “racial” territory) they do not believe that members of the subordinate ethnos ever could “really” assimilate (Fredrickson 2001). A state might believe that individuals comprising a subordinate ethnos could assimilate but that this boundary-crossing is undesirable, as was the situation of Jews in interwar Poland (Brubaker 1996). Moreover, a state might believe that an ethnos *could* assimilate (i.e. cross the boundary into the dominant ethnos) but is unwilling to do so and therefore exclusionary policies toward that ethnos is the appropriate approach—e.g. how the state viewed and treated resident Germans in interwar Poland (Brubaker 1996). This last example invokes the subjectivity of the subordinate ethnos (though in this case, assumptions of that subjectivity on the part of the dominant ethnos—i.e. the dominants’ subjectivity regarding the subordinates’ subjectivity). Once this subjectivity is integrated into the analysis, identifying which regime is an ethnocracy and which is not becomes vastly more complicated, because, *inter alia*, it has the potential to turn the emergence of every secessionist movement into a sufficient condition for classifying the existing regime as ethnocratic. However, this is not a complication that affects the classification of regimes as racially ethnocratic in this dissertation.

<sup>6</sup> Israel has been the object of the most sustained debate, which is centered around the question of whether it constitutes a case of “ethnocracy,” “ethnic democracy,” “ethnic state,” or something else (see Peled 2011; Berent 2010; McGahern 2010; Danel 2009; Ghanem 2009; Peleg and Waxman 2007; Yiftachel 2006; Al-haj 2004; Yiftachel and Ghanem 2004; Smootha 2002; Rabinowitz 2001; Yiftachel 1999; Ghanem 1998; Smootha 1997; Peled 1992; Yiftachel 1992).



of the racial ethnocracies in this dissertation, however, the role of law and state administrative practices was *not* ambiguous. Until the 1960s in the United States, for example, various levels of government classified the population by race and through law and state administrative practices accorded unequal rights and privileges on the basis of this classification, thereby ensuring that the racial boundary did in fact separate dominants from subordinates. Most often, this racial inequality was explicitly inscribed in law (e.g. school segregation; the requirement that African Americans sit in the back of public buses), while in some cases, such as the voting franchise in the period after adoption of the Fifteenth Amendment (which forbade explicit racial exclusion in law), this racial inequality was a regular product of state administrative practice. In either case, this racial exclusion was state-sponsored; for the sake of brevity and simplicity, I call this *legal racial exclusion*.

Because legal racial exclusion is directly observable, it is the dimension of racial ethnocracy that receives the most attention in this dissertation's substantive chapters. But this discussion of racial ethnocracy would be incomplete without attention to a second aspect particularly relevant to the first chapter's comparative analysis: racial nationalism.

As a form of rule based on conceptions of (racial) peoplehood, racial ethnocracies entail ideological claims about the proper link between a putative people and the state. The "people" linked to the state in this social imaginary is not the population as a whole but rather the racial dominants. That is to say, in racial ethnocracies one finds racial nationalism (and in former racial ethnocracies as well: expressions of racial nationalism can and do outlast the ethnocratic regime). In the context of the United States and other cases examined in chapter one, this took the form of white nationalism (Fredrickson 1971). "White nationalism" refers to an ideology holding that a

particular country and its resources, both natural and social, are rightfully ‘owned’ by the ‘white’ population (cf. Wimmer 1997).

Racial or otherwise, nationalism and expressions of nationhood are in general more episodic and less empirically tractable than legal racial exclusion. But that does not mean that white nationalism was invisible. In the conflict over slavery’s extension to western territories in the 1850s United States, for example, opposing sides both claimed exclusive fidelity to white polity ownership: the pro-extension side accused their opponents of being the “African” party for opposing slavery’s expansion; and the anti-extension side equated support for such expansion with support for the “Africanization” of valuable lands instead of “free territories for free white men” (see chapter two). Nearly a century later, African American leaders during the Second World War requested that the governor of Tennessee appoint African Americans to the state military draft board, a request that the governor flatly rejected on white nationalist grounds: “This is a white man’s country,” the governor explained. “The Negro had nothing to do with the settling of America” (quoted in Dalfiume 1968:92).

In the conception of racial ethnocracy advanced here, racial nationalism need not be as directly observable as the examples cited above in order to be relevant. Legal racial exclusion itself reflects an ideology that whites are the rightful owners of the state and can use the state’s powers to protect and to multiply the fruits of this ownership. If the origins and workings of legal racial exclusion are to be understood, I argue, then this ideological component must be grasped. To interpret legal racial exclusion merely as a weapon used by the racially dominant segment of the working class to improve its market position (e.g. Bonacich 1975), or as a weapon used by the capitalist elite to divide and thereby weaken the working class (e.g. Burawoy 1981), is to miss this essential ideological component. It is in contexts where racial nationalism is relevant—

not just any context—that dominant actors perceive difference based on ideas of ‘race’ as a dividing line that separates legitimate and illegitimate competitors in a broad array of ‘markets’ (labor, consumer, political, marriage, etc.), and use law and other forms of organizational power to exclude and marginalize the putatively illegitimate competitors.<sup>7</sup>

As I argue in chapter one, it was because of the racial conception of peoplehood that formed during the colonial period in Australia, South Africa, and the United States that working classes later organized along racially exclusionary lines in these countries—but not working classes in Brazil, Cuba, or New Zealand where no such conception formed. Moreover, in a context of racial nationalism, claims that racial subordinates are a source of illegitimate competition extend well beyond working class organizations. The notion of illegitimate competition lay behind the Democratic Party platform’s claim in the late 1860s that the Republican Party, by enfranchising African Americans in the U.S. South and permitting them to hold elective office, had subjected that region to “negro domination” (quoted in Johnson 1978:38). The same notion informed a widely distributed circular from the Ohio Democratic state committee during the election of 1920, which was titled “A Timely Warning to White Men and Women of Ohio” and offered in response to what the circular called an “invasion of negroes” from the South: “An ominous cloud has risen on the political horizon which should have the attention and consideration of all men and women before casting their ballots. That cloud is the threat of negro domination in Ohio. ...” (quoted in Giffin 1973:29). And the notion of illegitimate competition clearly informed claims-making during the Chicago mayoral contest of

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<sup>7</sup> This distinction between legitimate and illegitimate competition, as determined by processes of nation-state formation and conceptions of nationhood, comes from Wimmer’s (2002:ch.7, 2008:978) critique of economic competition theory.

1927, when Democratic Party organizers plastered posters throughout the city posing the question “Is the Negro or the White Man to Rule Chicago?” (quoted in Guglielmo 2003:99).

The framing of people’s movement into a territory as an “invasion” is something with which a reader of contemporary news about immigration would be familiar. African Americans who moved from southern states into Ohio or Illinois, of course, were not immigrants in any ordinary sense of the term. But the basic intuition is that these two ‘invasions’ are homologous: that in racial ethnocracies like the United States, there was not just a system of legal discrimination and exclusion on the basis of race; this system reflected that racial subordinates were conceived of and treated as falling outside ‘the people’, as removed from the rightful owners of the polity. And just as immigrants are chronically subject to claims of illegitimacy (of being trespassers, sources of “unfair” labor or business competition, etc.) in modern nation-states, so, too, are racial subordinates in a context of (equally modern) racial ethnocracies.<sup>8</sup>

Conceptualizing the United States *in general* as a case amenable to analysis in terms consistent with the broader comparative race/ethnicity literature, and *specifically* as a racial

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<sup>8</sup> If this point about the centrality of racial nationalism in U.S. history is obvious, it is also frequently ignored. The most cited work in the U.S. literature on ‘race’ examines briefly the value of a nationalism framework for understanding “racial formation” in the United States, but the discussion considers only Black nationalism (Omi and Winant 1994). In literature regarding the distinction between “civic” and “ethnic” nationalism—wherein, at a minimum, “civic” forms entail a prioritization of behavior over descent for membership (e.g. Kymlicka 1996:24)—Brubaker (1998:299) notes that the United States has been treated as one of the “paradigmatic cases of civic nationalism.” This is almost certainly because analysts consider only the relationship between (European) immigrants and the host society when interpreting American nationalism. Yet even a recent article devoted to analyzing “regimes of ethnicity” that include majority-minority relations among non-immigrants (e.g. Kurds in Turkey) characterizes the pre-1965 United States as having “a classical antiethnic regime based on assimilation (melting pot)” (Aktürk 2011:139; see Peleg and Waxman 2007:434 for another illustration of this blind spot, again in an analysis of non-immigrant ethnic relations). Kuzio (2001:144) recognizes this problem for cases like the United States and Australia, and recommends adding an ‘exclusive’ modifier to civic nationalism in these cases. Though this is not the place to wade into debates about the analytical merits of the civic/ethnic distinction (for persuasive critiques, see Brubaker 1998 and Miley 2007) and therefore the value of rescuing the civic form from its contradictions, I will note that relief from the Procrustean bed is as easy as recognizing that state policies and forms of nationhood can be simultaneously “assimilationist” toward some population groups and “dissimilationist” or “exclusionary” toward others (see Brubaker 1996 for this point)—which is precisely what prevailed in the racial ethnocracies examined in this dissertation, with assimilationist policies aimed at European immigrants and exclusionary ones at native-born non-European populations.

ethnocracy, has implications for how we understand the course of what Myrdal famously called “the American dilemma.” Though formal political processes have played at most a marginal role in the analysis of ‘race’ in the U.S. sociological literature (see Omi and Winant 1994; Wilson 1996; Bonilla-Silva 1997; Feagin 2006; and the recent collection devoted to updating the “racial formation” perspective, HoSang et al. 2012), such processes have been central to efforts to understand the formation and consequences of ethnic/racial boundaries in the comparative literature (see below for cites). And theorizing the United States as a case of racial ethnocracy—i.e. as a specific kind of ethno-political regime rather than as some form of “racism” (cf. Wilson 1996; Bonilla-Silva 1997; Feagin 2006)—suggests the analytical fruitfulness of what Skocpol (1994:191) terms a “polity-centered” approach, where the polity “includes state organizations, political parties, and all politically active social groups.”

At the heart of modern polities are conceptions of egalitarian membership and legal structures like equality under the law that promote this basic egalitarianism. In the United States and other ethnocracies examined in this dissertation, however, racial subordinates were excluded both from legal equality and the dominant conception of peoplehood. To be sure, it is possible that ethnocratic polities are simply a *reflection* of “socio-economic forces” getting “organized politically,” as Cell (1982:102-103) argues was the case in his comparative analysis of legal racial exclusion in the United States and South Africa. But this dissertation aims to show that such “societal reductionism” (Béland 2005:30) obscures much about the course of American racial ethnocracy that attention to political institutions and processes can reveal.

## AMERICAN RACIAL ETHNOCRACY AND THE POLITICAL-INSTITUTIONAL TURN

More than fifty years ago, Lipset (1960:80-81) observed that political sociologists tended “to treat formal political structures as epiphenomena” that have “little effect upon the main features of the societies.” As Sartori (1969) put it about the same time, much of what passed for “political sociology” was in fact a “sociology of politics” in the sense that political outcomes were explained with exclusive reference to their social bases (see Peters 2005:15 for a similar characterization of this period). In her critique of Barrington Moore’s *Social Origins of Dictatorship and Democracy*, Skocpol explicitly broke from a main component of this tradition, namely, the interpretation of political processes, structures, and outcomes in “class-instrumentalist terms” (Skocpol 1973:23), and she later critiqued the broader universe of “society-centered” perspectives (Skocpol 1985).<sup>9</sup>

Since Lipset’s observation and Skocpol’s critique, much has changed in political sociology. Since the 1980s, “states and political institutions” increasingly can be found “on what might be called the independent-variable side of causal arguments” in political sociology (Amenta 2005:96). This political-institutional approach “relies on the structure of state and other major political institutions, including electoral systems and political party systems, and processes of state and party building, in the construction of causal political arguments and explanations for macropolitical phenomena” (Ibid:104). As described by Skocpol (1994:191), this approach is “polity-centered” in the sense that “[s]tate formation, political institutions, and political processes ... move from the penumbra or margins of analysis and toward the center.”

But the political-institutional turn has been selective in its objects of interest. Amenta et al. (2002:56) note that the political-institutional approach “has gone fairly far in explaining the development of social [welfare] policies” but that social movements have received very little

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<sup>9</sup> See Béland (2005) for a more up-to-date critique of what he calls “societal reductionism.”

attention. In terms of the U.S. literature, the same can be said for racial exclusion, as James and Redding (2005) observe.<sup>10</sup> This disconnect is surprising in light of the comparative race/ethnicity literature, which has long emphasized the politically constituted nature of ethno-racial boundaries (M.G. Smith 1969; Schermerhorn 1970; Rothschild 1981; Horowitz 1985; Wimmer 1997; Loveman 1999b; Aminzade 2003; 2000; Mann 2005). Much of this literature identifies political processes as central mechanisms through which ethnic and racial categories become consequential. Scholars have demonstrated how politicization can both harden and make more consequential already existing ethnic/racial divides (e.g. Rothschild 1981). Other scholars (e.g. Posner 2005) have focused on processes of institutionalization that provide incentives to organize along ethnic or racial rather than other lines. All of this work suggests that political institutions should be of crucial significance to racial ethnocracy's emergence, endurance, and demise.

Yet, explanatory work on legal racial exclusion—racial ethnocracy's most observable manifestation—generally has been based on the “society-centered” perspectives that the political-institutional approach aims to de-center. The most prominent among these are *elite*, *class competition*, and *electorate* approaches. These approaches' specific arguments regarding legal racial exclusion will be examined in the substantive chapters. At present, I outline briefly the basic logic of each of these approaches in relation to legal racial exclusion in order to provide a theoretical context for this dissertation's political-institutional arguments.

*Elite Approach:* This approach emphasizes the role of elites who derive their power either from the economic or political sphere. According to one line of argument, economic elites

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<sup>10</sup> Mann (2005) offers a notable exception in his analysis of the harshest form of exclusion, murderous cleansing in Australia and the United States, among other historical cases (which is unsurprising, given that Mann's political sociology has always been multi-dimensional—see Hall and Schroeder 2006 for an overview). Wimmer (2002:ch.7) uses a political-institutional approach to critique society-centered theories of racism and xenophobia.

exacerbate and exploit racial divisions among the laboring classes in order to weaken solidarity and create a reserve army of easily exploitable labor (Cox 1948; Wolpe 1972; Burawoy 1981). In this view, political institutions are irrelevant; the political system is simply the instrument through which economic elites implement their divide-and-rule strategy. In schematic historical discussions of the U.S. case by scholars whose primary focus is contemporary society, this elite view is fairly influential as an account of the historical origins (though not endurance) of racism and exclusion (Wilson 1996; Bonilla-Silva 1997; Feagin 2006).

A second line of elite argument emphasizes political elite control over legal racial exclusion. This line of argument holds that elite divisions and conflicts over racial policy have not been generally significant, or when these divisions have become meaningful, they have not been enduring (Woodward 1974; Marx 1998). According to this view, legal racial exclusion generally stayed off the political agenda for most of U.S. history because elites kept it off the agenda. The one exception after the Civil War was short-lived and not very meaningful from this perspective, as elites rapidly closed ranks to protect the political peace and economic development (Marx 1998). This remained so until after the Second World War when Cold War pressures, which made American racial ethnocracy a problem for the country's image abroad, combined with the explosive force of the civil rights movement to push elites to support the elimination of legal racial exclusion (McAdam 1982; Morris 1984; Dudziak 2000)

*Class Competition Approach:* The class competition approach is similar to the economic elite line of argument in emphasizing the dynamics of capitalism, but it places causal priority on the working class. The class model is rooted in the struggle of workers under market capitalism in racially stratified societies. Racially dominant workers faced a threat from racial subordinates because capitalists could hire the latter and thereby undercut the bargaining power and wages of



racially dominant workers. In response, these racially dominant workers organized to institutionalize their dominant position based on legal racial exclusion (Bonacich 1975; Wilson 1980).

The role of political institutions in the class competition approach is greater than the elite alternative, though this role is only, at most, an implicit scope condition. One might argue that racially dominant workers were more likely to have the power to push for a regime of legal racial exclusion in more democratic polities. Beyond such an institutional specification, the class competition approach, like the economic elite line of argument, views “racial domination” as “essentially a class phenomenon” (Greenberg 1980:406).

*Electorate Approach:* The electorate approach emphasizes the influence of public opinion on the course of racial ethnocracy and specific policies regarding legal racial exclusion. This approach has not been applied to the question of racial ethnocracy’s origins, but it is an influential perspective in efforts to understand the history of racial policies in the United States. Combining analyses of the nineteenth and twentieth centuries, the electorate approach’s major argument is that racial ethnocracy lasted as long as it did because a majority of the white electorate did not favor its elimination (Frymer 1999; Klinkner and Smith 1999; King and Smith 2008). Once the white electorate shifted on this matter, policies were put into place to eliminate legal racial exclusion (Burstein 1998). Scholars also emphasize the growing power of the African-American segment of the electorate due to migration northward in the decades leading up to the 1960s civil rights transformation (McAdam 1982; Young and Burstein 1995).

The electorate approach is the most political-institutional of these society-centered perspectives by virtue of the emphasis it places on the causal power of public opinion in a context of democratic political competition. Yet, because this approach interprets public policy

as a translation of electorate preferences, it nevertheless is fundamentally a society-centered perspective. In contrast, the political-institutional approach pursued in this dissertation emphasizes the considerable extent to which legislative, electoral, and party institutions shield political actors from the influence of public opinion, giving actors in these institutions relative autonomy.

### Overview of the Political-Institutional Arguments

In four chapters, this dissertation examines racial ethnocracy in the United States from a *comparative, long-run, and political* perspective. Regarding comparisons between the U.S. and other cases, the comparative vision comes via two lenses. The first is the most direct. Chapter one uses macro-comparative analysis to explain why the United States became a racial ethnocracy in the era of independence. The literature on race in the United States tends to be contemporary, but when the U.S. race literature does offer historical discussion, the origins of racial ethnocracy tend to be linked to planter rationalizations of African slavery that eventually made racism an autonomous force in society, unmoored from its socio-economic origins (see Wilson 1996; Bonilla-Silva 1997; Feagin 2006).

The premise of this dissertation's comparative chapter is that we can learn something about the origins of racial ethnocracy in the United States by examining other cases where racial ethnocracy emerged *without* large-scale plantation slavery and other cases where it did not emerge despite the existence of large-scale plantation slavery. This is not, to be sure, my revelation; there is a considerable comparative body of scholarship that has pursued the same question or similar ones (e.g., Marx 1998; Harris 1980; Degler 1971; Tannenbaum 1946). This comparative literature, however, focuses on just two to five cases, which is but a sub-set of what

I argue in chapter one (building directly on this comparative literature) is a 25-case universe that encompasses all those former European settlement colonies that made the transition to independence with Euro-descendants in control of the political system. As I show in chapter one, none of the arguments within this comparative literature accounts very well for outcomes within this broader universe. In an argument that marries the comparative focus of this dissertation with its long-run and political emphasis, and that takes into account this entire universe of cases, chapter one links the origins of independence-era racial ethnocracy to the type of political rule that prevailed during the colonial period. Specifically, I argue that independence-era racial ethnocracies emerged from colonial-era political institutions that afforded European settlers and their descendants autonomous representative government. These autonomous representative governments institutionalized a macro-cleavage between white dominants and non-white subordinates, providing a racially exclusionary answer to the question posed by all transitions to independent statehood: In whose name does the modern state rule? Conformingly, non-whites were excluded from the definition of the citizenry in the independence period and unequal treatment was institutionalized in law.

Among the five countries that became racial ethnocracies, the United States is the only case where legal racial exclusion became an object of significant political contestation several decades before this exclusion was actually overcome. This contestation produced changing patterns of legal racial exclusion over time and space during the nineteenth century, though racial ethnocracy endured well into the twentieth century. The second chapter's political-institutional argument focuses on the dynamics of the party system in producing this contestation, shaping these patterns of legal racial exclusion, and ensuring that racial ethnocracy would endure. At the center of the analysis are relatively autonomous political parties, consistent with a growing line

of sociological research on other empirical contexts ( Desai 2002; Chen 2007; De Leon 2008; De Leon et al. 2009).

The second chapter's argument focuses on the formation of political parties and the coalitions that support them, the nature of political competition in a two-party system, and the impact of these on patterns of legal racial exclusion. The Democratic Party formed in the early decades of the 1800s as an inter-regional alliance for the defense of white supremacy, an alliance that lasted for more than a century.<sup>11</sup> Chapter two shows how bringing the Democratic Party into the center of the analytical framework provides explanatory leverage over a wider range of nineteenth-century patterns than previous approaches. Between the antebellum and post-bellum periods, the United States moved from a situation in which legal racial exclusion was nationwide to one in which it was largely confined to the South. Using a variety of primary and secondary data regarding both the state and federal levels—on election returns; on laws concerning racial exclusion and its elimination; on legislative roll calls concerning these laws—I show that the Democratic Party drove patterns of legal racialization in the antebellum North; that when Republicans gained the upper hand in the North after the war, legal discrimination was dissolved; that Republicans' temporary dominance at the national level produced a project to ensure African American suffrage in the South; but that the Democratic Party's resurgence at the federal level from the mid-1870s—rather than an abandonment driven by elite bargaining and consensus (Woodward 1974; Marx 1998)—made the necessary strengthening of this project impossible.

Along the way, chapter two shows that party positions regarding legal racial equality were reducible to neither class divisions nor public opinion, as maintained by other scholarly

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<sup>11</sup> In the context of the comparative race/ethnicity literature, the Democratic Party was an “ethnic party” for more than a century, due to its exclusive devotion to representing the white ethnos (cf. Horowitz 1985:291-298).

approaches to the subject (Bonacich 1975; Wilson 1980; Frymer 1999; Klinkner and Smith 1999). Rather, the parties exercised relative autonomy vis-a-vis such societal forces. Thus, the elections that brought either Democrats or Republicans and their contradictory racial agendas to power were not simply a result of shifting preferences of voters regarding the question of racial equality, but were largely determined by other issues and forces, at least in the North. By demonstrating the intimate link between the shifting balance of power between Democrats and Republicans and patterns of legal racial exclusion, this second chapter suggests that the dynamics of party competition and coalition-building are essential for understanding the long-term trajectory of racial ethnocracy in the United States.

One major conclusion of chapter two is that the United States would endure as a racial ethnocracy as long as one member of its duopolistic party system remained an inter-regional alliance in defense of legal racial exclusion. Chapter three, therefore, turns to an analysis of this alliance's unraveling in the early decades of the twentieth century. This chapter is more strictly historical than political-institutional as compared to the other portions of the dissertation, and its main purpose is to provide an empirical bridge between the analyses in chapters two and four respectively. Nevertheless, it does further advance the argument concerning the relative autonomy of parties and political actors in relation to an electorate-centered alternative that emphasizes the direct role of African American migration out of the South in driving a wedge between the Democratic Party's southern and non-southern wings (Reiter 2001; see also Ladd and Hadley 1978; McAdam 1982). In one influential version, Democrats outside the South did not seek to bring African Americans into their coalition until Democrats noticed in the first election after the New Deal's commencement that African Americans were voting for them (Weiss 1983)—a strong version of the electorate-centered story.

Chapter three does not dismiss altogether the importance of a growing African-American vote outside the South in pushing the non-southern Democrats away from the southern wing. However, this chapter does use a comparative analysis of the 10 largest non-southern states to show that Democratic Party politicians in many contexts started to bring African Americans into their coalition before migration hit large-scale levels in the 1940s, before the election of 1936 demonstrated Democrats' ability to attract African Americans in presidential politics, and even before Roosevelt's winning of the presidency in 1932. At the same time, in other key contexts in the period before 1932 non-southern Democrats responded to even modest levels of African-American migration in exclusionary ways consistent with the party's history—which suggests that the inclusive response was not the only possible outcome. Overall, chapter three argues that the changing relationship between African Americans and the Democratic Party outside the South—which itself was a key factor in both the regional split of the Democratic Party and the enduring re-emergence of civil rights on the national agenda—revealed itself most dramatically at the national level in the 1930s, but to a considerable extent this changed relationship was the culmination of earlier developments at the state and local levels, which themselves were not an inevitable result of the growing African-America vote.

Chapter four then takes a political-institutional approach to explain why, even though civil rights re-emerged on the national agenda in the 1930s with the break up of the Democrats' exclusionary alliance, meaningful reform aimed at legal racial exclusion took another generation. While all other major institutions of the federal government—the Supreme Court, the presidency, the House of Representatives—pushed against legal racial exclusion starting in the 1930s and 1940s, the Senate consistently pushed back in the cause of defending racial ethnocracy. Though Republicans and non-southern Democrats in the House of Representatives started in the 1930s to

vote for legislation aimed at guaranteeing civil rights to African Americans, the Senate consistently upended these efforts.

In order to understand this contrast between these two legislative bodies, chapter four examines the role of two institutions that distinguish the Senate from the House of Representatives: the *filibuster*, which at the time required two-thirds of the Senate membership to close debate and pass legislation, and *equal state representation*, which provides small population states with vastly greater power in the Senate than the population-apportioned House. In order to examine the role of these institutions and, more generally, the alliances that enabled southern Democrats to block civil rights reform in the Senate, chapter four analyzes a comprehensive dataset of civil rights roll calls between 1938 and 1964 along with a range of senator-level and state-level variables compiled specifically for the dissertation. Based on tabular and logistic regression analysis, chapter four shows that the equal representation of states in the Senate made the most substantial contribution to southern Democrats' ability to use their institutional power to block reform. Senators from small population states were much more likely to support southern Democrats in their defense of racial ethnocracy, to the point that when the votes of senators are weighted by the size of population that they represented, the pro-civil rights forces almost always had a majority—despite losing most roll calls before 1964. Moreover, this chapter's logistic regression analysis shows that this alliance pattern was not merely a reflection of senator characteristics (ideology, seniority, etc.) or the constituencies that senators represented, but rather had to do with the internal logic of building coalitions in the Senate. Overall, chapter four shows that among federal law-making institutions in the generation before the 1960s, the Senate was uniquely obstructionist in blocking the reform of legal racial exclusion,

and that key to this obstructionist role was a powerful alliance between southern Democrats and senators from small population states.

## CONCLUSION

Summarized in Table 1 below, the major components of this dissertation seek to provide a comparative, long-run, political perspective on the origins, endurance, and demise of racial ethnocracy in the United States. The goal is *not* to show that a political-institutional approach can explain everything, but rather to demonstrate the indispensable explanatory contribution that this approach makes to our understanding of the long-term trajectory of racial ethnocracy. Before focusing specifically on the United States in chapters two through four, the first chapter uses comparative analysis to explain why the United States and several other countries became racial ethnocracies in the era of independence, while most former European settlement colonies did not.



Table I: Overview of Chapters

	Chapter 1	Chapter 2	Chapter 3	Chapter 4
Time Period	1600s – 1900s	1820s – 1890s	1910s – 1930s	1930s – 1960s
Case(s)	25 former European settlement colonies	(i) states in antebellum North (ii) states in post-bellum North (iii) federal policy toward post-bellum South	(i) 10 most important non-southern states in electoral college (ii) presidential politics	U.S. Senate in context of federal “law-making” institutions
Explanatory focus	Why racial ethnocracy?	patterns of legal racial exclusion	break-up of Democrats’ inter-regional alliance	how the Senate blocked legal reform
Political institutions	type of imperial political rule	party system dynamics	party system dynamics	(i) filibuster rule (ii) equal state representation in Senate
Major Data	secondary historical literature	(i) state racial laws in North; (ii) party control of northern state legislatures and federal government; (iii) voter referenda on racial laws in North; (iv) platforms, campaign textbooks; (v) secondary historical literature	secondary historical literature	(i) 44 Senate roll calls, along with state- and senator-level variables (ii) periodicals (e.g. CQ Almanac; New Republic; Time; Newsweek) (iii) Senate committee membership data (iv) secondary historical literature

# CHAPTER 1

## THE COLONIAL ROOTS OF RACIAL ETHNOCRACY

Colonial legacies have moved center stage in historical sociologists' efforts to understand key contemporary issues, including socio-economic development (Mahoney 2010), democratic durability (Bernhard, Reenock, and Nordstrom 2004), warfare incidence (Wimmer and Min 2006), and women's rights (Charrad 2001). This chapter offers a similar perspective on a different outcome: how different styles of imperial rule gave rise to different independence-era racial orders and more specifically, what the conditions were for the emergence of legally sanctioned discrimination against a racially defined segment of the population. Based on macro-comparative analysis, this chapter develops a colonial legacy argument to explain why the United States became a racial ethnocracy.

Between the late eighteenth and early twentieth centuries, the descendants of European settlers, native inhabitants, and African slaves formed more than two dozen independent countries in the Americas, southern Africa, and the Asia-Pacific region. Though these countries had a common background of colonial conquest by Europeans, the role of 'race' in the independence period differed in a fundamental way. In most cases, no legally sanctioned differences in how the state treated citizens of different descent backgrounds emerged. In several cases (from Australia to South Africa), however, the transition to the modern nation-state did not bring equality under the law for all; instead, individuals of non-European descent suffered legal exclusions in numerous domains, including employment, voting, education, and the choice of residence. In these countries, the dominant social groups imagined the nation (Anderson 1991) as

exclusively 'white' and translated that imaginary into a political and legal reality, thereby creating what I call racial ethnocracies.

Previous efforts to understand the racialization of polities have focused on no more than a few cases, usually including the United States, South Africa, Brazil, or Cuba (see below for citations). Most of these works do, however, implicitly conceive these cases as part of a larger universe of cases. Marx (1998:6), for example, makes this explicit by stating that his study of the United States, South Africa, and Brazil deals with "the three most prominent cases in which European settlers dominated indigenous populations or slaves of African origin." As the next section will show, existing explanations of the rise of racial ethnocracies falter as soon as we move beyond the usual handful of cases and instead consider the entire universe of cases: every country with a history of colonial-era domination of non-Europeans by European settlers where the descendants of European conquerors remained after independence and maintained a dominant role in the political system.

The present chapter represents the first attempt to explain the emergence of racial ethnocracy through an analysis of this full universe of comparable cases. As shown in Table 1.1, this universe consists of 25 countries, five of which became racial ethnocracies. Why did the polities of South Africa, Australia, and the United States become racialized, while those of Brazil, Cuba, and Colombia did not? How can we account for the variation in this full universe of cases?

Table 1.1: The Universe of Cases: Former European Settlement Colonies around the World (Racial ethnocracies in **Bold**)

Argentina	Dominican Republic	Paraguay
<b>Australia</b>	Ecuador	Peru
Bolivia	El Salvador	<b>Rhodesia (Zimbabwe)</b>
Brazil	Guatemala	<b>South Africa</b>
<b>Canada</b>	Honduras	<b>United States</b>
Chile	Mexico	Uruguay
Colombia	New Zealand	Venezuela
Costa Rica	Nicaragua	
Cuba	Panama	

Going beyond existing explanations, this chapter argues that these divergent trajectories were rooted in the nature of colonial rule. As can be seen in Table 1.1, different colonizers generally produced different outcomes: five of six British settlement colonies became racial ethnocracies, while none of the 19 Iberian ones did. This pattern reflects the distinct ways in which British and Iberian imperial centers ruled their colonies and thereby produced different types of political networks and alliances at the time of independence—which, as Wimmer (2002) has argued more generally, are critical to the kinds of social cleavages that become salient after independence. The British empire generally afforded their settlers substantial autonomy by intervening little in local social relations, and it encouraged them to establish representative governments. Introducing autonomous representative governments in a context of colonial domination had two effects: it provided Europeans the liberty to institutionalize in law their dominance over non-Europeans, and it served to diminish the political salience of cleavages *within* the European-descent population, giving rise to what Mann (2005) has called an “ethno-demos fusion.” As a consequence, a deeply institutionalized macro-cleavage between Europeans and non-Europeans developed, providing the basis for setting up an exclusively ‘white’ polity in the post-colonial era. Transitions to an independent nation-state raise the question of who

belongs to “the people” in whose name the polity will be governed. In most British colonies, years of autonomous representative government meant an answer was readily at hand: the descendants of European settlers.

This was not the case in Iberian colonies. Though European descent certainly mattered as one basis of privilege, the more direct, interfering style of imperial rule in the Iberian colonies prevented a macro-cleavage between Europeans and non-Europeans from forming. The Iberian colonies were directly administered by the imperial center. This did not mean that settlers were powerless, but it did mean that the power of the local elite did not depend on gaining the favor of non-elites through elections. While this local elite was overwhelmingly of European descent, the absence of representative government and the substantial degree of imperial intervention aimed at dividing populations in a multiplicity of overlapping ways, prevented the emergence of the elite-mass linkages within the European-descent population that were characteristic of British settler colonies. Exclusive elite rule during the colonial period meant that when the transition to independence demanded the “invention of the people” (Morgan 1988), this people included all former subjects of the crown, including the descendants of slaves and the indigenous populations.

The remainder of the chapter develops this argument in the following way. I begin with a critical review of existing explanations in the second section, which shows that none can account for all cases in the universe. The third section then provides an elaboration of the main argument and applies it to explain why racial ethnocracies emerged in most former British settlement colonies but never in Iberian ones. Two inter-related dimensions of imperial political rule are the focus: the character of imperial intervention in colonial social relations, and whether empires encouraged representative government in the colonies. In the fourth section, the chapter turns to a more detailed examination of the former British settlement colonies, with two major goals: to

show the general role of British imperial rule, especially the promotion of autonomous representative government, in laying the foundations for legal exclusion along racial lines and the formation of an exclusively white ‘people’; and to show how deviations from this style of rule on the part of the British empire produced variation—most prominently in New Zealand, which did *not* become a racial ethnocracy in the era of independence. This comparison of the British cases provides the bulk of the empirical evidence for the chapter’s main argument. A final section summarizes and suggests avenues for future inquiry.

## EXISTING EXPLANATIONS

Class dynamics, racial demography, conflict, and culture have been at the heart of scholars’ attempts to understand the origins and dynamics of racial ethnocracy. I examine each of these in turn.

*Class:* A rich sociological tradition links the salience of race to the dynamics of capitalist class relations. One interpretation assigns causal power to white workers, who use their organizational capacity to exclude racial subordinates so as to minimize the threat of “cheap labor” (Bonacich 1975, 1981; Wilson 1980; Greenberg 1980). A second argument focuses on economic elites who use race to divide the working class and thereby relegate racial subordinates to a reserve army of cheap labor (Burawoy 1981; Wolpe 1972). Both of these interpretations provide potential insight into the reproduction and endurance of racial ethnocracy, but neither offers an empirically adequate account of why working classes organize along racial lines in the first place, or why economic elites can use race to divide workers. Indeed, it is telling that neither class interpretation attempts to understand non-racial ethnocracies in which the working class

was organized without respect to race, such as Brazil, Cuba, and New Zealand (Andrews 2004, 1991; De la Fuente 2001; Harré 1963).

*Demography:* A second line of reasoning links variation in racial ethnocracy to racial demographics (Fredrickson 1988; Harris 1980; Degler 1971; Hoetink 1967). Focusing principally on the US and Brazil, scholars have argued that the ‘tri-racial’ structure of Brazil prevented legal racial exclusion, while a large population of ‘poor whites’ produced a racial ethnocracy in the US. Yet, South Africa throughout its history as a racial ethnocracy had a third ‘racial’ group (i.e., ‘the Coloureds’); in the US the ‘mulatto’ category was socially significant until at least the late nineteenth century; and Cuba arguably developed a bi-racial structure without racializing its polity (Fredrickson 1981; Helg 1995; Marx 1998). Second, while it is true that there were large populations of ‘poor whites’ in most racial ethnocracies, those settlement colonies that became racial ethnocracies did not have a monopoly on them; ‘poor whites’ comprised a significant portion of the population in late colonial Latin America as well (Milton 2005; Lynch 2001; Seed 1982; Barbier 1980). Finally, the ratio of whites to non-whites does not in itself explain anything, as evidenced by the tremendous range of this ratio within racial ethnocracies (from 1:19 in Rhodesia to 19:1 in Australia) (cf. Fredrickson 1988).

*Conflict:* Two conflict arguments can be distinguished. The first invokes the role of what Marx (1998) calls “intra-white” conflict (see also Woodward 1974). When such conflict occurred, legal racial exclusion became the basis for healing the divisions between whites. While the United States and South Africa suffered major intra-white conflicts in the form of the Civil War and the Boer War, which were eventually overcome by agreeing on Black exclusion, Brazil experienced no such intra-white conflict and thus the polity was never racialized (Marx 1998). Even if this argument works for the three cases, it does not hold up when considering the full

universe: Australia and Rhodesia became racial ethnocracies without experiencing intra-white conflict. There is also a problem with the argument in relation to the three cases. Marx identifies Brazil and the United States as equivalent in terms of racial policy prior to the time of abolition, and argues that how abolition happened in the two countries (peacefully in Brazil but not in the US) pushed the countries along different paths with respect to racial policy. But both countries had been independent for more than 50 years at the time of abolition, and their policies regarding *free* people of African descent were starkly different. While in the US free African Americans suffered a variety of legal discriminations across the country, from the time of Brazil's independence in 1822 onward there were no legal distinctions between the freeborn based on race (Berlin 1974; Litwack 1961; Andrews 2004). Such prior difference suggests that a long-term explanation is needed, one that reaches back to the period before independence.

A second conflict argument does have a longer historical reach, linking formal equality for people of African descent in many Latin American countries to their role in the wars for independence. This argument, which has been applied to Colombia (Lasso 2007), Cuba (Ferrer 1999; Helg 1995), and to the region as a whole by Andrews (2004), is reminiscent of a well-established theory regarding the relationship between war and the expansion of citizenship rights in Europe. Whether people of African descent played a significant enough role across Spanish America to warrant this conclusion requires more research (including how the argument relates to the indigenous population). But existing knowledge on some of the non-Spanish cases is sufficient to reveal the problematic nature of the argument. Native Maori and English settlers forged a non-ethnocratic polity in New Zealand without fighting together in a war for independence. Brazil as well experienced a *peaceful* transition to independence *with* full equality under the law for free people of African descent. Finally, even if one limits the analysis to



Spanish American cases, the events at the Cortes of Cádiz in 1810-1812 contradict the warfare thesis. Representatives from Spain and Spain's colonies met in Cádiz to form a constitution in the absence of the King (who had been abducted in 1808). These events *preceded* the outbreak of large-scale warfare across the Americas, and yet indigenous people were granted full political equality without much debate. The outcome for people of African descent seems at first glance to support the warfare thesis: the constitution established criteria by which they could gain political equality rather than granting it as a matter of birth. But political equality by birth was supported by more than 90 percent of the delegates from the Americas, and it failed to make it into the constitution only because of the Spanish delegates' near unanimous opposition and much greater numerical representation (King 1953). This support for equality shortly before independence—and before independence was gained through war and conflict—again hints at the colonial roots of non-ethnocratic polities, which brings us to the cultural argument.

*Culture:* Tannenbaum's (1946) explanation for why and how Anglo and Iberian slavery produced distinct types of race relations in the independence era continues to provoke debate (see, e.g., De la Fuente 2010). Focusing in particular on the U.S., Cuba, and Brazil, Tannenbaum argues that the more inclusionary nature of post-colonial Latin America was rooted in the peculiarities of Iberian slavery. The Spanish and Portuguese had a tradition of slavery that long antedated overseas settlement and thus had a well-defined place for slaves in their social fabric, while the British lacked this tradition of hierarchically incorporating slaves into society and therefore treated them as mere property. Correspondingly, the enslaved in Iberian colonies had a "legal personality" that slaves lacked in Anglo colonies, and this difference extended to free persons of African descent. Tannenbaum's argument has received extensive critical scrutiny (for reviews, see De la Fuente 2004, 2010). Here, I want to focus on its implications for

understanding polity racialization, i.e., the assumption that the roots of racial ethnocracies lie in the nature of slave regimes. Two of the five racial ethnocracies, Australia and Canada, never experienced slavery, while in a third, South Africa, slavery was never a major institution (Fredrickson 1981). This suggests that something more general than the legal nature of slavery determined whether European settlement colonies became racial ethnocracies, which brings us to the second element of Tannenbaum's argument.

Tannenbaum also argues that slaves in Iberian colonies had not only a legal personality but also a "moral" one, because the Catholic church's universalism prevented total dehumanization. While Protestant churches in Anglo colonies promoted small and exclusive communities of believers, the Catholic Church fostered the development of an inclusive macro-community, which deterred the sort of racial exclusion that long characterized countries like the United States. When one attempts to generalize this argument to all post-settlement colonies—thus including those that never knew slavery—it holds considerable promise. All of the racial ethnocracies were indeed predominantly Protestant, and nearly all non-racial ethnocracies were predominantly Catholic. Nevertheless, there is still New Zealand, a Protestant case that did not become a racial ethnocracy. And of even greater significance are cases in the British West Indies. These are not part of the universe of cases because the Euro-descent population did not maintain a dominant position in the political system after independence, but they are of the greatest relevance to Tannenbaum's argument for this reason: these islands combined British large-scale plantation slavery with Protestantism. Despite this configuration, it was in the British West Indies that European colonizers went *the farthest* in recognizing the "legal and moral personality" of people of African descent in the 1820s and 1830s by abolishing slavery and according full equality under the law to Afro-Caribbeans (Heuman 1981). This was a development completely

at odds with Tannenbaum's argument, but one whose source brings us to the core argument of this chapter: Intervention by the imperial center produced these changes in the British West Indies, against the will of European colonists (e.g. Heuman 1981). Both this fact and its general significance for processes of race-making, already can be found in the writings of one of the most significant early nineteenth-observers of New World societies, as we are about to see.

### IMPERIAL POLITICAL RULE AND CLEAVAGE-MAKING

Alexis de Tocqueville argued in the 1830s that in the United States only a “despot” could “succeed in commingling the races” but that this would never happen “[a]s long as American democracy” reigned. He offered the Caribbean islands to the south as additional support for his claim: “If the English in the West Indies had governed themselves, one can be sure that they would not have passed the Emancipation Bill which the mother country has lately imposed upon them” (Tocqueville 2003:418). Tocqueville was not alone in this view. About the same time, Lord Stanley at the British Colonial Office fretted about the introduction of representative institutions in the Cape Colony (South Africa) on the grounds that such institutions could be “perverted into a means of gratifying the antipathies of a dominant caste [i.e. settlers], or of promoting their own interests or prejudices, at the expense of other and less powerful classes [i.e. natives]” (quoted in Keegan 1996:168)—a view common among colonial officials at the time (see Burroughs 1999 for the British West Indies; see Royal Commission 1996:274 for Canada).

Could high degrees of local autonomy and settler democracy explain the emergence of racial ethnocracies in the independence era, as Tocqueville and the colonial officers implied a very long time ago? This is indeed what I will argue in the remainder of this chapter: that negligible imperial intervention on behalf of non-Europeans combined with broad-based

representative political forms in the colonies institutionalized the dominance of European settlers as a sovereign, racially exclusive people, and thus laid the foundation for racial ethnocracy in the era of independence. Rather than a matter of religion or styles of slavery, most British colonies became racial ethnocracies, while none of the Iberian colonies did, because only the British empire ruled its colonies indirectly and encouraged broad-based representative governments as a means for local governance. I now turn to a more detailed comparison between British and Iberian imperial rule.

### The British Path

The British empire attempted to rule its settlement colonies indirectly through representative governments formed by settlers; conformingly, it also interfered only minimally in local social relations between Europeans and non-Europeans. “Unlike the Spanish . . ., the British never attempted to rule colonies directly from the metropole; neither their resources nor their inclinations pointed towards centralized direction . . .” (Burroughs 1999:170). This style of decentralized administration through elected representative governments began in the Americas, with the result that the British colonies there “enjoyed a far more extensive autonomy than did those of any other Euroamerican empire” (Savelle 1974:41). Among the 21 colonies established in British North America and the Caribbean in the 17<sup>th</sup> century, for example, 18 had representative assemblies within 20 years, and all did so by the end of the century, with these assemblies by then becoming “a fixed feature of English colonial administration” (Kammen 1969:10-12 and 57). By the middle of the eighteenth century, these assemblies had become the colonies’ “centers of power” (Steele 1998:120). This reliance on broad-based representative

governments later occurred in the administration of all other British settlement colonies within our universe of cases.

This combination of limited imperial intervention on behalf of non-Europeans and representative government for settlers was the sure pathway to racial ethnocracy. Limited imperial intervention meant that government played little or no role in moderating inequality in colony-level dominant-subordinate relations, which tended to fall along European/non-European lines. At the same time, the introduction of broad-based representative government widened the dominant category to all descendants of European settlers, independent of their precise origin, making an ethno-racial divide between whites and non-whites politically relevant. That the local government was autonomous meant that it was free to establish discriminatory laws that augmented European control of non-European land and labor. That it was broadly representative meant that it purported to rule in the interests of the settler population—rather than the crown, let alone all of its subjects. Rule by representative government entails rule in the name of a people. Through the workings of autonomous representative government in a context of colonial domination, European settlers constructed themselves as “the people” of the colonial polity. Unlike the Iberian colonies, as will be seen, autonomous representative government in British settlement colonies provided the political basis for independence-era regimes that excluded non-Europeans.

Not only did nearly all settlement colonies with representative government go on to become racial ethnocracies in the era of independence, but *only* colonies with this form of political rule became racial ethnocracies. Thus, the correlational evidence is very strong, and certainly stronger than the existing explanations reviewed above. Before I discuss the Iberian cases in the remainder of this section, I would like to briefly mention how the theory also

accounts for the one British case that did *not* develop into a racial ethnocracy (this and other British cases will be discussed below in more detail).

Though only settlement colonies with representative government became racial ethnocracies, representative government did not always produce this outcome. Greater degrees of imperial intervention could alter the dynamics of race relations under colonial representative government, but only if this intervention favored rights for the non-European population. The “only if” conditional is crucial: In colonial Natal (South Africa), for example, imperial officials intervened but to restrict and otherwise regulate the native population, which thereby bolstered the exclusiveness of the settler representative government (Welsh 1971). In New Zealand, however, imperial officials intervened extensively on behalf of the native population in ways that forged a single colonial polity in which both European and non-Europeans were politically incorporated—despite the presence of representative government. Broad-based representative government during the colonial period was a necessary condition for independence-era racial ethnocracy, but this outcome emerged only when representative government was accompanied by either low levels of imperial intervention or higher levels that bolstered settler power rather than non-European rights.

### The Iberian Path

The Spanish and Portuguese crowns interfered far more extensively in colonial social relations than the British, and these interventions, though variable over time and space as to whether they advantaged dominants or subordinates, fostered the *hierarchical incorporation* of the entire population. Consistent with this interventionist approach, Iberian imperial centers did not encourage or permit elected representative governments in their colonies. Shaped by these

two features of imperial political rule, Iberian colonial societies were rife with a multiplicity of overlapping and cross-cutting cleavages, which never consolidated into the master divide between self-governed Europeans and subjugated others that characterized British settlement colonies. When the Iberian colonies made the transition to independence, they defined a sovereign people *for the first time*, and in so doing, they adopted a definition of peoplehood based on the inclusive, if hierarchical, people that had formed through centuries of imperial rule that embraced the colonies' entire population as subjects of the crown.<sup>12</sup>

Interestingly, Spanish colonial rule originally began “British style”—with the settler-conquerors substantially in control of the emerging polity. But the crown subsequently withdrew settlers' privileges and centralized rule in the 1520s and 1530s (Haring 1947:75-76; Savelle 1974:29-34; Elliot 2006:129). Located in Madrid, the Council of the Indies produced extensive legislation that touched “every aspect of the duties, rights and responsibilities of the colonists and of the officials sent to rule over them” and provided local imperial officials with substantial control over colonies' major affairs (Haring 1947:109, 119-120). The only representative bodies in the Iberian colonies, the *cabildos* or ‘town councils’, were never uniformly elected (posts were filled by a combination of election and purchase) and, with time, these councils “lost their popular character” and “their autonomy” (Ibid.:175 and 158-175; Burkholder and Johnson 2004:85-88; Elliot 2006:127-128). This authoritarian control continued throughout the imperial period, so that by the time of the independence revolts, “there was no substantial tradition of popular participation in the political process . . .” (Elliot 2006:387). Independence thus marked

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<sup>12</sup> In the interest of clarity and economy, the rest of the discussion focuses on the Spanish empire, which accounted for 18 of the 19 Iberian cases. Multiple sources (Drake 2006:52-87; Burkholder and Johnson 2004:208-209; Mansuy-Diniz Silva 1987; Lockhart and Schwartz 1983:245-246 and 383-397; Dutra 1973; Schwartz 1970; Prado 1967:351-373) confirm that the aspects of imperial rule germane to this chapter's argument were similar in Portuguese Brazil as compared to the Spanish colonies.

“The Birth of Representative Government”, as the title of a book chapter has it (Rodriguez O. 1998:Ch.3; see also Drake 2006:52-87).

With all but a small portion of European settlers excluded from political decision making, “the Spanish crown was interventionist from the beginning” and aimed specifically to “incorporate” natives into colonial society (Elliot 2006:130 and 85; McAlister 1963). There was a “constant concern of the Spanish government that Indians” adopt European ways (Haring 1947:174). There was also considerable imperial effort devoted to intervening on behalf of subordinates, from land rights to labor relations to commerce and religion (Elliot 2006:77; Wortman 1982). “The bulk of . . . regulatory legislation related to the government of the Indians,” and there was an imperial official who was “expected to devote a part of two or three days each week to the consideration of Indian petitions” (Haring 1947:119-120). The crown also provided ample space for other non-European populations, including those of African descent, to appeal for higher protection (De la Fuente 2004). This did not change the fact that Iberian colonial society was highly unequal and characterized by considerable exploitation. Nevertheless, the application of these policies over hundreds of years helped to ensure non-Europeans a place within—rather than outside—the colonial community.

It was also crucial that no macro cleavage developed that would have countered imperial officials’ policy of hierarchically incorporating a multitude of local communities. This was because there was no representative government of equals that could have marked whites as a specific descent group, and because of the “deliberate intervention of the crown in the process of social formation” (McAlister 1963:353-354). The Council of the Indies made this goal explicit in an 1806 opinion: “It is undeniable that the existence of various hierarchies and classes is of the greatest importance to the existence and stability of a monarchical state, since a graduated



system of dependence and subordination sustains and insures the obedience and respect of the last vassal to the authority of the sovereign” (quoted in *Ibid.*:364). As Dusenberry (1948:302) explains, the Spanish empire “made no pretense at equality before the law”—unlike British colonial contexts in which the settlers used their autonomy to make themselves equals before the law, while withholding this privilege from non-Europeans.

What emerged from the Iberian imperial strategy was a hierarchy of rights and duties based on wide range of social categories—descent, yes, but also occupation, place of birth (Iberian peninsula vs. Americas), service to the crown, parentage (legitimate vs. illegitimate), and the like. Any given individual could occupy a different position within this ‘graduated system of dependence and subordination’ depending on the institution with which he was interacting and therefore the category that was most relevant for that institution (Burkholder and Johnson 2004:ch.6; McAlister 1963). In this hierarchical and differentiated context, a macro cleavage based on ethno-racial membership could not emerge.

This system of dependence and subordination did not mean that the settler population as a whole was powerless. But this style of rule empowered a rather narrow, local elite who had to collaborate with imperial officials (Lynch 2001; Barbier 1980). As a consequence, no clearly circumscribed mass basis for a future independent regime formed in the colonial crucible. When independence was finally achieved, the colonial population as a whole—including its various sub-groups and overlapping strata—became the new sovereign people. To be sure, slavery continued sometime after independence, but—in stark contrast to the United States—*all* those who were born free had equal rights (Andrews 2004; Sabato 2001). And while informal discrimination based on skin tone is well-documented in Latin American history (and continues into the present), never was racial exclusion institutionalized in law. Even during the late 19<sup>th</sup>

century when many state elites became inspired by an ideology that was unambiguously racist—as evidenced by the policies of ‘whitening’ aimed at “improving” the population stock by encouraging European immigration (see Andrews 2004)—these policies bore far more resemblance to the hierarchical incorporation of the colonial era than to the exclusionary regimes that became institutionalized in most former British settlement colonies: The aim of the “whitening” policies was not to divide and separate the existing population and accord equality only to light skinned individuals, but rather to transform it through intermarriage and admixture.

## PATHWAYS TO RACIAL ETHNOCRACY

I now turn to a close consideration of the British cases to examine how the predominant form of British imperial rule—the establishment of representative institutions for local governance combined with negligible imperial intervention on behalf of non-Europeans—produced racial ethnocracies in the independence era. As will be seen in the country-by-country analysis that follows, the imperial center played no significant role in curbing autonomous representative government in Rhodesia, Australia, and the United States, which enabled the European population to institutionalize their domination in law and to form a notion of peoplehood that was specifically ‘white’. This was also the general pattern in South Africa and Canada, though the discussion also will show that within-country variation in degrees of independence-era racialization can be reasonably explained by variation in the degree and kind of imperial intervention during the colonial era. The final country discussion will show how extensive imperial intervention to ensure the incorporation of non-Europeans prevented New Zealand from taking the pathway toward racial ethnocracy, despite broad-based representative government during the colonial era.

## Rhodesia

Settlement in Rhodesia began in the last decade of the nineteenth century, when the British South African Company (BSAC) was made responsible for the administration of the territory. Colonial law dictated that land be sold on an equal basis, but in practice the BSAC refused to sell to Africans (Palmer 1977:135). The BSAC also gave settlers elected representation on the Legislative Council.

In 1923 settlers gained representative government and eliminated BSAC control, which allowed them to advance and further entrench their power. Through various pieces of legislation over the years, the 5 to 10 percent of whites who lived in Rhodesia seized about half of the land, relegating Africans to infertile and increasingly overcrowded reserves (Bowman 1973:12-14 and 169; Herbst 1990:24; Palmer 1977:80-130). The Industrial Reconciliation Act of 1934 excluded Africans from the category of ‘employee,’ which in turn denied them collective bargaining rights and apprentice opportunities that were open to the white minority. By virtue of the Native Registration Act of 1936 and the Native Passes Act of 1937, Africans needed employment documents to live in the cities. Furthermore, the Native Urban Areas Act (1951) stipulated that urban African migrants live in “African locations”, on land that they could never own, and in compliance with exacting regulations concerning their stay (Creighton 1960:152-154).

Between 1923 and the early 1960s, Rhodesian settlers did not have complete control over internal affairs, however. The British imperial government reserved the right to overrule legislation in a few areas, including legislation concerning Africans. While the crown never vetoed legislation passed by Rhodesia’s representative government, imperial officials did use the veto threat to shape legislation and sometimes to prevent legislation from being officially

proposed (Herbst 1990:16; Palley 1966:226-227). One former prime minister said that the veto “made the [Rhodesian] Government very much more careful what they introduced” (quoted in Palley 1966:243). Prior to independence, imperial officials promised to veto any legislation that excluded Africans from voting strictly on the basis of race (settlers wanted a whites-only franchise, even though property and income requirements largely did the trick—only 39 of the 24,626 person electorate in 1939 were Africans) (Palley 1966:243-246). When settlers decided to make it official that Africans could not buy European land, imperial officials extracted 7.5 million additional acres of land for Africans in return for not using the veto (Palley 1966:263-268). Regarding the harsh 1936 Native Registration Act mentioned above, the prime minister claimed before its passage that it had been “watered down during the last twelve months almost to vanishing point” because of negotiations with imperial officials (Palley 1966:251).

In the context of African de-colonization in the mid-20<sup>th</sup> century, Rhodesian settlers sought “dominion” status, which meant full control over internal affairs. In order to persuade the British to relinquish veto power, the Rhodesian settler government in 1960-61 eliminated bans on Africans in the civil service and on sexual relations between Africans and Europeans (International Committee of Jurists 1976:99; Rhoodie 1969:242). Imperial officials told the settlers that more was needed, including a place for Africans in the parliament, a declaration of rights, and a council to review the consistency of new legislation with this declaration (Bowman 1973:40). All three elements became part of the 1961 constitution. To be sure, this did not amount to a full-blown de-racialization of the polity: the Declaration of Rights applied only to post-1961 legislation; any judgment by the Constitutional Council could be overridden by a simple majority of the Rhodesian parliament; and African representation in parliament came through the formation of a separate roll that elected only one-fifth of the body (International

Committee of Jurists 1976; Bowman 1973). Nevertheless, these measures did somewhat erode the extensive legal racial exclusion that had prevailed, and the settler government would not have adopted them had it not been for imperial intervention.

Though by adopting these reforms Rhodesian settlers did succeed in eliminating imperial veto power, negotiations for dominion status were unsuccessful. Because the British would not grant it, Rhodesian settlers declared independence in 1965. During the period between independence and the ousting of the settler regime by African insurgents in 1980, all of these steps towards de-racialization were reversed and new racial exclusion laws introduced (International Committee of Jurists 1976; Bowman 1973:142; Rhodie 1969:321-326). The Constitutional Council ruled in 1967 that a new segregation law violated the Declaration of Rights, but parliament overruled it. The 1969 Constitution then eliminated the Constitutional Council and stipulated that no other court could review the Declaration of Rights. The Declaration changed as well, prohibiting only “unjust discrimination” (International Committee of Jurists 1976:11). The 1969 constitution also fully racialized the parliament by stipulating that white members must forever outnumber Africans by a more than three to one ratio (International Committee of Jurists 1976:93).

### Australia

The British empire had no specific policy regarding settler-native relations in the first several decades of its rule over Australia (1780s-1820s), a period described as one of “laissez-faire genocide” by Kociumbas (2004:90). The settlers themselves were well aware of this “tradition of brutality” (Reynolds 1987:58). One settler remarked that he had “become so familiarized with scenes of horror from having murder [of aborigines] made a topic of every day

conversation” (quoted in *Ibid*:60-61). After carrying letters and editorials concerning the issue of “Shall We Admit the Blacks?” in the 1860s, a newspaper editor implored his fellow settlers to maintain their guard, because the “blackfellows” as “our enemies” harbor “undying hostility” due to “the reign of terror by which they have hitherto been kept in subjection” (quoted in Reynolds 1987:63-65).

When the “high point of humanitarianism” came to British imperial rule in the 1830s, it was “little more than an irrelevancy” in Australia after two generations of brutal subjugation of the aborigine population (Markus 1994:25). Only the most thoroughgoing imperial intervention could have forced a change of course, but the local colonial administration was severely underfunded and settler control of local government was increasing (Mann 2005:79-83). The informal autonomy that settlers had enjoyed from the beginning started to become formalized in the 1820s through the institution of legislative councils and later through representative government. By the 1860s, most of Australia’s individual colonies were “self-governing democracies” with an elected governor and legislature (Denoon 1999:555). Due to the imperial government’s insistence, the move to adult male suffrage came on a non-racial basis, but it became clear, as discussed below, that “the right to vote was hardly a guarantee of other rights” (Goot 2006:520). Moreover, as will be seen, the non-racial franchise itself soon disappeared.

With self-government came control over the legal apparatus. Settlers in various Australian jurisdictions proceeded to institutionalize in law what already had been firmly established in practice—the complete subordination of the aboriginal population. In 1869, Victoria became the first of Australia’s colonies “to establish a comprehensive system of Aboriginal administration,” which included governmental power to compel Aborigines to live on reserves (Chesterman and Galligan 1997:16). Then legislation in 1886 stipulated that all ‘full

bloods' as well as those 'half-castes' over 34 years of age *must* live on the reserves (Broome 1995:135-140). This was a harbinger of things to come. So, too, was Queensland's 1865 *Industrial and Reformatory Schools Act*, which deemed "any child born of an aboriginal or half-caste mother" as a "neglected child," and, therefore, subject to compulsory removal to reformatory or industrial school (quoted in Chesterman and Galligan 1997:56). These were not the schools attended by the children of settlers: After free state-financed schools emerged in the late nineteenth century, aboriginal children gradually were denied entry to all of them because of white parents' rejections, and in some states it was official policy that any school could exclude aboriginal children "if there was any complaint by any white parent" (Goodall 1995:75). In 1897, Queensland passed native legislation that then was largely copied by Western Australia, South Australia, and the Northern Territory. Chesterman and Galligan (1997:32-33) helpfully summarize this legislation's consequences: "Aborigines would now be heavily restricted . . . in their movement, in their employment, in their freedom to marry, in the rearing of their children, and generally in their freedom to exercise any substantial degree of autonomy . . ."

The different colonies of Australia federated in 1901. At that time, the states where about one-half of Aborigines lived—i.e. Queensland and Western Australia (Chesterman and Galligan 1997:63)—had a racial franchise, whereby European males enjoyed suffrage while Aborigines' right to vote depended on their owning a freehold (Goot 2006:520); all other states had a non-racial franchise, though the exclusion of those in receipt of charity in all but South Australia usually disfranchised those who lived on reserves (Chesterman and Galligan 1997:14 and 83). At this time, Victoria, Queensland, and Western Australia formally regulated aboriginal employment and allowed for their compulsory removal to reserves (Ibid.:83). Fifty years hence, the scope of aboriginal freedom had *narrowed*. By 1948, Queensland, Western Australia, and the

Northern Territory had an unqualified racial franchise (i.e. property did not matter), and restrictions on aborigines' freedom of movement had become nearly universal: they could be removed to the reserves in all jurisdictions except Tasmania (Ibid.:151-152).

The federal government was also quite restrictive. The 1901 constitution denied the federal government the power to make laws pertaining to aborigines (while granting this power in relation to the rest of the population, in the interest of “the peace, order, and good government of the Commonwealth”) (Chesterman and Galligan 1997:58). Federal franchise laws reproduced state-level exclusions by making state rights the basis of federal ones (Goot 2006:522-525). Aborigines suffered similar exclusions in federal welfare legislation passed in the first half of the twentieth century that made them ineligible for pensions, maternity allowance, and child endowments (Chesterman and Galligan 1997:85-86 and 117). Settler autonomy in conquest and governance during the colonial period produced a deeply racial ethnocracy that lasted into the 1960s.

### United States

During the imperial period, European settlers and their descendants enjoyed a high degree of political autonomy in the various colonies that later became the United States; “representative assemblies took the initiative in government almost from the beginning” (Morgan 1988:46), becoming “centers of power” for the settlers (Steele 1998:120). This high degree of political autonomy resulted in the formation of a ‘white’ peoplehood and two dominant modes of exclusion for non-Europeans: territorial restriction and forced removal for Native Americans and socio-political exclusion for African Americans.



From the beginning of the seventeenth century, imperial officials sought to promote justice in dealings with Native Americans, but they were ill-equipped to do so. The “world of colonial legislative assemblies” lacked “an overarching system of royal control which would allow the crown to intervene ... on the Indians’ behalf” (Elliot 2006:77). Imperial governors who tried to intervene could be rebuffed by both rebellion and the legitimate instruments of local government, such as happened in late 17<sup>th</sup>-century Virginia when “Governor William Berkeley’s refusal to expand aggressively into Indian lands” sparked Bacon’s Rebellion and the subsequent election of Bacon to the Legislative Assembly (Richter 1998:351).

Settler expansion generally proceeded without check, resulting in native displacement and the territorial separation of natives and whites. It was not until the French and Indian War (1754-1763) that the British empire attempted to take an active role in the management of native affairs in order to protect and cultivate their military allies (Rosen 2007). The Royal Proclamation of 1763 set aside lands to the west of the Appalachian Mountains for Indians. Accustomed to autonomous governance and self-directed expansion, settlers in their Declaration of Independence interpreted the Proclamation as an imperial incitement of “the merciless Indian savages” against “the inhabitants of our frontiers.”<sup>13</sup> The country’s new constitution did not refer to Indians as merciless savages, but it did treat them as a distinct set of peoples—rather than an integral part of an “American” people—granting Congress in Article I, Section 8 “the power to ‘regulate commerce with foreign nations, and among the several states, and with the Indian tribes’” (McCool, Olson, and Robinson 2007:1).

After independence, some elites took an ‘imperial’ view of relations with Native Americans. George Washington promised peaceful separation, “a boundary line between them

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<sup>13</sup> For the full text of the document, see <http://www.ushistory.org/Declaration/document/index.htm> (accessed May 17, 2007).

and us beyond which we will *endeavor* to retain our people” (quoted in Meinig 1993:78).

Jefferson wanted to ‘civilize’ the Indians and bring the two descent groups together (Horsman 1967). For a century, neither vision prevailed but rather the following pattern: Congress made treaties with Indian groups that settlers ignored by seizing the relevant lands, thereby making new treaties and sometimes federal military intervention necessary (see Horsman 1967:67-81 and 139-140). “[T]hough the government attempted to stop them [i.e. the settlers], it usually at the last instant became a question of whether to turn extensive military force against *its own citizens* or against the Indians” (Horsman 1967:172—emphasis added); only the citizens voted, so the choice was not difficult.

Indigenous groups were subjected to territorial cleansing even when they adopted European ways, as illustrated by the fate of the “Civilized Tribes” that adopted settled agriculture, republican constitutions, and African slavery in the South. Instead of finding a place for them in the US polity, Congress passed the Indian Removal Act in 1830 in response to claims that ‘white’ lands otherwise would be lost to ‘Indians’; the Trail of Tears ensued (Meinig 1993:ch.5).

Territorial cleansing was not always this formal, but it was a regular feature of the US’s first century. With displacement came confinement. Enforcing Indian Department rules, the army “sought to punish any Indians caught off reservations” in the last few decades of the 19<sup>th</sup> century (Wooster 1988:31; McDonald 2010:10). The small portion of Indians that did settle among whites were subject to socio-political exclusion. Many states had laws that prevented all non-whites, including Indians, from voting, from testifying against whites in court, and from marrying whites (Rosen 2007:110-116). In the United States, citizenship was no guarantor of equality under the law, but people of indigenous descent were excluded even from citizenship. The Constitution seemed to treat them as a people outside the polity (see above), and the long-

standing naturalization law of 1790, by restricting naturalization to whites, did not provide a pathway to full citizenship either. The Supreme Court confirmed this in *Elk v. Wilkins* (1884) by ruling that John Elk, despite having severed tribal relations and having lived among whites for decades, did not enjoy the protections of the 14<sup>th</sup> and 15<sup>th</sup> Amendments, because these did not apply to Indians just as they did not apply to “ambassadors or other public ministers of foreign nations” (quoted in McCool et al. 2007:6; see also Rosen 2007:120). Congress did pass a law in 1887 that provided a pathway to citizenship for all Indians, but it was not until 1924 that they received birthright citizenship. And like African Americans, full voting rights did not come until the 1960s (Wolfley 1991; Hoxie 2001; McDonald 2010).

For African Americans, the dominant mode of exclusion was socio-political, not territorial. Prior to the Civil War, most persons of African descent were enslaved. Those who were not enslaved were subject to legally enshrined discrimination across the country. These discriminations had deep roots in the workings of colonial era representative government. “The Virginia Assembly’s declaration in 1668 that free Negroes ‘ought not in all respects to be admitted to a full fruition of the exemptions and impunities of the English’ proved to be the guideline which in varying degrees was accepted in every colony” (Jordan 1968:123). In no southern colony could non-enslaved African Americans testify against whites in court (Ibid.:125). Most of these colonies also banned free Blacks from voting (Berlin 1974:8). Northern colonies appear not to have barred African Americans from voting, but restricted their rights in every other domain. Pennsylvania’s government barred free African Americans from testifying against whites in court, while also stipulating that any such person found to have had sexual relations with a white could be sold into slavery or indentured servitude (Higginbotham 1980:269 and 282). In colonial New England, free Blacks could not serve on juries nor even leave their town of

residence without a pass (Greene 1966:299-300). Restrictions on territorial movement were more stringent in the South: Several of these states barred free African Americans from entering and also dictated that manumitted slaves leave unless granted special government permission (Higginbotham 1980:203-204 and 224-225; Jordan 1968:123-124; Guild 1936:95-102).

After independence, legal racial exclusion became more entrenched. On the eve of the Civil War, most states restricted the franchise to whites, and free blacks were banned from entering all southern states as well as several states outside the South—which contrasts starkly with independence-era Latin America, where those born free had a legal status equal to all others. As analyzed in detail in chapter two, the Civil War and its aftermath altered this configuration with the Thirteenth, Fourteenth, and Fifteenth Amendments, which effectively eliminated most legal racial exclusion outside the South. But the failure of Reconstruction and the autonomy of southern states in regulating race relations according to their taste meant the perpetuation of racial ethnocracy for another century.

### South Africa

The four colonial political units that later formed the Union of South Africa went through distinct colonial experiences that shaped the pattern of polity racialization after independence. In the two Afrikaner (Dutch) republics, which were independent from the British prior to the 1890s Boer War, fully autonomous settler representative government produced near total exclusion of non-Europeans. In Natal, British imperial officials were active, but they did little to mitigate settlers' exclusionary inclinations. In the Cape Colony, however, imperial checks on settler autonomy produced a tradition of "Cape liberalism" toward non-Europeans that somewhat

curbed the degree of South African polity racialization after independence. The following discussion addresses each of these experiences.

From the beginning of South Africa's colonial history in the 1650s until the early 1800s, settlement was largely a Dutch affair and confined to the Cape Colony. Until the British takeover in 1806, the Dutch East India Company (DEIC) administered the colony. Though the DEIC made some efforts to protect non-Europeans, such interventions were never far-reaching (Peires 1989:490; Schutte 1989). Thus, by the time the British gained control, relations between Europeans and non-Europeans had been developing for 150 years with little imperial oversight.

The British immediately established a role in governance more active than that played by the DEIC. The key instrument was the application of liberal-humanitarian principles to the labor codes of the 1820s and 1830s. Slavery was abolished, and series of reforms eroded the power of settlers in master-servant relationships (Fredrickson 1981; Peires 1989; Thompson 2001; Evans et al. 2003). Unwilling to live with these changes, 15,000 Dutch (Afrikaner) settlers migrated beyond the British frontiers and established two independent republics, the Orange Free State and the Transvaal. Settlers in these republics pursued their interests without any interference or oversight by an imperial center, and the purest form of non-European exclusion emerged: "formally democratic systems based on universal white manhood suffrage were established. Not only were Africans totally excluded from the franchise, but they were scarcely accorded a legal existence, even as inferiors" (Fredrickson 1981:258).

Following British victory in the Boer War in 1902, these two white republics joined with two British colonies, Natal and the Cape, to form the Union of South Africa. At the constitutional convention, representatives from the two Afrikaner republics pressed for a racial ethnocracy, largely with success and without resistance from the Natal delegates. How had race

relations previously developed in Natal? The British had seized Natal from the trekking Afrikaners in the mid-1840s, and settler self-rule by representative government came just a decade later. Though the imperial government insisted that the franchise laws not invoke race as a basis for outright exclusion, the voting law erected many African-specific barriers. By the 1865 Native Franchise Act, Africans had to hold an individual title to land in order to vote; “to have been a resident of Natal for at least twelve years; have held letters of exemption from Native Law for a least seven years; and have the approval of three White men, whose word was endorsed by a magistrate” (Evans et al. 2003:105). On the eve of the Union of South Africa’s formation, whites comprised 10 percent of Natal’s population but 99 percent of its electorate (Ibid.:171). Moreover, imperial officials in Natal only bolstered settlers’ sense of themselves as the true sovereign people by establishing the principles of mandated territorial segregation that later became a hallmark of the apartheid era (Welsh 1971).

Because of imperial checks on settler autonomy, the Cape Colony followed a different path of historical development. When the British initiated the liberal reforms of the 1820s and 1830s, the Cape did not have representative government. Although many Dutch descendants left (see above), many also stayed behind along with most of the British settlers. When representative government was granted in 1854, imperial officials required the franchise to be non-racial *and* based on a low property qualification, which made many non-Europeans eligible to vote. Both political parties that emerged made alliances with the enfranchised non-Europeans (McCracken 1967; Trapido 1964). To be sure, this did not mean paradise for the non-Europeans: labor laws affected mainly them, and these laws became more coercive after the executive became responsible to the legislature (Fredrickson 1981:181-182). Moreover, changes in the franchise law reduced the non-European proportion of the voting rolls from 24 percent in 1890 to 15

percent two decades later (three-fourths of the colony's population was non-European) (Evans et al. 2003:64).<sup>14</sup> Nevertheless, when representatives from Natal and the two Afrikaner republics tried to restrict voting to whites in the new constitution of the Union of South Africa, the Cape Colony delegation objected and it was left to the individual provinces to decide who could vote (Evans et al. 2003:176-177). As a consequence, non-Europeans voted in the Cape Province until the 1930s, when exclusionary political forces at the national level at last gained the numbers necessary to amend the constitution and override representatives from the Cape Province (Thompson 2001). South Africa emerged as a racial ethnocracy, with an array of exclusionary laws similar to those detailed in the Rhodesia discussion, but also with an asterisk made necessary by imperial constraints on settler political autonomy in the Cape Colony.

### Canada

Canadianists agree that independence-era policy toward indigenous people was long characterized by a contradictory agenda of separation and assimilation, and that this duality was firmly rooted in the colonial era (Royal Commission 1996). One might add that these differences in emphasis between assimilation and separation were clustered along regional lines—between the eastern region, from Ontario eastward, and the western region—and that these differences were the direct consequence of different levels of imperial engagement. Racialization prevailed in all of Canada, but it was more extensive in the West, where settlers enjoyed greater political autonomy because the region was settled later.

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<sup>14</sup> The Afrikaner Bond party made these changes, which affected mainly the native Africans, who generally supported the British party; the “Coloureds”, who tended to support the Afrikaner party, were much less affected by the change in franchise law (McCracken 1967:104).

Settlers and natives were not integrated during the imperial period in eastern Canada, but neither were native lands violently conquered, as they were in the US (Miller 2000:119; Nichols 1998:175). For most of the imperial period the crown and Indian groups had something like a “nation-to-nation relationship” (Royal Commission 1996:273) in which “Indian tribes were, de facto, self-governing” and “had exclusive control over their population, land, and finances” (Milloy 1991:145-146). The crown aimed to foster good relations with native groups as military allies throughout the first quarter of the nineteenth century. One method to achieve this was to ensure the non-violent acquisition of lands for settlers, a task that was made easier in Canada as compared to the US by the fact that settlement in Canada was on a smaller scale and mostly occurred after the imperial center asserted a stronger hand in settler-native affairs. The Royal Proclamation of 1763 minimized settler-native conflict by requiring, generally with success, that all acquisitions of Indian land go through the crown (Miller 2000:103-104 and 140; Nichols 1998:186).

But the absence of antagonism did not mean amalgamation. Military needs, not a desire bring all different segments of the population under a single imperial roof, drove British efforts to foster good relations with indigenous groups. As such, settlers and natives lived apart and under their own polities. When the era of North American imperial rivalry came to an end after the War of 1812, the empire’s need for military allies diminished, and the imperial strategy shifted toward the goal of Europeanizing—or ‘civilizing’—the natives. This strategy was first formalized in 1828 as a “full-fledged accultural [*sic*] program” (Nichols 1998:176-177). In the 1830s, imperial administrators set up reserves *not* for the purpose of exclusion, but rather to facilitate assimilation to European ways for those groups desirous of this change (Tobias 1983:41). This goal was then enshrined just three years before the official end of imperial control



over native affairs in eastern Canada, in the 1857 “Act for the Gradual Civilization of the Indian Tribes” which continued these earlier acculturation programs and “called for each Indian person to strive for incorporation into Canadian society” (Nichols 1998:199).

Thus, imperial political rule constructed indigenous peoples in Canada as outside the polity but extended them an invitation to enter. Meanwhile the European settler population ruled themselves through the elected representative governments that emerged in different jurisdictions of eastern Canada in the late 1700s and early 1800s. After settlers gained independence (dominion status) in 1867, policies toward indigenous people resembled the imperial prescription, though with a stronger dose of coercion. The Indian Act of 1876 started a trend toward greater federal control over native self-government, but it also carried over the enfranchisement provisions of the 1857 legislation, making Indian passage into the Canadian polity contingent upon being male and free of debt, having an ability to read and write French or English, and being judged to be of “good moral character” (Royal Commission 1996:271). With enfranchisement came all the rights and duties of Canadian citizenship, but the overall policy was laced with elements of racial discrimination: among those born on the Canadian territory, Euro-descendants became part of the Canadian polity by virtue of birth, while those classified as “Indian” by the state had to meet the criteria just specified; for an Indian, settling in a ‘European’ territory was insufficient for gaining membership in the Canadian polity, and there was nothing like the accommodation made for communal land ownership in the case of the Maori in New Zealand (see below). What Tobias (1991:130) said about the 1857 legislation continued to be true of the 1876 act: “Thus, the legislation to remove all legal distinctions between Indian and Euro-Canadians actually established them. In fact, it set standards for acceptance that many, if

not most, white colonials could not meet, for few of them were literate, free of debt, and of high moral character.”

Such racialization was more extensive in western Canada. Large-scale settlement in western Canada did not commence until the 1850s, after imperial oversight of native affairs had largely faded from the scene. British Columbia and Vancouver Island illustrate the consequences of this more pronounced settler autonomy. The influx of European settlers produced land conflicts between settlers and natives that imperial officials were ill-equipped to handle, particularly at a time that the imperial government was withdrawing from the colony (Fisher 1977:103). The first imperial governor, Douglas, “did make every effort to protect Indian rights guaranteed by the treaties he made,” but his effective power diminished as the Legislative Assembly, first established in 1856 against his wishes, became increasingly dominated by settlers (Ibid.:68-69). With Douglas’ departure in 1864, “Indians began to feel the full brunt of a settler-oriented set of government policies” (Ibid.:146). The new imperial governor (in power until 1871, when these two colonies joined the Dominion of Canada) lacked Douglas’ will to thwart settler desires, and even suggested at one point that he might be “compelled to follow in the footsteps of the Governor of Colorado [in the United States] . . . and invite every white man to shoot each Indian he may meet” (quoted in Ibid.:157). Settlers also used their greater political autonomy to craft laws in their favor. “[T]he representative assemblies in both colonies reflected settler opinion on Indian land, and much of the pressure for removing the Indians from their land came from these institutions” (Ibid:167). An 1865 law, for example, allowed a European settler family to purchase up to 54 times more land than a native one (Ibid:165).

Fewer imperial constraints on settler political autonomy in the western region led to more extensive racialization in the era of independence. First, the enfranchisement provisions of the

Indian Act of 1876 described above originally applied only to Indians in the East, and it was decades before all indigenous peoples in the West were legally permitted to seek enfranchisement. Second, during the brief period (1885-1898) when voting rights for federal elections were established at the federal instead of the provincial level, only indigenous people in the eastern region could vote (if they met the general eligibility criteria); this was against the wishes of the legislation's sponsor, who wanted it to apply equally to all those born in Canada, regardless of descent or region, but the western representatives in parliament thwarted these efforts (Evans et al. 2003; Bartlett 1979-80). Third, provincial suffrage laws were more racialized in the West. The eastern provinces generally observed a distinction between Indians who lived on state-recognized reserves (and/or received state annuities from previous land claim settlements) and those who did not; the latter, non-reserve, people of indigenous descent were eligible to vote. The West was a different story: Between the 1870s and 1940s, suffrage laws "in Alberta, British Columbia, Manitoba and Saskatchewan ... banned all Indians from exercising the franchise irrespective of residence and property" (Bartlett 1979-80:184). Legal racial exclusion in Canada was more extensive in the western region, where the settlement process was only lightly touched by imperial impingements on settler political autonomy.

### New Zealand

New Zealand is the only the case that had representative government in the colonial period but did not become a racial ethnocracy after independence. First, this is because imperial officials initially delayed self-government then curbed its autonomy in matters concerning the Maori. Secondly, the Maori with time were incorporated into colonial era representative

government, thereby institutionalizing an idea and practice of ‘peoplehood’ that included those of both European and non-European descent.

Europeans began in the 18<sup>th</sup> century to settle the islands that became New Zealand, but no large-scale settlement occurred until 1840 (Dalziel 1999). Roughly 2,000 Europeans lived there in 1839, a figure that grew to nearly 60,000 by 1860, and more than 600,000 by 1890 (Beaglehole 1951:254). With the commencement of large-scale settlement in a context of empire-wide commitments to humanitarianism, the guiding ideology from the beginning was that of imperial inclusion. As Maori chiefs signed the Treaty of Waitangi, the British representative uttered each time, “‘He iwi tahi tatou’: we are now one people” (Dalziel 1999:580). In its first ordinance concerning Maori welfare, the imperial government declared its intent to avoid the “great disasters [that] have fallen upon uncivilized nations on being brought into contact with Colonists from the nations of Europe . . . *by assimilating as speedily as possible the habits and usages of the Native to those of the European population*” (quoted in Ward 1974:39).

The Treaty of Waitangi both enshrined British sovereignty and guaranteed Maori land rights, a guarantee that the crown honored. In the speculative rush prior to 1840, settlers made claims to more than nine million acres. But a crown inquiry validated claims for only a few hundred thousand acres (Banner 2007:67), an action that led to conflict between settlers and imperial officials (see Miller 1958:42-69). Settlers sought a solution through greater autonomy, and after “strong campaigning from settler organizations,” the British parliament agreed to extend representative government to the colony in 1846 (Ward 1974:85). One local settler newspaper celebrated this decision on the grounds that representative government would eliminate “all the ‘Treaty of Waitangi’ nonsense, and . . . plans for hindering the settlement of the

islands”; another declared the end of “the humbug treaty of Waitangi” (quoted in Miller 1958:149).

But imperial officials on the scene delayed the move for greater settler autonomy and, when it did arrive, they curbed this autonomy in relation to native affairs for more than a decade after that. Governor Grey persuaded the British Parliament to allow at least five more years for ‘amalgamation’ policies to work so as to prevent deleterious consequences for settler-native relations (Burroughs 1999:583; Ward 1974:85; Miller 1958:150ff). When representative government did come in 1852, it was with the blessing of Governor Grey, who trumpeted the great strides that had been made in Maori-European relations (Burroughs 1999). Governor Grey also played a large role in constructing New Zealand’s 1852 constitution, which not only provided voting rights to *all* male inhabitants who met a property requirement but also maintained imperial authority over Maori affairs. This was a very different constitution than the one proposed by some settlers, who formally organized to call for both “absolute control [by the settlers] of all internal affairs of the colony” and political exclusion of the Maori (quoted in Miller 1958:155).

An imperial policy not directly related to Maori equality helped to ensure that the inclusive vision is the one that endured. The Lands Claim Ordinance of 1841 granted the crown the sole authority to purchase and lease land from the Maori; if settlers wanted Maori land they had to go through the crown (Banner 2007; Ward 1974). Although as discussed above, the crown nullified nearly all early land claims by settlers, imperial officials did not use their power to stifle settlement. In the same year that Governor Grey squelched settlers’ attempts to gain greater autonomy (1846), an 8-year period began during which the crown acquired “just under half” of New Zealand’s territory from the Maori for purposes of European settlement; by 1860, the crown

had acquired “virtually the entire South Island” (Banner 2007:68). If the crown had not been successful in this endeavor, it is possible that the exclusionary agenda of settler organizations might have eventually prevailed.

Imperial officials also persisted in their efforts to advance the political inclusion of Maoris. New Zealand quickly moved from simple representative government in 1853 (where the executive was an imperial official) to responsible government in 1857, with an executive and ministers accountable to the legislature (though with a couple of imperial officials also holding posts as ministers). But the responsible government’s autonomy did not extend to Maori affairs at the time, because, as then imperial governor Colonel Gore Brown put it, “the interests of the two races are antagonistic” (quoted in Miller 1966:8). When in 1858 the House of Representatives passed a voting franchise bill that many believed would have technically made it impossible for Maori to meet the property qualification, Governor Gore Brown used his continued authority over Maori affairs to void the relevant provision (Miller 1966:14-15; Hunter 1949:74-75). The message was received: A year after Governor Grey returned in 1861 to New Zealand as the top imperial official—the same Governor Grey who earlier had delayed the introduction of representative government in pursuit of Maori inclusion—the House of Representatives expressly affirmed its commitment to equality, declaring “[t]hat in the adoption of any policy, or the passing of any laws, affecting the Native race, this House will keep before it, as its highest object, the entire amalgamation of all Her Majesty’s subjects in New Zealand into one united people” (quoted in Jackson and Wood 1964:383).

At the time the House issued this statement, a number of Maori groups were rebelling in defense of land and in order to establish their own system of political representation. The one established by the 1852 constitution was not working, even though franchise rights based on

property were available to all regardless of race, because of the communal style of Maori land ownership. The presumption in 1852 was that the official policies of amalgamation would lead to Maori adoption of European-style individual land tenure, but this was not happening. Even though the rebellion was largely suppressed by 1867, the response of the legislature was not to continue political exclusion by technically non-racial means. Instead, and partly “to avert possible intervention by the Colonial Office” on behalf of the Maori, the legislature passed the Maori Representation Act of 1867 (Walker 1990:144; see also Jarstad 2001:197 and Sorrenson 1986:20). The legislation’s preamble identified most Maoris’ inability to qualify for the property suffrage as the principal reason for allotting them four dedicated seats in the legislature, to be chosen by elections in which all Maori adult males could vote. In this way, the Maori gained universal male suffrage more than a decade before those of European descent did (Jackson and Wood 1964; Ward 1974; Sorrenson 1986).

By all accounts, this measure was meant as a temporary expedient. However, because of its favor with major segments of the Maori, and because the Maori did not rapidly Europeanize their system of land ownership, this provision became permanent by 1880. Although the Maori who participated in this portion of the electoral system could not run for office or vote on the European rolls, this was *not* exclusion by other means. The Maori seats were “of considerable importance to settler parliamentary factions,” and Maori representatives on a number of occasions held the balance of power because of a closely contested legislature (Ward 1974:270; Evans et al. 2003; Jackson and Wood 1964). Also, “a number of cabinet ministers and an acting prime minister ... [were] chosen from their [i.e. Maori] representatives in parliament” in the first few decades of the twentieth century (Hawthorn 1945:44; Sorrenson 1986:38). Although the

number of Maori seats was disproportionately low at first, this situation changed by the end of the 19<sup>th</sup> century, as Table 1.2 shows.

Table 1.2: Percentage of Maori Seats in the House of Representatives Compared to Percentage of Maori in Total Population

Year	non-Maori seats	Maori seats	% Maori seats	% Maori pop
1874	74	4	5.1	13.7
1881	91	4	4.2	8.6
1891	70	4	5.4	6.6
1901	76	4	5.0	5.6
1911	76	4	5.0	5.0
1921	76	4	5.0	4.5
1926	76	4	5.0	4.5
1936	76	4	5.0	5.2
1951	76	4	5.0	6.0

*Sources:* 1. Maori and non-Maori seats (Jackson 1972:242). 2. Population figures: <http://www.teara.govt.nz/1966/P/Population/PopulationFactorsAndTrends/en> (accessed May 21, 2008).

Moreover, the upper house of the legislature, the Legislative Council, typically had two Maori members (starting in 1872) out of an average total membership of 45 (Jackson 1972:85 and 242)—a similar proportion to their share of the Assembly. This institutionalization of Maori representation was both an outcome of the actively incorporative policies of the colonial period, and a sustaining cause of this inclusion.

When the British imperial representative declared that “we are now one people” upon signing the Treaty of Waitangi in 1840 (Dalziel 1999:580), he conjured up an inclusive imaginary that endured. This inclusion of the Maori as part of “the people” was clear at moments of exclusion: When the hysteria surrounding East Asian immigration emerged in the early twentieth century, for example, fears of ‘miscegenation’ and ‘contamination’ were aired on



behalf of Maoris and Europeans alike, not simply the latter (Bennett 2001). More concretely, unlike all the other British settlement colonies that made the transition to independence with a significant European descent population, New Zealand never became a racial ethnocracy: schools were not segregated; the vote was not monopolized by European descendants; the Maori were not confined to specific territories or subject to coercive native administration; trade unions were fully integrated, with literature published in both English and Maori; and the emergence of New Zealand's welfare state in the first half of the 20<sup>th</sup> century entailed full inclusion of the Maori (Ward 1974; Jackson and Wood 1964; Harré 1963; Beaglehole 1951).

As in Latin America, prejudice against the indigenous population clearly existed (see, e.g., Thompson 1953 for systematic evidence from newspapers), but this prejudice never influenced the law. And while informal discrimination existed, like in Latin America, public exposure of such acts met with official rebuke. In an anecdote reminiscent of Venezuela or Brazil (see Andrews 2004), for example, the refusal of hotel service to a Maori in the 1890s resulted in the owner's being "threatened with prosecution by the local police and criticized in the General Assembly" (Ward 1974:309).

## CONCLUSION

Among the 25 European settlement colonies in which the European-descent population remained a significant part of the population after independence, five became racial ethnocracies: they officially classified their populations by race and assigned differential rights based on that classification, thereby legally subordinating natives or the descendants of slaves. This chapter has argued that the nature of imperial rule determined which path of political development the different settlement colonies traveled and which ones ended up with a racial ethnocracy after

gaining independence. Nearly all British settlement colonies did so, while none of the Iberian colonies did. I have argued that this is because only the British empire ruled their colonies indirectly and encouraged representative governments as a means for local governance. The introduction of representative government for settlers in a context of conquest and colonial domination meant that the white population came to regard itself as “the people” in whose name these governments ruled, excluding non-settlers from domains of the imagined and institutionalized political community. This laid the foundation for the emergence of independence-era racial ethnocracies in which natives and the descendants of slaves were politically excluded from full membership.

In line with other research on colonial legacies, the argument offered here roots different post-colonial political developments firmly in colonial-era political institutions—rather than independence-era elite conflict or class dynamics. Rather than an immediate consequence of fast moving, contingent concatenations of events, this research suggests, there are more slowly moving forces that steer the history of race relations in certain directions rather than others. This is a conclusion also suggested by explanations rooted in colonial-era demography and culture, but, like the class and conflict arguments, neither of these alternatives can account for the full universe of cases. Colonial-era political configurations are what mattered. These findings, then, are also consistent with a long line of research in comparative race and ethnicity that underlines the political nature of ethno-racial cleavages and, thus, their varying nature across periods and places. Among former European settlement colonies, legal racial exclusion in the era of independence was the exception, not the rule, and it was an exception that emerged from a specific combination of colonial political conditions whose consequences endured over a long period of time.

This chapter also sheds further light on democracy's dark side (cf. Mann 2005). Somewhat paradoxically, stronger institutions of democratic inclusion in the colonial period produced starker forms of racial exclusion after independence: of African Americans, Canadian Indians, Australian Aborigines, Bantu, Shona—all born onto territories that were long ruled in the name of a people defined explicitly and purposefully *against* these groups. In contrast to most other states, which have emphasized an external boundary in their definition of peoplehood (Brubaker 1992; Wimmer 2002)—e.g. French vs. Germans—nation building in the former self-ruled settler colonies proceeded largely against an “inner other” that long belonged to the territory but not the polity.

The next three chapters pursue the trajectory of racial ethnocracy in the context of the United States. As the present chapter has made clear, within the universe of former European settlement colonies the United States was exceptional but not unique in becoming a racial ethnocracy. Yet, among the set of racial ethnocracies the pathway followed by the United States was distinctive. It was only in the United States that a challenge to racial ethnocracy emerged at the center of the political system long before ethnocracy was actually undermined. And it was only in the United States that patterns of legal racial exclusion changed significantly during the era of racial ethnocracy. As the next chapter will endeavor to show, a political-institutional approach is essential for understanding the earlier but unsuccessful challenge to racial ethnocracy, as well as the geographically and temporally changing patterns of legal racial exclusion.

## CHAPTER 2

# PARTY MATTERS: LEGAL RACIAL EXCLUSION IN THE NINETEENTH-CENTURY UNITED STATES

For reasons explored in the previous chapter, after achieving independence the United States became an ethnocracy that legally institutionalized discrimination against a racially defined segment of the population. This *legal racial exclusion* allowed “whites” to monopolize a variety of material and symbolic goods, including at various times and places, land, the franchise, schools, and full participation rights as witnesses and jurors in courts of law. In 1851, for example, Iowa passed a law titled “An Act to Prohibit the Immigration of Free Negroes Into This State” (Finkelman 1985-86:438n140), which made it illegal for African Americans from neighboring Illinois, or any other state, to enter and settle in Iowa. Being one of the world’s first democracies but also being an ethnocracy with a racial conception of peoplehood, the United States tolerated such obvious violations of the democratic principle. Indeed, based on his travels in the U.S. in the 1830s, Alexis de Tocqueville hypothesized that democracy actually hindered the elimination of legal racial exclusion: “A despot who should subject the [white] Americans and their former slaves to the same yoke might perhaps succeed in commingling the races; but as long as the American democracy remains at the head of affairs, no one will undertake so difficult a task . . .” (Tocqueville 2003:418).<sup>15</sup>

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<sup>15</sup> Any ambiguity regarding what Tocqueville meant by “commingling the races”—Did he mean miscegenation rather than eliminating legal racial exclusion?—is resolved by the Frenchman himself in a footnote, where he contrasts the situation in the U.S. with the Caribbean colonies; in those colonies, the British imperial government, Tocqueville explains, forced the white settler-dominated representative assemblies to provide equal rights to people of African descent.

By examining variation in legal racial exclusion over time and across space in the nineteenth-century United States, this chapter gives specificity to Tocqueville's claim, showing how it was rooted in the workings of the two-party system and, more specifically, the development and endurance of the Democratic Party as an inter-regional alliance for the principles and practices of white supremacy. Three major nineteenth-century developments comprise the empirical focus of the argument: (1) varying adoption of racially exclusionary laws across the North during the antebellum period; (2) the elimination of racial exclusion laws in the North after the Civil War; and (3) the failed attempt in the post-bellum South to eliminate racial exclusion in voting.<sup>16</sup> I will show that all three developments must be understood in terms of the logic of political competition in a two-party system and the varying political power this brought to the pro-exclusion and anti-exclusion parties. For all three empirical puzzles, this *party model* fits the data better than the three major alternative explanations, which emphasize the causal power of public opinion (*electorate model*), elite bargaining and consensus-building (*elite model*), and the racist preferences of the white working class (*class model*).

In making this case, this chapter builds on what Brandwein (2011) calls the “new political history” (NPH) of the post-bellum United States (Valelly 2009, 2004; Calhoun 2006; Wang 1997; and earlier, Kousser 1974). The NPH sheds new light on the third development just mentioned by countering the long-standing view that Republicans abandoned the federal effort to enforce voting rights in the South in the mid-1870s. As will be seen below, two distinct models—one elite-centered (Marx 1998; Woodward 1974) and the other electorate-centered (Frymer 1999; Klinkner with Smith 1999)—partially explain the failure of equal suffrage in the South on the basis of a putative mid-1870s Republican abandonment. Both models make this

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<sup>16</sup> In this chapter, the North consists of those states that did not practice slavery on the eve of the Civil War. The South in turn are those states that did.

abandonment part of a two-stage explanation for Black suffrage's failure in the South: after Republican abandonment (stage 1), white supremacists in the South used fraud, violence, and intimidation to undermine Black suffrage by the 1890s (stage 2). The NPH leaves this second part of the story intact, but offers an array of evidence—political platforms, legislative struggles in Congress, statements by key political actors, Senate investigations, enforcement efforts in the South—that contradicts the narrative of mid-1870s Republican abandonment. This evidence, which is examined in detail below, shows the various ways in which Republicans remained committed to voting rights enforcement in the South well after 1877. If an abandonment narrative applies at all, the NPH shows, then abandonment came much later than previous accounts suggest: in the early 1890s rather than the mid-1870s. (Brandwein 2011; Valelly 2009; Calhoun 2006; Valelly 2004; Wang 1997; and earlier, Kousser 1974).<sup>17</sup>

Undermining the Republican abandonment narrative raises the question of why Republicans did not strengthen the federal legal apparatus once it became clear by the late 1870s that existing laws were insufficient to neutralize southern white resistance to Black suffrage. Because the NPH has been most concerned with countering the Republican abandonment narrative, this question has not been a major focus. Nevertheless, the NPH has identified a crucial factor that the present chapter examines in detail: the return of the Democratic Party to partial federal power in the 1870s. This chapter makes two modest contributions to our understanding of this development. First, the chapter shows that the Democrats' national resurgence was *not* driven by a rejection of Black suffrage on the part of the northern white electorate. By showing that Republicans remained overtly committed to enforcing Black suffrage

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<sup>17</sup> For an excellent discussion of the electoral incentives driving this, see Valelly (1995). Brandwein (2011, 2007) shows that Supreme Court abandonment of African Americans also did not happen until the mid-1890s, also contrary to earlier accounts that date this shift in the mid-1870s.

in the South, the NPH already has implicitly rebutted what this chapter will refer to as the “indirect electorate model”: Republicans were not driven by fear of northern white public opinion to change its equal suffrage policy. This electorate model is “indirect” in the sense that the causal power of the electorate flows through politicians’ perceptions of public opinion (see Frymer 1999). But while the NPH rebuts the *indirect* electorate model, the possibility remains that a *direct* electorate model applies: perhaps the Democrats were resurgent at the national level because the northern white electorate punished the GOP for its equality policy by voting for Democrats. King and Smith (2008) make this argument, and the NPH does not address it. This chapter fills this gap by showing—through an analysis of presidential, Senate, and House elections—that the Democrats’ national resurgence in the mid-1870s was *not* the result of a shift in the northern white electorate toward Democrats; instead, it was almost entirely a southern affair in which a basically constant level of support for Democrats in the North between the late 1850s and 1890s played a supporting, albeit crucial, role.

This chapter’s second contribution to understanding post-bellum federal policy is a matter of emphasis: to underline the role of the Democratic Party in preventing the improvement of federal enforcement efforts in the South. As discussed, the NPH mentions Democratic national resurgence as an obstacle to Republicans’ equal suffrage policy, but without elaborating on its significance. Moreover, one of the most prolific contributors to the NPH, Valelly (2009, 2004, 1995), offers an explanation of federal enforcement failure in which this Democratic resurgence does not play a central role. Valelly (2004) instead highlights the difficulty of what he calls “crash party-building” in the South: for equal suffrage to be institutionalized in the South, the Republican Party had to gain a secure foothold; but Republicans had no base in the South after the Civil War, and they were unable to build a durable party organization there in the face

of the fraud, intimidation, and violence meted out by southern white supremacists. The present chapter does not dispute this compelling argument. But by emphasizing the causal significance of the Democratic Party's federal-level legislative veto between the mid-1870s and late 1880s, this chapter does highlight why greater federal support for GOP party-building in the South was impossible to achieve.

This second contribution to the post-bellum federal story, though more modest than the first, holds greater significance when situated within the chapter's more general contribution: to show the long-run link between the party system and legal racial exclusion across the nineteenth century. When the Democratic Party acted in a unified fashion, regardless of region, to thwart Republican efforts to improve the federal enforcement apparatus in the 1870s and 1880s, it acted in conformity with a role that it had filled since the early part of the century: as an inter-regional alliance for white supremacy. I detail the logic of this alliance and how it mattered through an analysis of two earlier developments: the spread of racial exclusion laws in the antebellum North and the elimination of these laws after the Civil War. As this analysis shows, the fortunes of legal racial exclusion were tightly linked with the fortunes of the Democratic Party—a pattern that continued in relation to federal policy toward the South between the 1860s and 1890s.

The theoretical goal of the analysis is to demonstrate just how much the “relative autonomy of parties” (Desai 2002) mattered to patterns of racial exclusion in the nineteenth-century United States. Before commencing with the historical analysis of these three developments, therefore, it is first necessary to specify both the theoretical logic of party autonomy and the analytical strategy for identifying when this party autonomy matters. I do so in relation to three other major explanatory approaches that have been applied to racial exclusion in the nineteenth-century United States: elite, class, and electorate models.



## THEORY & ANALYTICAL STRATEGY

This section details what it means to advance a party model against electorate, class, and elite alternatives in efforts to explain patterns of legal racial exclusion. In the context of this chapter, examples of legal racial exclusion include the ‘whites-only’ franchise, state bans on the settlement of African Americans, state-mandated racially segregated schools, and state administrative practices that consistently and directly contravene laws that on their face might be racially neutral.

In order to account for patterns of legal racial exclusion, this chapter advances a party model against elite, electorate, and class alternatives. The elite model I have in mind is the one developed by Woodward (1974) and Marx (1998) to understand post-bellum federal policy in the South (see above)—i.e. it is an elite *consensus* model. Therefore, differentiating the party model from its elite alternative is straightforward: clear and enduring inter-party differences on racial policy—as evident, for example, in legislative roll calls and differences in policy depending on which party controls the government—demonstrate the absence of elite consensus in this domain.

The class model assigns a central role to the racially dominant segment of the working class in processes of racial exclusion. Fearing labor competition from racially subordinate workers, the dominant segment uses its political power to demand legal racial exclusion—an explanatory account that class theorists have used to account for the extensiveness of exclusion in the antebellum North (Bonachich 1975; Wilson 1980). I show, however, that these patterns of exclusion in the antebellum North do not conform to the expectations of this class model. Moreover, this class model cannot explain the shift of northern states away from legal racial exclusion after the Civil War. The antebellum patterns and the post-bellum transformation do

closely correspond, however, to the varying power of the pro-exclusion and anti-exclusion parties.

A third alternative to the party model is the electorate model. As mentioned, it has been applied to nineteenth-century racial policy in two distinct ways: The *indirect* electorate model has parties shaping policy to conform with what they believe to be the white public's opinion. The *direct* electorate model has the electorate changing policy by voting out the party that does not conform to its wishes. The indirect electorate model suggests that a party's racial policy might simply reflect the wishes of the dominant white public. While I argue that the evidence is insufficient to reject this possibility for the antebellum North, I draw on a variety of evidence—including voting referenda on equal suffrage in the North in the 1860s—to show that the indirect electorate model cannot account for the second and third developments. Combined with the evidence against the direct electorate model (see above for a summary), I show on balance that an explanation rooted in the workings of relatively autonomous parties is better able to account for change and continuity across the three historical developments.

What exactly is the party model alternative to the elite, class, and electorate models? This chapter argues that parties mattered to processes of legal racial exclusion in two important ways. The first is the "*political articulation*" mechanism (see De Leon et al. 2009 for a full discussion) and the second is the *duopoly mechanism*, which together form the theoretical case for what Desai (2002) calls the "relative autonomy" of parties. The political articulation mechanism emphasizes how parties *shape* the electorate, reversing the causal flow posited by electorate and class models. Parties do not merely reflect social cleavages; they can reproduce, augment, and even develop certain cleavages while downplaying, bridging, or overcoming other divides (Schattschneider 1960; Sartori 1969; Desai 2002; De Leon 2008; De Leon et al. 2009). Smith

(1997:9) argues that to rule effectively, political actors “must find ways to persuade the people they aspire to govern that they are a ‘people’”; in this context, ascribed categories such as ‘race’ can prove useful, and their use in turn can elaborate and institutionalize what otherwise might have been merely one of many *potential* cleavages (Wimmer 2008). By identifying issues and cleavages, a party does more than sensitize voters to their tacit preferences; it also actively shapes those preferences by showing voters what they *should* think is important. In short, when a social cleavage such as ‘race’ matters in politics, it is not always, or strictly, because society has “racial tastes” that are exogenous to the political system and then drive political actors within that system; to a non-trivial degree, parties play an active role in cultivating this taste (or in downplaying this taste—see Aminzade 2000 on Tanzania; Messina 1989 on Great Britain; and the discussion below of the Republican Party in the post-bellum U.S.). The political articulation mechanism, therefore, has direct implications for any effort to distinguish the relative merits of the electorate and party models: any assessment of the role of public opinion in racial policy, whether this concerns voter referenda that largely favored racial exclusion between the 1830s and 1860s, or whether this concerns northern electoral support for the Republican Party as it pursued anti-exclusion policies in the post-bellum period, must take into account the role of parties’ political articulation work in cultivating pro-exclusion or pro-equality sentiments.

When a pro-exclusion or pro-equality party gains power, then party effects on society become all the more consequential. This brings us to the *duopoly mechanism*, which requires more discussion for two reasons. First and unlike the political articulation mechanism (see De Leon et al. 2009), the duopoly mechanism has not received an extended treatment elsewhere. Second and more importantly, the duopoly mechanism does the most explanatory work in this chapter.

The duopoly mechanism directs analytic attention to the fact that political competition is quite limited in democracies. Party competition is *oligopolistic* competition (Finegold and Skocpol 1995:39)—indeed, *duopolistic* competition in the United States, given its long-standing two-party system. While the electorate model emphasizes voter choice and therefore power, the duopolistic mechanism draws attention to the limited nature of these choices. In terms of Albert O. Hirschman’s famous scheme, voters’ exit options are highly circumscribed, which means their leverage over party action is limited as well. The severely restricted nature of the political market’s supply side provides parties with considerable autonomy in the construction of policy; general conditions (e.g. the recent state of the economy) have a much greater effect on party fortune than specific programs, because voter options for choosing programs are limited to two. As a consequence, a winning party’s political interests and strategies for building policy coalitions can be greatly consequential for the shaping of society through policy, without any necessary connection to the policy preferences of the voting majority.

According to the party model’s duopoly mechanism, therefore, elections are significant not for what they signal about public opinion but rather for a straightforward (and less empirically ambiguous) reason: they determine, *frequently by very small margins*, which member of the duopoly is empowered with the opportunity to enact its policy agenda.<sup>18</sup> In contrast, the electorate model ignores that “we can rarely interpret a majority of first choices among candidates in a national election as being equivalent to a majority of first choices for a specific policy” (Dahl 1956:127). Not that we never can, but the instances are outliers. In the case of legal racial exclusion in the nineteenth-century United States, this chapter shows that

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<sup>18</sup> To be sure, the extent of this opportunity once a party takes power then depends both on party unity, which the analysis below will show was generally extensive in the realm of nineteenth-century racial policy, and on the limited availability of institutions with which legislative minorities can thwart the majority’s agenda. Wawro and Schickler (2006) show that legislative minority obstruction did not generally become important until the twentieth century.

election outcomes (and thereby racial policies) in the North were *not* driven by the racial preferences of the electoral majority. In this respect, the chapter's empirical analysis generally conforms to a fundamental implication of the party model: while elections are ordinary voters' greatest source of power, the use of that power *in relation to any given policy* typically derives not from the voters' preferences regarding the policy but rather their *general and relative indifference*. On almost any given issue, the party model assumes, only a minority of voters will have *decisive* preferences, where "decisive" means that candidate/party positions on the issue determines who the voter supports; thus, indifference is "general" in that it rests with the majority and "relative" in the sense that this majority finds other issues more important. It follows that for any given issue, elections put the fate of minorities with "decisive" preferences in the hands of a majority that, though not caring deeply about the issue, decides whether party *X* with position *Q* or party not-*X* with position not-*Q* gains control of the government and thereby policy. This basic feature of democratic politics justifies Dahl's (1956:133) effort to downplay the likelihood of majority tyranny (or majority beneficence, one might add) in democratic politics and argue instead that "the more relevant question is the extent to which various minorities in a society will frustrate the ambitions of one another with the passive acquiescence or indifference of a majority of adults or voters."

In order to concretize the party model's emphasis on the causal power of voters' general and relative indifference, consider briefly for now how it relates to the substantive analysis to follow. In the two-party competitive context where one party pushed for racial exclusion and another for racial equality—a situation that clearly prevailed in the post-bellum United States and less sharply in the antebellum era (see below)—the balance of power in determining which party controlled the state generally rested with those who did *not* have "decisive" preferences

regarding racial policy. Placing voters on a continuum, with those having decisive preferences on each end (pro-equality on one and pro-exclusion on the other), those who were *in the expansive middle* generally determined which party won and thereby which racial policy prevailed, even though racial policy did not determine the voting choices of these majority voters. Put a different way, whether and to what degree legal racial exclusion (or equality) prevailed generally did not depend on majority support for exclusion (or equality), but rather which party won.

Given this conceptualization of elections' significance, it would be useful to be explicit about this chapter's strategy for analyzing them. In terms of the *consequences* of elections, the major objective is to show, against the elite model as it has been applied to the nineteenth-century United States, that which party prevailed mattered a great deal for racial exclusion policies. I do this by evidencing the link across the nineteenth century between party control of government and racial policy, and, when possible, by detailing party differences in roll call voting on specific racial policy proposals. In terms of the *determinants* of election outcomes, the party model itself is explanatorily agnostic, with a programmatic preference for directing analytical energies to the consequences of elections. Yet one explanatory burden must be met if the causal power of the duopoly mechanism is to be convincing in relation to the electorate model: it is necessary to show that which party gained power through elections was *not* determined by the racial exclusion preferences of the electoral majority. This is done in various ways—e.g. by showing the contrast between on the one hand, voters' racial exclusion preferences as revealed in referenda and, on the other, the racial policies of the party that prevailed in elections—and the goal is always the same: *not* to show why parties won elections but only that the racial policy preferences of the majority were not the reason. Put another way, the explanatory burden is to demonstrate, in relation to the hypothesis that majority voter

preferences on racial policy drove election outcomes, that there is not enough evidence to reject the null hypothesis.

The explanatory power of the party model in relation to the three alternatives will now be scrutinized in light of the three historical developments previously specified, starting with the antebellum North.

#### PARTY POWER AND RACIAL EXCLUSION IN THE ANTEBELLUM NORTH

The nineteenth century gave birth to our own century's two major parties. Until the formation of the Republican Party in the 1850s, the Whig Party and the Democratic Party comprised the two-party system. The Whig and Democratic parties were different in many ways, not the least of which concerned their relationship to the ideology and practice of white supremacy (Holt 1999, 1992; Ashworth 1995:295-371; Saxton 1990; Foner 1970). The Whig Party tended toward a hierarchical conception of society in which the constituent individuals were multiply differentiated but universally included (Watson 1990:245-246; Howe 1979:38-42). Democrats were more egalitarian, but this egalitarianism was bounded by race (Fredrickson 1971). "The Democrats ... advocated a highly populist political system, one that empowered adult white males and championed their rights against many of the social and political elites in the nation" (Ashworth 1995:295). Based on her detailed study of political culture in the antebellum North, Baker (1983:24) concludes that "the vital core of Democratic thinking was a firm commitment to a 'white man's republic'" (see also Richards 2000:116).

In terms of the political articulation mechanism, Democrats emphasized a cleavage between whites and non-whites during the antebellum period (and beyond, as we will see). White supremacy accorded well with three major components of Democrats' policy program and

coalition strategy. The first was support for slavery and the “states’ rights” approach to federal policy that protected it. There were individual Democrats who were anti-slavery, but making this position explicit meant encountering “at the minimum, resistance or, more likely, expulsion from the party” (Ashworth 1995:329-330). Silbey (1985:97) identifies “a conscious agreement, worked out as early as the 1820s, between [Democratic] leaders in the North and South to protect slavery ...” in order to provide the party with an inter-regional unity useful for capturing national power. The party’s 1832 constitution had a provision to cement the inter-regional alliance by preventing the more populous North from swamping the South in voting: nominations for presidential and vice presidential candidates required two-thirds support rather than a simple majority (Richards 2000:111-113). This alliance was evident in Congress, too—for example, in the controversy surrounding Congressional efforts to suppress abolitionist petitions in the 1830s and 1840s, when northern Democrats voted with the South 80 percent of the time in support of this suppression (Ashworth 1995:325 and 329). Although the party split in 1860 over where the locus of control over slavery should lie—southern Democrats wanted to impose slavery in the federal territories, while northern Democrats generally wanted the decision to be left to states formed from those territories—northern Democrats never abandoned the South in its support for the institution of slavery and its expansion westward throughout this period or, indeed, through the Civil War (Saxton 1990; Holt 1992:57ff; Gerring 1994; Jaenicke 1995). Championing the common people against elites while also supporting slaveholders might seem inconsistent, but white supremacy provided a racial boundary to Democrats’ egalitarianism, while the constitutional rationale for this slaveholder support, states’ rights doctrine, emphasized the liberty of local autonomy against the tyranny of centralized power. That it was liberty for whites



and exposure for non-whites—to invoke John R. Commons’ distinction—mattered little if liberty and equality were racially bounded.

Westward expansion was a second Democratic policy that fit well with white supremacy. From the Indian Removal Act of 1830 to the Mexican-American War of the late 1840s, the Democratic Party led the expansionist charge (Richards 2000; Holt 1999). The ideology of white supremacy was a useful tool in these efforts. As Congress considered the Indian Removal Act of 1830, for example, “[t]he Democratic-party press [pushed for the legislation] ... by popularizing theories of the ineradicable inferiority of the nonwhite races, which taught that hopes for civilizing the Indians were delusive” (Howe 1979:40).

Any social boundary is simultaneously exclusive and inclusive. In the case of its support for slavery and westward expansion, Democrats’ emphasis on race highlighted most prominently the exclusionary dimension. But in the case of the third policy that accorded with white supremacy, support for European immigrants, the inclusive side of Democrats’ racialism is clear. Across the period from 1828 to 1892, when nativism was recurrent, Gerring (1994:761) found in his study of Democratic Party platforms “[n]o statement in opposition to (European) immigration.” Playing a guiding role in Democrats’ strategy for incorporating immigrants was an emphasis on the capacious category of “white,” consistent both with the political articulation mechanism and the conception of peoplehood forged during the colonial period. Against the ethno-cultural, ethno-religious, and class divisions of antebellum society, Democrats sought to unify European immigrants ethno-racially *qua* ‘whites’. The Democratic Party is a central actor in Ignatiev’s (1995) *How the Irish Became White* (see 69-76), and Roedinger (1991:141) agrees with this emphasis, arguing that “Democrats and Irish-American Catholics entered into a lasting marriage” based on “the importance of whiteness.”

Consistent with the linkage between these three elements of the Democratic Party's policy program and its white supremacist orientation, the Whig Party offered a notable contrast. The Whig Party was divided regionally on the slavery issue, and it opposed Democrats on the issues of territorial expansion and immigration. In sectional controversies related to slavery, northern Whigs almost never voted with their southern brethren—and thus not with either regional wing of the Democratic party (Richards 2000:111-132). This sectional split on slavery intensified in the two decades preceding the Civil War and eventually was a major factor in the Whig Party's demise and its replacement by the northern-centered Republican Party (Holt 1999:390, 952-953). The Whig Party also did not generally support territorial expansion, opposing both the Indian Removal Act of 1830 and the Mexican-American War (Howe 1979; Holt 1999). Whigs in their 1844 national platform, for example, warned about the dangers that territorial expansion posed for the social fabric (Holt 1999:240). The conservatism on expansion was evident in the party's approach to immigration as well: Whigs were "reluctant to enfranchise large numbers of foreign immigrants" (Watson 1990:245-246)—again in contrast to the Democrats (Formisano 1971:ch.5)—and the Whig Party contained a major strain of "nativism and anti-catholicism" (Watson 1990:245-246).

There were also direct electoral incentives for the Whig Party to abjure racial exclusion. The staunchness of Democrats' white supremacy made African Americans the easy allies of the Whig Party. This was true in states such as Massachusetts and Rhode Island, where African Americans had equal voting rights for a good portion of the antebellum period, and it was true in Tennessee, North Carolina, and Pennsylvania where African Americans voted until the 1830s (Malone 2008; Ford 1999). Battles over equal voting rights for African Americans, then, were to

a substantial degree conflicts over how many additional votes Whigs—and later, Republicans—would be able to add to their coalition.

Identifying the Whig-Democratic divergence on white supremacy and accounting for this difference in terms of different electoral and policy coalitions, as I have just done, is only a first step in pursuing the relationship between party politics and racial exclusion in the antebellum North. In order to assess how much party divisions mattered—and specifically to what degree the Democratic Party was behind the development of legal racial exclusion—a concrete examination based on systematic data from the period is required. To this end, I compiled data on racial exclusion laws in the 16 northern states that had achieved statehood by 1850 (see Table 2.1). Four laws pertaining to basic rights were the focus of this inquiry: (1) laws that either banned African Americans from entering the state or required them both to present a certificate of freedom and to offer substantial surety or cash bonds, from \$250 to \$1000 (“settlement”); (2) laws that barred African Americans from testifying in court against ‘whites’ (“testimony”); (3) laws that restricted the franchise to ‘whites’, or in one case, provided for a differential suffrage qualification based on race (“franchise”); and (4) laws that either excluded non-whites from public schools, mandated racial segregation, or allowed localities to segregate (“education”) (see Appendix 2.1 for sources and details).

Table 2.1: Legal Racial Exclusion in the Antebellum North

State	Settlement	Testimony	Franchise	Education
Pennsylvania				b
New Jersey				c
Connecticut				c
Massachusetts				c → d
New Jersey				c
New York				c
Rhode Island				c
Vermont				c
Ohio				a → b
Indiana				a
Illinois				a
Maine				c
Michigan				c
Iowa				a → b
Wisconsin				c
California				b

Sources: Please see Appendix 2.1 for sources and more details on the specific exclusion laws.

Note: Diagonal shading indicates elimination of a previously enacted exclusion law. Racial exclusion in Education defies dichotomous classification: “a” = state required exclusion of African Americans; “b” = state required segregation; “c” = state permitted localities to segregate; “d” = state required integration.

How did the extent of racial exclusion laws relate to the degree of Democratic Party control in the state? I developed a measure of state party control for 1828 to 1856 based on control of the state legislature and governorship across this period (see Appendix for details) in order to probe this relationship. Among these 16 states, eight were dominated by Democrats and four more were “competitive” but leaned to the Democratic Party. Among the four other states, one was competitive but leaned to the Whig Party, while the other three were solidly Whig. Relating party dominance in a state to the extent of legal racial exclusion reveals a striking pattern (see Table 2). In Democratic states (solid or leaning) where there were 48 possible exclusion laws (12 states x 4 legal issues per state), nearly 70 percent (33/48) of all possible exclusions were enacted in this period. In contrast, Whig states exhibited much less exclusion:

out of a maximum of 16 possible exclusion laws (4 states X 4 laws per state), just four (25%) were still in effect by the end of the period.<sup>19</sup> Thus, racial exclusion laws were much more likely to be enacted in Democratic states as compared to Whig ones.

Table 2.2: Racial Exclusion and Party Dominance in the Antebellum North

State	Party Dominance	# of Exclusion Dimensions
Pennsylvania	D	2
Illinois	D	4
Michigan	D	4
Iowa	D	4→2
California	D	3
New Hampshire	D	1
Maine	D	1
Wisconsin	D	2
Ohio	comp/D	4→2
Indiana	comp/D	4
New York	comp/D	2
Connecticut	comp/D	2
New Jersey	comp/W	2
Massachusetts	W	1→0
Rhode Island	W	2→1
Vermont	W	1

Source: Please see Appendix 2.1.

Note: Please see Appendix 2.1 for determination of “party dominance.”

By examining the reversals indicated in Table 2.1 (see diagonally-shaded cells), more direct evidence of the consequential nature of party control emerges. Rhode Island instituted a racial franchise in 1822, when a predecessor to the Democratic Party was in power, and this

<sup>19</sup> Not all states defined against whom they were effecting exclusion. Other states aspired to more precision. California’s 1851 law banning ‘negro’ testimony against ‘whites’ defined the former as anyone “possessing” at least one-half “Negro blood” (Farnam 1938, p.416; Litwack 1961, pp.93-94). Ohio, Indiana, and Illinois tended to define ‘negroes’ as those “possessing” at least one-fourth or one-eighth ‘negro’ “blood” (Berwanger 1967, pp.32, 43; Farnam 1938) The difference in the fractions was not strictly an inter-state one but could vary by statute and year within the same state. Indiana’s 1831 law requiring any ‘negro’ entering the state to have a \$500 bond law defined a ‘negro’ as anyone with “one-fourth or more Negro blood,” but a 1817 ban on inter-marriage between ‘whites’ and ‘negroes’ defined the latter as someone having one-eighth or more “Negro blood” (Ibid). Ohio’s exclusion laws changed from a fractional definition in the early nineteenth century to a “visible admixture” criterion in the 1850s and 1860s (Wood 1968, p.83; Foner 1970, p.286).

racial exclusion was abolished during a time of Whig Party control in 1842 (Malone 2008:119-120, 129-130; Keyssar 2000:72-74). Massachusetts was the only state to require racial *integration* in all of its public schools, eliminating the local segregation option that was typical of the period, and it did so at a time when Democrats were excluded from power (just as they had been throughout most of the antebellum period in this state). The four other eliminations of racial exclusion, two in Ohio and two in Iowa, also occurred when Democrats were *not* in control. Ohio eliminated its racially exclusionary settlement and testimony laws in 1849, when Democrats did not control the governorship and were less than a majority in the state legislature. Prior to this time, between 1837 and 1848, there had been seven roll calls in the state legislature concerning repeal of exclusionary settlement and testimony laws; more than 97 percent of Democrats' nearly 300 votes favored the continuation of exclusion, while 59 percent of the Whig votes supported repeal (Erickson 1973:168). Iowa repealed its exclusionary laws concerning testimony and settlement at the Republican-controlled 1857 state constitutional convention (Foner 1970:287).<sup>20</sup>

A similar pattern is evident from the New York state legislature's consideration of three equal suffrage petitions in the late 1830s: only about 2 percent of Democrats voted even a single time to eliminate the racial suffrage as compared to roughly 85 percent of Whigs (Field 1982:48). The Democratic Party's role in institutionalizing racial exclusion is also clear in studies of state constitutional conventions in Pennsylvania, Michigan, New York, Iowa, and Wisconsin between the 1830s and 1850s (Richards 2000:117-118; Olbrich 1912:23, 81-98).<sup>21</sup> At the 1846 Wisconsin constitutional convention that voted 91 to 12 to exclude African Americans, for example, more

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<sup>20</sup> A majority of Republicans in the late 1850s made similar efforts in the Indiana and Illinois state legislatures but fell short due to unanimous Democratic opposition, coupled with opposition from a minority of Republicans (Foner 1970:286-287).

<sup>21</sup> For a similar pattern in the South, in North Carolina and Tennessee, see Ford (1999:731-734).

than 85 percent of the delegates were Democrats (Olbrich 1912:85). The 1850 Michigan constitutional convention that voted 46 to 13 for a whites-only suffrage “was overwhelmingly Democratic” (Olbrich 1912:97-98), and the same was true when the racial suffrage was first put into the Michigan constitution at the 1835 convention (Formisano 1971:22-23).

Moreover, a comparison of the “Education” column in Table 2.1 with party dominance by state in Table 2.2 indicates that when there was a difference in racial exclusion laws’ severity, it was the Democratic Party that was most severe. All northern states during the antebellum period allowed localities to segregate their schools by race. But this was as far as the Whig states went—and, indeed, Massachusetts had banned segregation by the end of the period. Among the 12 Democratic or Democratic-leaning states, however, half either *required* the segregation of African Americans or their outright exclusion. Moreover, there were two generally Democratic states (OH and IA) that lessened the severity of racial exclusion in education, moving from mandatory exclusion to mandatory segregation, and they did so at times when the Democratic Party did *not* hold the balance of power.<sup>22</sup>

To summarize, three kinds of evidence support the hypothesis that party divisions, and specifically the political power of the Democrats, were behind patterns of racial exclusion in the antebellum North: (1) characterizations by a wide range of historians of the Democratic Party as white supremacist, particularly in the way it incorporated European immigrants and justified both slavery and westward expansion; (2) a pattern of racial exclusion laws across the northern states showing that Democratic states were considerably more exclusionary than Whig states,

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<sup>22</sup> Ohio’s 1849 law required “the establishment of separate black schools managed by directors elected by black taxpayers” and thereby overrode an 1829 state law that simply excluded them from public schools. But the city of Cincinnati fought this law in court and did not erect its first school for ‘blacks’ until nearly a decade after passage of the state law (Curry 1981, pp.161-162). Cincinnati was the same city where in 1829 a mob of whites ran more than one thousand African Americans out of town during anti-abolition riots (Richards 1970:35).

both quantitatively and qualitatively; and (3) direct evidence from specific states, in both constitutional conventions and activities of the legislature, that reveal the link between racial exclusion laws and party control: most notably, only legislatures *not* under Democratic control eliminated exclusion laws enacted earlier by Democratic legislators .

I now turn to an assessment of the other three models' ability to account for patterns of racial exclusion in the antebellum North.

*Elite Model:* The distinct party division regarding legal racial exclusion contradicts the elite model. There was not an elite consensus that African Americans should be subject to wide range of legal exclusions in the antebellum North. It is true that the parties did not share equal devotion to their opposing causes, something that Howe (1979:17) highlights in discussing voting rights: "Black suffrage was a partisan issue that the Democrats strenuously opposed and the Whigs, somewhat less strenuously, supported" (see also Field 1982:48). But the division was not a mere facade, as is evidenced by the different exclusion patterns between Whig and Democratic states, by the party division on voting in legislatures and state constitutional conventions, and by the reversals of legal exclusions by Whigs (and later Republicans) in Rhode Island, Ohio, and Iowa—but never by Democrats anywhere.

*Class Model:* Was it the case that "the [white] laboring classes had the power resources to at least preserve their interests in the face of black competition," and that they used this power in order to institutionalize the exclusion of African Americans in the antebellum North (Wilson 1980:51)? According to this model, the white working class pressed for exclusion to defend itself from being undercut by the lower priced African-American labor. During the first half of the



nineteenth century, however, the most industrialized areas—and therefore the areas with the most wage workers and the greatest potential for working class organization—were in the northeast, while the highest levels of legal racial exclusion were in states such as Illinois, Indiana, and Iowa. In fact, when one aligns the patterns of state-by-state racial exclusion with the percent of males in manufacturing, as Table 2.3 does, one sees that the patterns of exclusion were practically the inverse of what the working class model would predict: in general, the greater the proportion of males in manufacturing, the *less* extensive was racial exclusion. Dividing the states at the median level of manufacturing employment (11%), those states above the median collectively had about 40 percent of the maximum level of legal racial exclusion (13 out of 32 possible laws), while those below the median had 80 percent (26 out of 32). And while the four most industrialized states (the upper quartile) never exceeded an exclusion level of 44 percent (and stood at just 31 percent by the end of the period, thanks to Whig reversals in Massachusetts and Rhode Island), the four least industrialized states reached an exclusion level of 94 percent.

Table 2.3: Racial Exclusion and Working Class Organizing Potential

State	% Males in Mfg. Employment	# of Exclusion Dimensions
Massachusetts	33	1
Connecticut	32	2
Rhode Island	30	2
New Jersey	22	2
Pennsylvania	18	2
New York	17	2
New Hampshire	15	1
Maine	13	1
Ohio	9	4
Michigan	8	4
Vermont	8	1
Wisconsin	7	2
Indiana	6	4
Illinois	5	4
California	5	3
Iowa	3	4

Source: Haines (2004).

Notes: The percent of males in manufacturing employment is derived from Haines' (2004) analysis of the 1850 Census, specifically the proportion of males employed in manufacturing (variable "mfglabm") to total males age 15 or more who were employed (variable "m15empl"). See Table 2.2 for specific exclusion dimensions. The number of dimensions recorded here reflect the maximum for the antebellum period (i.e. before the repeals reflected in Table 2.2).

This pattern does suggest that some other class-based based explanation might work for the antebellum North. Bonacich (1975:624) in fact suggests a broader class model when seeking to dismiss the role of political parties in favor of a "class-interpretation of politics" near the end of her article. She identifies the Democratic Party as more exclusionary than the Whigs but interprets Democratic policies as a mere reflection of the fact that it was "a coalition of town workers and small farmers" (624). Perhaps, then, the more agrarian states were more exclusionary because of the political power of small farmers. These small farmers certainly opposed the extension of slavery to their states, because of the competitive advantages such an extension would give to large, slave-holding landowners (Wood 1968). But if *enslaved* Black

labor was a threat to small farmers, the same could not be said for *free* Black labor: non-enslaved African Americans were less than two percent of both the national and Midwestern state populations during the antebellum period. Thus, even if we assume that anti-black feelings drove small farmers' support for the Democratic Party in the antebellum era, those feelings apparently had a non-economic logic that does not square with the class model. Most importantly, as will be discussed in the next section on the post-bellum period, the notion that it was a taste for racial exclusion that drove farmers' support for Democrats before the war is directly contradicted by the shift in power to the anti-exclusion Republicans during and after the war.

Finally, the class model's economic logic also does not work well for the Whig Party. Bonacich (1975) explains the party's support for equal rights by arguing that commercial and industrial interests were the core of the Whig alliance: employers wanted "cheap labor" in order to undercut white working class power, and the Whig Party did the employers' bidding. This makes sense in terms of some rights—e.g. settlement—but not others like the franchise and even the right to testify in court: employers want lower cost migrants, but not politically empowered ones. This economic logic is even less compelling in relation to the Whig Party's stance on European immigration, something that Bonacich does not discuss: Why would a party that allegedly reflects large employer interests oppose immigration and thus an increase in the labor supply? Certain class and class segments might be more likely to support particular parties, but support for a party does not mean capture of it.

*Electorate Model:* Did white public opinion drive exclusion patterns in the antebellum North? There is no available polling data with which to test this hypothesis, but there are three key pieces of evidence that do support it. First, just as historians have emphasized the white

supremacist character of the Democratic Party in the antebellum North, so, too, have they emphasized the pervasiveness of racism among the general public (Stewart 1998; Voegeli 1970; Berwanger 1967; Litwack 1961). The second piece of evidence is more systematic, though by no means perfectly so. From secondary scholarship and political almanacs from the period, I compiled data from nearly a dozen referenda in nine different states across more than 20 years. In these referenda, voters were asked to decide upon two types of racial exclusion that appear in Table 1, franchise and settlement laws. Voters favored racial exclusion in all referenda but one, and, in the aggregate, by a large margin—more than two to one (see Table 2.4). The third piece of evidence concerns what key actors on the scene, Republican Party politicians, perceived to be the white public’s opinion about racial exclusion. As we will see in the next two sections, legal racial exclusion was *not* the policy of the Republican Party after its emergence in 1854. However, this did not prevent a non-trivial number of Republicans from invoking white supremacist arguments in election campaigns—a strong indication that they believed this appealed to the white electorate.<sup>23</sup> One key policy held the Republican Party together: that slavery should not be allowed to expand to the western territories; instead, these territories should be settled on the basis of free labor. In response, Democrats in the late 1850s “use[d] race as a key issue” (Aarim-Heriot 2003:63), accusing Republicans of belonging to the “African party” (Bilotta 1992:267). Republicans retorted by equating Democrats’ support for slavery’s expansion with a plan for the “Africanization” of the country (Ibid). Republicans argued that the western territories should be settled and worked by whites. Such was the meaning behind the words of a Republican congressman from Indiana who proclaimed that his state had “elected in favor of the white race

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<sup>23</sup> Some might also have been acting out of habit or conviction; Foner (1970) says that most of the Republican politicians who made such arguments were themselves former Democrats who split from their party due to the extension of slavery issue.

by prohibiting slavery” (quoted in Voegeli 1970:20), and the words of a Republican campaign organizer, who said his party stood for “free territories for the free white men” (quoted in Bilotta 1992:307; see also Berwanger 1967). Republicans wanted to stop the spread of slavery, and they did not wish to lose the attention of a public they apparently assumed to be white supremacist.

Table 2.4: Voter Referenda on Racial Exclusion in the North, 1837-1869

State	Year	Issue	No. of Voters	% approving exclusion
New York	1846	Franchise	309,700	72
Wisconsin	1846	Franchise	22,200	66
Connecticut	1847	Franchise	25,100	78
Illinois	1848	Settlement	76,500	79
Wisconsin <sup>a</sup>	1849	Franchise	9,300	44
Michigan	1850	Franchise	45,000	71
Indiana	1851	Settlement	135,500	84
Oregon	1857	Settlement	9,700	89
Iowa	1857	Franchise	58,000	85
Wisconsin	1857	Franchise	67,700	59
New York	1860	Franchise	535,500	63
Total (1837-1860)			1,294,200	70
Illinois	1862	Settlement	211,900	74
Illinois	1862	Franchise	211,900	83
Colorado	1865	Franchise	4,700	90
Connecticut	1865	Franchise	60,700	55
Wisconsin	1865	Franchise	10,200	54
Minnesota	1865	Franchise	27,000	55
Ohio	1867	Franchise	472,300	54
Minnesota	1867	Franchise	56,200	51
Connecticut	1867	Franchise	94,200	51
Kansas	1867	Franchise	29,900	65
Iowa	1868	Franchise	186,500	43
Minnesota	1868	Franchise	71,800	43
Michigan	1868	Franchise	225,600	53
New York	1869	Franchise	532,200	53
Total (1862-1869)			2,195,100	57
Total (1837-1869)			3,489,300	62

Sources: *The American Annual Cyclopaedia and Register of Important Events* (1868:386, 495, 500) and (1865:577); McPherson ([1871] 1972:259 and 354); Harris (1904:239); Olbrich (1912:76-90); Berwanger (1967:33, 40-41, 45, and 93); Field (1982:199); Fishel (1954:19); Foner (1970:281 and 285); Gillette (1965:25-26); Litwack (1961:86 and 92); Dykstra and Hahn (1968:205); and Wang (1997:40).

Notes: The number of voters is rounded to the nearer hundred. The total percentage approving exclusion for each time period is based on the total number of voters; it is not an average of percentages. In the following cases the author was not able to find the total who voted on the exclusion law and therefore the total for the general election was used: MI (1868), MN (1868), CT (1867). Shaded information signals instances where voters *rejected* exclusion.

<sup>a</sup> This vote faced a legal challenge for 17 years (see Fishel 1963:184-185 for details) and “[i]n the meantime, Negroes had not been permitted to vote, and the state’s electorate had twice—in 1857 and 1865—defeated suffrage extension” (Litwack 1961:92; see also Berwanger 1967:42 and Olbrich 1912).

While these three pieces of evidence support an electorate model, caution is required because one key piece of evidence is missing: we do not know, indeed cannot know, that voters chose the Democratic Party during the antebellum era *because of* that party’s pro-exclusion policies. A coincidence of majority support for a policy and majority support for the party that implements that policy does not necessarily mean that this specific policy preference of the majority was “decisive” (as defined above—it determined their votes) in voters’ decision to support the party.<sup>24</sup> This caution receives empirical justification, and support for the electorate model erodes, when ones takes a longer term perspective that goes beyond the confines of the antebellum period, as we will see shortly. If party control of the state and state policies are indeed a mere reflection of voters’ preferences, then one should *not* expect to see major changes in party power and policies *without* major changes in public opinion. And yet that is exactly what

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<sup>24</sup> As this point suggests, the existence of a party’s relative autonomy does *not* depend on pursuing a policy agenda that contradicts the preferences of an electoral majority. An electoral majority might have a preference for a given policy that a party pursues, but this preference calls into question party autonomy’s existence only if the party adopted the policy *because of* public opinion, or if the party is compelled to adhere to this policy *because of* majority opinion. Moreover, the coincidence of electoral majority preferences and party policies can be a product to some non-trivial degree of the party’s efforts to cultivate these electoral majority preferences through the work of political articulation—as I have suggested was the case for the antebellum North.

happened, as becomes clear when the analysis is extended into the post-bellum period. The transition from the antebellum to post-bellum period in the North brought an inter-linked transformation in party power and racial policy that the electorate model cannot explain—but that the party model can.

#### PARTY CHANGE, RACIAL CHANGE: US NORTH, 1850s TO 1880s

Looking out from 1860, this was the situation in the North with respect to legal racial exclusion: nearly three-fourths of the states had a racial franchise, nearly one-half barred non-whites from public education or mandated separate schools, and roughly one-fourth both barred non-whites from testifying against whites in court *and* either barred migration of African Americans into the state or allowed such in-migration only after the payment of a prohibitively high price. Yet by 1870 the exclusionary legal edifice concerning voting, settlement, and testimony had crumbled, never to be rebuilt. Moreover, by the end of the 1880s, more than a dozen northern states had banned racial segregation in education, while 18 states actually went so far as to ban discrimination in the private sector—in hotels, restaurants, and other service sector businesses (Kousser 2002; 1974). This change was significant in itself, transforming the legal status of African Americans in the North, and it was also significant in relation to long-term historical development: while African Americans' migration northward in the 1930s and 1940s helped pave the way for civil rights in the 1960s because of the political influence that African Americans gained from this migration (e.g. McAdam 1982), it was this earlier historical juncture (i.e. the 1860s-1870s) that transformed the legal structure of the North and thereby made such a gain in political influence possible. The promise of the Fifteenth Amendment was not realized in the South in latter decades of the nineteenth century, but it did have an “enduring impact” in the

North (Orren and Skowronek 2004:143).<sup>25</sup> Social scientists, however, have largely ignored this aspect of the post-bellum period, focusing exclusively on the project of reconstruction in the South.<sup>26</sup> How well can each of the four models account for this change?

*Elite Model:* If the elite model explained this change in the North, then one would expect to see evidence of an elite consensus concerning the elimination of legal racial exclusion in the North, a consensus that would manifest itself in a lack of party conflict concerning the issue. This is not what happened. As we will see in more detail shortly, the Democratic Party in the North remained true to its white supremacist principles after the war. While the Civil War had divided the elites of the North from the elites of the South, the contest over the place of African Americans in the polity after the war sharply divided elites within the North. To state this point counter-factually: if the Democratic Party had regained the dominance after the war that it enjoyed before the war, legal racial exclusion would not have been eliminated in the North. But the Democratic Party's hegemony was broken—not because of a shift in voter preferences against racial exclusion, as will be shown below—and thus so, too, was the legacy of legal racial exclusion in the North.

*Class Model:* The class model cannot account for such rapid change in the North's legal structure. Farmers and wage workers were around in 1870 just as they had been in 1860. In fact, the white working class grew over the decade, thanks to the extensive manufacturing needs of the world's first industrialized war. Moreover, abolition meant the release of four million people

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<sup>25</sup> As Orren and Skowronek (2004:143) note, this impact “figured prominently in the construction of future struggles; certainly civil rights in the 1960s cannot be separated from the power of black voting in the North.”

<sup>26</sup> Neglect by historians is the general rule as well (see Schwalm 2009:175-176). For an excellent exception, see Kousser's (2002) study of northern state school de-segregation.



onto the labor market, all of them part of the working class segment that, according to the class model, threatened the interests of the white working class with “cheap labor” and should have prompted white workers to use their political power to effect legal racial exclusion. But the opposite dynamic took hold, with the North shifting to racial equality under the law. The evidence against the posited connection between the interests of class segments and racially exclusionary policies is also clear in the case of the farmers: the still largely agrarian states west of Pennsylvania shifted dramatically to the Republican Party during the war and they remained Republican after it—even though it was this party that dismantled the antebellum era’s system of legal exclusion.

*Electorate Model:* Perhaps the war made the white electorate in the North see racial issues in a new light. It is easy enough to find claims that the Civil War ushered in a new period of egalitarianism that embraced equal rights without regard to race (e.g. Blum 2005:3-16; Klinkner with Smith 1999:85). If this were true, then an appeal to party dynamics is unnecessary; the implication is that policy followed public demand, as the electorate model predicts (see Burstein 1998). Two key pieces of evidence, however, undercut this claim. First, many Republicans did not perceive that their electoral base, the northern white public, had shifted toward racial egalitarianism. When debating the Civil Rights Act of 1866, senators *supportive of* legal racial equality described their white publics as rife with “proverbial hatred [of African Americans]” and with prejudice that was “almost ineradicable” (Indiana), “nearly insurmountable” (Nevada), “morbid” (Illinois), and “iron-cased” (Iowa) (quoted in Berger 1977:13). In debates regarding what became the Fourteenth Amendment, Republican senators and congressmen repeatedly emphasized the northern white electorate’s antagonism toward the

adoption of a non-racial franchise on a national scale (Berger 1977:54-68). The second key piece of evidence shows that there was a sound basis for these Republican concerns: As Table 2.4 shows (see above), the northern white electorate during the 1860s had 14 opportunities in 10 different states to express their opinion on the non-racial franchise; they rejected equality on all but two of those occasions. Overall, of the more than two million people who cast ballots, nearly 3 in 5 voted for a racial suffrage. Moreover, this figure probably *underestimates* exclusionary opinion, because in some states Republicans avoided putting equal suffrage to the voters so as to keep it from being a campaign issue (Gillette 1965). Public opinion, however, did not determine the course of events: rather than echoing the views they believed prevailed among northern whites, or rather than simply ignoring the issue, Republican politicians crafted and passed a constitutional amendment, the Fifteenth, that prohibited governments at any level from adopting a racially exclusive franchise (Why Republicans would do this will be addressed further below, in the section on the post-bellum South). The electorate model cannot make sense of the major reversal of legally institutionalized racial exclusion in the North.

*Party Model:* The most compelling explanation for why the North shifted away from legal racial exclusion after the Civil War is that it shifted decisively *toward* the Republican Party—but not because of that party’s advocacy for equal rights; the *duopolistic mechanism* comes to the explanatory foreground. The majority could maintain a preference for racial exclusion *and* vote for the anti-exclusion Republicans, because these racial exclusion preferences were not “decisive” for a majority of voters. At the same time, because electorates with pro-exclusion majorities put Republicans in power—for a variety of reasons, including Republicans’ role in ensuring that western lands were not monopolized by large landowners (i.e. slaveholders);

northern Democrats' close association with the rebellious South; Protestantism; etc.—anti-exclusion policies prevailed.

The Republican Party's tremendous success with the northern electorate in the 1860 elections continued throughout the war and for decades thereafter: between 1866 and 1894, the Republican Party controlled more than 80 percent of all northern senate seats, which in turn indicates extensive dominance of state legislatures (see Appendix) (based on Martis 1989). The dominance of the Republican Party in the North meant power rested in the hands of those opposed to legally institutionalized white supremacy. Much of the legal change in the North derived from actions at the federal level. The Civil Rights Act of 1866 and the Fourteenth Amendment eliminated the exclusionary testimony and settlement laws, while the Fifteenth Amendment eliminated the whites-only suffrage that had prevailed in most northern states. As will be detailed more fully below, Republicans and Democrats were sharply divided in Congress, with Republicans nearly unanimous in their support for equal rights and Democrats nearly unanimous in opposition. The shift in party power to the Republicans at the federal level made this legislative action possible.

But such a shift in party power was crucial at the northern *state level* as well, and not only because state legislatures selected federal senators. In order for any amendment to become part of the Constitution, three-fourths of the states must ratify it. The struggle over ratification of the Fifteenth Amendment demonstrates that it never would have been ratified had the Democratic Party continued to control state governments in the North. With Democrats in control of the state legislature, Ohio first rejected ratification in April 1869 “along strict party lines”; ratification came in 1870, only after Democrats lost control of the state legislature (Gillette 1965:139). The same pattern occurred in New Jersey, where a Democratic legislature

rejected ratification in Jan 1870 “by a strict party vote” (Ibid:115n17). In New York, the Republican-controlled legislature approved ratification in April 1869 in a vote “along straight party lines,” only to have it rescinded in Jan 1870 after Democrats gained control in the 1869 elections (Ibid:115n18). In Pennsylvania, meanwhile, the vote was “strictly partisan” but not close because Republicans dominated the legislature (Ibid:116). Indiana’s ratification of the Fifteenth Amendment, among the most tumultuous, also conformed to the partisan pattern. Ratification was first blocked when 55 of 64 Democratic state legislators resigned to prevent a quorum. After a special election to replace these members, there were still quorum problems thanks to the Democrats, but Republicans used ‘creative’ interpretations of the state constitution to get around them, and the amendment was eventually ratified (Ibid:131-139). Even in the northeastern states where African Americans already were voting, Democrats offered strong opposition, though this was insufficient to block ratification because of Republican control of the state legislatures (Ibid:148-153).

Thus, a shift in party power to the Republican Party in the North—which we know from voter referenda was *not* because of the party’s anti-exclusion policies—drove the region away from a racially exclusionary franchise. The same is true with respect to school segregation. Between the 1860s and 1880s more than a dozen northern states adopted laws to ban racial segregation in education. Data on state legislature roll calls by party that are available for nine states (thanks to Kousser 2002) show that Republicans drove this process against Democratic opposition. In these nine states, Republicans cast more than 90 percent of their 1,741 votes in favor of racial integration in education, while more than 80 percent of Democrats’ 1,233 votes went *against* de-segregation (calculated from Ibid:195-198; see Douglas 2005 for complementary narrative evidence). In only one of these states was Republican support less than

80 percent (California, 70/92, or 76%), while in the other eight states Republican support was at least 88 percent—including at least 97 percent in five of these.

*Summary:* Between the antebellum and post-bellum periods, the U.S. North transformed from a region where legal racial exclusion was widespread to one characterized by general racial equality under the law. Most of these changes (the franchise, settlement, testimony) came far too rapidly to be explained by a shift in class relations, while the sharp party difference between Republicans and Democrats concerning these changes in the northern legal structure shows that an elite consensus did not drive the transition. At the same time, the notion that a shift in northern white public opinion in favor of African American rights determined events is directly contradicted by northern whites' continued majority support for a racially exclusionary franchise. The North shifted *away* from legal racial exclusion because it shifted *toward* the Republican Party, a shift that simultaneously undercut the party that supported the continuation of the antebellum racial exclusion regime. The Republican project to extend racial equality under the law was not confined to the North, to be sure, and thus the analysis now shifts to the fate of this project in the South. The above analysis of the rise and fall of legal racial exclusion in the North creates strong expectations that party dynamics would lie behind the failure of the federal government to enforce equal suffrage in the South. Yet, as will be seen, scholars largely have ignored party politics, emphasizing elite bargains and an exclusionary electorate instead.

#### PARTY POWER AND EQUAL SUFFRAGE: US SOUTH, 1860s to 1890s

The Fifteenth Amendment, passed in 1869 and ratified by the requisite number of states the following year, prohibited governments at all levels from using race as a qualification for

voting. By virtue of its passage and ratification, the Fifteenth Amendment nullified the racially exclusionary suffrage laws that prevailed in nearly three-fourths of *northern* states at that time. As discussed, Republicans pushed through this amendment at the federal and state level at the very same time that white voters were rejecting an equal suffrage in referenda in numerous northern states—a confluence of events that is in direct contradiction to the expectations of the electorate model.

Why would the Republican Party take bold steps to advance equal suffrage when a majority of voters in the North, the region responsible for Republicans' national power, rejected this policy? There is plenty of debate in the historical literature regarding Republicans' driving motives, with some emphasizing political ideals (Cox and Cox 1967; Wang 1997) and others political interests (Gillette 1965; Kousser 1992). Political ideals do provide part of the answer but not all of it. Characteristic of their era, Republicans drew a distinction between two kinds of rights, which they respectively called "civil" and "political".<sup>27</sup> Civil rights included rights to freedom of movement, to trial by jury, and to property, including one's own labor. From the time of their party's emergence in the 1850s, Republicans were unified on the importance of civil rights. This was not true for "political" rights, however, including the right to vote. During the Civil War, for example, proposals to eliminate racial qualifications for voting failed in the Republican-dominated Congress, while those aimed at protecting "civil" rights passed (Foner 1970; Wang 1997).<sup>28</sup> Within a few short years, however, political interests drove Republicans to unify behind equal suffrage.

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<sup>27</sup> For an illuminating discussion of the rights typology during the nineteenth century, which encompassed "civil", "political", and "social" rights, see especially Brandwein (2011:60-86). For a rhetorical analysis of the role of this typology in congressional debates in the 1860s and 1870s, see Wilson (2002).

<sup>28</sup> Republicans passed five war-time acts to establish governments in federal territories, and all continued the pre-war practice of restricting the franchise to whites (U.S. Government 1859-1863:173, 211, 241, 655, and 810).

In the US's two-party system, there had always been one party—the Whig and its predecessors (Federalists; National Republicans), then the Republican Party—that supported African American suffrage in various states. But it was only with the Civil War and its aftermath that the more inclusive party gained a *national* political interest in equal suffrage. The enfranchisement of African Americans was the answer to the Republican Party's southern problem. From its origins, the Republican Party had no base in the South, a fact vividly illustrated by the election of 1860, when just 1 in 10,000 voters in the states that practiced slavery cast their ballots for Lincoln (Baker 1983:124). Republican prospects appeared no better in the South's state elections of 1865-1866, which gave former confederate rebels control of the state legislatures, a control that they in turn used to impose "black codes" that undercut many of the civil rights that Republicans both valued and believed to be an outcome of the war (Foner 1988). Exacerbating this southern problem for the Republican Party was an irony of slavery's abolition: the Constitution's three-fifths clause became irrelevant, because there were no more enslaved persons to be counted as just three-fifths of a person for the purpose of apportioning seats in the House of Representatives. This meant that the abolition of slavery automatically increased *the South's* political power in Congress by increasing this region's representation. The Democratic Party's standing in the North further exacerbated Republicans' southern problem. Though clearly the weaker party in the North, Democrats had no "northern problem" comparable to Republicans' southern one. Democrats won more than 40 percent of the northern vote in the presidential election of 1860, and they remained reasonably competitive throughout the war. In the state elections of 1862, for example, Democrats won control of the lower house in New York and of both houses in Illinois and Indiana—which, respectively, were the largest, fourth largest,

and fifth largest states in the North at the time (Voegeli 1970). In the 1864 presidential election, Democrats gained an average of 46.7 percent of the vote in the five largest northern states, which together accounted for 109 of the 233 electoral votes in play during that election (calculated from The American Presidency Project, UCSB <http://www.presidency.ucsb.edu/elections.php>). Republicans recognized the difficulties attendant to their lack of support in the South and Democrats' continued competitiveness in the North. Without African American suffrage, Republican Senator Sumner argued in 1867, the "rebel states ... in alliance with the Northern democracy [i.e. northern wing of the Democratic Party]" would "put us all in peril ..." (quoted in Wang 1997:21).

It also had become clear by 1867 that without African-American suffrage in the South there would be no constitutional guarantee of the 'civil' rights upon which the Republican Party was in full agreement. Ruled by white supremacist governments, the former slave states one after the other in 1866 and early 1867 rejected ratification of the Fourteenth Amendment, which was the Republicans' effort to constitutionalize the guarantees set forth in the Civil Rights Act of 1866 (Foner 1988:269).<sup>29</sup> Thus, driven to gain ratification of the Fourteenth Amendment, and driven to gain a foothold in the South and become a truly national party, instead of a regional one with national power, Republicans enfranchised African Americans in the South through the Reconstruction Act of 1867. In the northern state elections that followed the passage of this legislation, Republicans "lost ground in nearly all" the 20 states in which people went to the polls (Benedict 1972:344). Some Republicans interpreted this erosion of support as punishment for the party's equal suffrage policy in the South. One major Republican strategist argued that "the Negro question lies at the bottom of our reverses . . . We have lost votes in the Free States

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<sup>29</sup> All of the following rejected the 14<sup>th</sup> Amendment: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, Virginia, Delaware, Kentucky, and Maryland (Weeks 1894, p.683).



by daring to be just to the Negro” (quoted in Woodward 1966:6). According to Foner (1988:315), “both parties concluded that the race issue had produced the stunning result.”

Consistent with this interpretation, Republicans in the presidential election of 1868 pledged that, despite the new policy in the South, northern state governments would continue to have the autonomy to decide on their own suffrage qualifications.<sup>30</sup> Yet, immediately after that election, Republicans in Congress set to work crafting the Fifteenth Amendment.<sup>31</sup> Following the amendment’s ratification, Republicans passed five enforcement acts between 1870 and 1872 in order to transform the constitutional provision into a political reality. These acts met with success at first, with African Americans voting in large numbers, and some of them even getting elected to office (Valelly 2004; Foner 1988). Over the long term, however, the effort to enforce African American voting rights in the South failed, and by the 1890s southern white supremacists had effectively disfranchised nearly all African Americans in the South (Kousser 1974). The Fifteenth Amendment and enforcement legislation of the late 1860s and early 1870s, therefore, were clearly insufficient to guarantee equal suffrage in the South. A multitude of factors help explain this failure, including southern fraud, intimidation, violence, and public opinion *in the South* (not the North, as we will show) (Perman 1984). Another determinant of equal suffrage’s failure was the lack of effective federal action in the face of this fraud and intimidation. Why did the federal government do nothing to improve the enforcement laws,

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<sup>30</sup> The platform language, referring to the First Reconstruction Act, was as follows: “The guaranty by Congress of equal suffrage to all loyal men at the South was demanded by every consideration of public safety, of gratitude, and of justice, and must be maintained; *while the question of suffrage in all the loyal States properly belongs to the people of those States*” (quoted in Johnson 1978:39—emphasis added).

<sup>31</sup> But in debates over the 15<sup>th</sup> Amendment, it was clear that the amoral instrumentalism sometimes wrongly attributed to all Republicans no doubt applied to some—indicating political interests had to join ideal interests to make the 15<sup>th</sup> Amendment happen. Here is an example from a Republican on the Senate floor in 1868: “[There] are reasons for giving the ballot to the black man of the South which do not exist for giving the ballot to the Chinaman of California, or the black man in Ohio or anywhere else” (quoted in Aarim-Heriot 2003, p.84). So much for Blum’s (2005) characterization of Reconstruction as a general period of “radical civic nationalism.”

which by the late 1870s (Foner 1988) were widely recognized to be insufficient for the task of guaranteeing African-American voting rights?<sup>32</sup>

*Elite Model:* For elite theorists, this lack of federal legislative action stemmed from a conscious policy of abandonment, which itself was prompted by the perceived impossibility of overcoming southern white resistance to equal rights. In order to restore political unity, rebuild the nation, and promote economic development, state elites realized the necessity of overcoming the “intra-white conflict” that efforts to promote voting rights produced: “the North faced the strategic imperative to abandon its commitment to blacks in favor of encouraging white reconciliation and peace” (Marx 1998:133; Woodward 1974). This inter-elite bargain became solidified in what history books have enshrined as the Compromise of 1877 (but see Peskin 1973), which settled the contested election of 1876 (see Foner 1988 for details). In exchange for the presidency, Republicans agreed to allow the white South to settle the question of African American political rights on its own terms, elite theorists argue, a settlement that ended in Black political exclusion.

The facts of the post-1877 period do not fit this explanation, however. While key Republicans did offer ‘conciliation’ toward the South in efforts to resolve the 1876 election controversy, this offer was conditional on southern white respect for the Fifteenth Amendment—which helps explain why a staunch equality advocate like Frederick Douglass supported the conciliation policy (Wang 1997:181). But rampant fraud and abuses in the 1878 election made it clear that southern whites had no intention of upholding their end of the bargain. Republicans spoke in a “united voice” to withdraw conciliation (Wang 1997:163), including the policy’s

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<sup>32</sup> The following discussion does not address a class model, because no scholar has put forth such an interpretation, and I cannot conceive of a reasonably plausible application of this model.

greatest Republican beneficiary, President Hayes, who informed a major D.C. newspaper that “the experiment was a failure” (quoted in Hirshson 1962:49). In a most non-conciliatory fashion, the 1880 Republican national platform invoked the “dangers of a solid south” and the “terrorism” and “violence” and “fraud” being perpetrated there (quoted in Porter and Johnson 1970:62); twelve of the party’s 19 campaign textbook chapters “dealt with the sectional [i.e. southern] question” (Calhoun 2006:179). The 1884 platform “denounce[d] the fraud and violence practiced by the Democracy [i.e. Democratic Party] in Southern States ...” (quoted in Ibid.:74).

Republicans’ post-1877 non-conciliatory stance toward the South’s violation of equal suffrage was not confined to rhetoric. In the 12 years that Republicans controlled the presidency between 1877 and 1892, federal prosecutors attempted over 1,000 voting rights prosecutions in the South, nearly two per week (calculated from Wang 1997:300). Republicans also sought, with success, to strengthen the constitutional basis for protecting African American voting in the South, which is contrary to the view of some elite theorists who argue that the Republican Party’s legislative and enforcement abandonment of African Americans went hand in hand with a judicial abandonment fueled by decisions from a Supreme Court comprised of Republican appointees (e.g. Woodward 1974, 1951).<sup>33</sup> As construed in the mid-1870s by the Supreme Court in *Reese* and *Cruikshank*, the Fifteenth Amendment as a basis for enforcing equal suffrage did entail an important limitation: enforcement and legislation based on this amendment could address racially motivated actions that infringed upon citizens’ right to vote, but it could not address political violence and corruption *per se*.<sup>34</sup> While enforcement and legislative efforts

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<sup>33</sup> For a range of works that posit judicial abandonment of civil rights in the 1870s, see the citations in Katz (2003:2347n36) and Brandwein (2011: 4-6).

<sup>34</sup> *Cruikshank* threw out federal indictments because they did not explicitly allege racial motivation (*United States v. Cruikshank* 92 U.S. 542 [1875]), and *Reese* judged sections 3 and 4 of the Enforcement Act of 1870 as “insufficient” on the grounds that these sections did not explicitly state racial motivation (*United States v. Reese* 92

based on the Fifteenth Amendment had the advantage of reaching both private and state action (unlike the Fourteenth Amendment, which was construed by the Court to apply only to state actions), and in any kind of elections (federal, state, local), this amendment did not provide a basis for addressing the basic problems of electoral fraud, corruption, and violence, unless the federal government could demonstrate that these actions were racially motivated.<sup>35</sup> Republicans certainly were cognizant of this limitation (Goldman 2001 [1990]:62). But as a clear indication that they were not seeking conciliation with the white South on the basis of the regionalization of the race question, Republicans did not ignore this limitation of the federal enforcement powers entailed by the Fifteenth Amendment, nor did they simply lament it; instead, they tried to address it.

When the *Reese* decision became available to the public in 1876, government officials were uncertain of its implications. But instead of allowing this uncertainty to be a source of paralysis, Republican Attorney General Taft issued a widely circulated memorandum that identified Article I, Section 4 of the Constitution as a basis for federal control of federal elections

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U.S. 214 [1875]) (for discussions of these cases, see Goldman 2001; Katz 2003; Brandwein 2011). Within a few days of the *Reese* decision, Republicans in the Senate passed legislation to remedy it, but it stalled in the Democrat-controlled House (Brandwein 2011:126). According to Goldman (2001:124), most historians until the 1950s accepted the view that these two decisions effectively undercut any hope of enforcing equal suffrage in the South. However, since that time a wide range of scholars have shown this view to be false (Benedict 1978; Fairman 1987: Volume VII, Chapter 6; Wang 1997; Goldman 2001: 105-106; Katz 2003; Klarman 2004; Valelly 2004; Brandwein 2011: 122-126).

<sup>35</sup> The Supreme Court's position on whether the Fifteenth Amendment gave the federal government the power to reach private action (e.g. by the Ku Klux Klan) changed over time, which has created plenty of confusion. The Waite Court of the 1870s and 1880s said that it did (see sources in previous note, and in particular Brandwein 2007:369-370), while later in 1903 the Court construed the amendment very narrowly to apply only to the type of laws made by states (i.e. such laws could not explicitly exclude people from voting on the basis of race, color, or previous condition of servitude) (*James v. Bowman*, 190 U.S. 127 [1903]; see Benedict 1978:78 for a discussion of this case's jurisprudential significance). As Brandwein (2007) points out, even prominent scholars ignore this difference between the Waite Court (1874-1888) and later ones—e.g. Laurence Tribe in his widely used textbook, *American Constitutional Law* (see Brandwein 2007:366n34). As Klarman (2004:37) argues, if the 1903 *Bowman* decision had been decided on precedent (i.e. on the basis of the Waite Court reasoning), it would have turned out differently. Though the issues are not as clear cut as in the case of the Fifteenth Amendment jurisprudence of the 1870s and 1880s, there is also a growing literature arguing that Court decisions on the Fourteenth Amendment during these decades were not as narrow and constraining of federal power as previously supposed (see esp. Brandwein 2011:28-59 and 87-128, but also Aynes 1995; Katz 2003; Ross 2003; Brandwein 2007; Goldstein 2007).

(Goldman 2001 [1990]:41; Brandwein 2011:130-139).<sup>36</sup> This, to be sure, was before the 1876 election and therefore before the supposed turning point identified by Marx (1998) and other elite theorists. But Republicans did not let this drop after they won the presidency. In the aftermath of the 1878 election, Republicans in the Senate launched an investigation—which itself was made possible only because Republicans won a strict party line vote—of the election outrages in South Carolina and Louisiana (Goldman 2001 [1990]:69). This investigation yielded a nearly 700-page report. In a section titled “Duty of the National Government”, Republicans emphasized the Article I, Section 4 rationale for federal control of House elections (U.S. Senate 1879: XLVI). In the same year this report was issued, the Supreme Court unanimously sanctioned these Article I, Section 4 powers in *Ex parte Siebold*.<sup>37</sup> Writing for the majority, Justice Bradley argued that the federal government’s jurisdiction over federal elections gave it the power to curb violence, fraud, and corruption in order to protect the purity of elections: “The counsel for the petitioners concede that *Congress may, if it sees fit, assume the entire control and regulation of the election of representatives*. This would necessarily involve [several specific tasks listed] ... and *every other matter* relating to the subject. *Is it possible that Congress could not, in that case, provide for keeping the peace at such elections, and for arresting and punishing*

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<sup>36</sup> As Brandwein’s (2011:16-17) careful research shows, the first statement of the Article I, Section 4 rationale came in Justice Bradley’s Circuit Court opinion for *Cruikshank* in 1874. It was also in this opinion that the Fifteenth Amendment was first explicitly exempted from the state action doctrine (i.e., Justice Bradley said it reached private as well as state action). As late as 1900 and 1901, federal district courts continued to exempt the Fifteenth Amendment from state action doctrine on this basis of Bradley’s 1874 circuit opinion (Ibid:15-17). Circuit court opinions, it should be noted, were much more important in the late nineteenth century, as evidenced by the fact that Bradley’s circuit court opinion in *Cruikshank* was cited by at least 10 Supreme Court decisions between 1882 and 1907 “as the authoritative statement in *Cruikshank*” (Brandwein 2011:93 and 93n49).

<sup>37</sup> This was *not* because the Court was predominantly comprised of holdovers from the pre-1876 era who had not received the elite bargain memo regarding the desirability of abandoning equal suffrage in the South: of the nine justices who voted unanimously in 1879, five had ascended to the Court since 1876 (Goldman 2001:115).

*those guilty of breaking it? If it could not, its power would be but a shadow and a name.*”<sup>38</sup> Five years later, the Court in *Yarbrough* made this Article I, Section 4 power to fight electoral violence and corruption perfectly clear: “If this government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the general government, it [the federal government] must have the power to protect the elections on which its existence depends from violence and corruption.”<sup>39</sup> Also in the *Yarbrough* decision, the Supreme Court explicitly held that private (not just state) actions were covered under the Fifteenth Amendment (see Brandwein 2011:149).

Thus, rather than Republican politicians and Republican-appointed Supreme Court justices collaborating to undermine a federal role in equal suffrage enforcement (or working at cross purposes, for that matter), Republicans *after 1877* pursued a constitutional basis for broader federal powers in the South, and the Supreme Court, comprised largely of Republican appointees, provided affirming decisions. As Benedict (1978:74) summarizes, “the Waite Court [1874-1888] established Congress’s power to protect voting rights against private infringement in State and local [and federal] elections in any case where the offense was racially motivated [based on the Fifteenth Amendment], and on any grounds whatever in federal elections [based on Article I, Section 4 powers]” (see also Katz 2003; Brandwein 2007; and especially Brandwein

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<sup>38</sup> *Ex Parte Siebold* 100 U.S. 371 (1879), 396—my emphasis; from <http://supreme.justia.com/us/100/371/case.html> (accessed March 31, 2009).

<sup>39</sup> *Ex Parte Yarbrough* 110 U.S. 651 (1884), 657-658; from <http://supreme.justia.com/us/110/651/case.html> (accessed 31 March 2009). Here is the above quotation in full context: “That a government whose essential character is republican, whose executive head and legislative body are both elective, whose numerous and powerful branch of the legislature is elected by the people directly, has no power by appropriate laws to secure this election from the influence of violence, of corruption, and of fraud, is a proposition so startling as to arrest attention and demand the gravest consideration. If this government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the general government, it must have the power to protect the elections on which its existence depends from violence and corruption. If it has not this power, it is left helpless before the two great natural and historical enemies of all republics, open violence and insidious corruption.”

2011:152).<sup>40</sup> Yet, if the federal government was to use this power effectively in pursuit of equal suffrage, it would need stronger weapons than the existing legislative apparatus provided—something that it in fact did not receive for another century. As the above discussion makes clear, the source of this federal legislative inaction in the 1870s and 1880s must be sought somewhere other than an enduring elite bargain arranged by political or judicial actors, or both.

*Electorate Model:* According to electorate theorists, federal legislative inaction after the mid-1870s stemmed from a Republican Party judgment regarding the wishes of the northern white electorate, the core of the party's support. The Republican Party relinquished efforts to use the federal government for the enforcement of equal suffrage in the South, including by adopting more forceful legislation, because Republicans perceived that white public opinion in the North was hostile to these efforts (Frymer 1999; Klinkner with Smith 1999; Smith 1997). Republicans determined "that defending the African American right to vote in the South was simply too costly for vote gathering efforts in the North" (Frymer 1999:76).

To be sure, a number of Republicans expressed concerns about the effects the party's equal suffrage efforts were having on *southern* white public opinion; some argued that Republicans had a chance of capturing a significant share of the southern white electorate if only the party would relinquish these efforts (Abbott 1986; Wang 1997; Calhoun 2006). But these voices did not prevail, as evidenced by the platform language quoted above. It did not predominate among *southern* Republicans either, which is why the Republican platform of 1884 explicitly pledged to "the Republicans of the South" that the national party would "promote the

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<sup>40</sup> This explains why in the context of the Republican Party's effort to craft stronger enforcement legislation in 1889-90 (on this, more below), President Harrison "felt on solid constitutional ground with federal elections" (Orren 2004:256).

passage of such legislation as will secure to every citizen, of whatever race and color, the full and complete recognition, possession and exercise of all civil and political rights” (quoted in Porter and Johnson 1970:74).

As for the northern white electorate, making pledges like this in the national platform during a presidential election year indicates that the Republican Party did *not* fear that advancing equal suffrage in the South unacceptably eroded the party’s appeal in the North. Moreover, the 1884 platform was not an anomaly; similar pledges were made in 1880 and 1888, and in fact the pledge for stronger legislation was the first plank in the 1888 platform. This fear was also notably absent from President Garfield’s inaugural address in 1881, “almost half” of which was devoted “to issues concerning black rights and the South” (Wang 1997:190-194). These were not the words of a Republican politician tucked away safely in some pro-equality district in Massachusetts; these were the words of the President, the party’s most prominent national politician, giving an address to the entire country—and indeed an address that is probably any president’s most observed one (i.e. the first inaugural)—and making clear his party’s support for equal suffrage in the South.

The notion that federal legislative inaction was rooted in Republican abandonment due to fear of hostile public opinion on the part of the northern white electorate is also contradicted by events involving the legislative and executive branches during the Congressional session that ran from 1879 to 1881. During this session, Democrats controlled the House and the Senate for the first time since before the Civil War, and they attempted to use this power to repeal major parts of the voting rights enforcement legislation earlier passed by Republicans. In various riders attached to appropriations bills, Democrats attempted “to reduce the number and power of federal elections supervisors, deputy supervisors, and marshals”; to remove “a number of



important powers of federal enforcement officers, including the power to arrest, inspect poll records, examine voter eligibility, and participate in counting the ballot”; and to disallow the use of federal money for enforcement officer salaries and expenses (Wang 1997:171-173). The Republican response was the opposite of what one would expect had the party been fleeing from equal suffrage enforcement in response to perceived hostility on the part of the northern white electorate. President Hayes vetoed all seven of these attempts to undermine the enforcement legislation, issuing lengthy veto messages supporting equal suffrage on each occasion (Calhoun 2006:161-166). Had there been a non-trivial amount of Republicans (about 25 percent in each chamber) interested in abandoning equal rights in the South, the Democrats could have overridden the vetoes; Democrats were highly united in the repeal effort, with 99.3 percent of their 753 votes going for repeal. But the overwhelming majority of Republicans did not defect: on these seven roll calls, 98.8 percent of Republicans’ 592 votes were cast in defense of the enforcement legislation, and therefore Hayes’ vetoes were effective (calculated from Wang 1997:168-177). Moreover, rather than attempting to obscure this conflict and their role in maintaining existing enforcement legislation, Republicans in the next campaign emphasized these events, devoting two chapters of their campaign textbook exclusively to the conflict (Republican Congressional Committee 1880).

Finally, the notion that fear of white opinion in the North deterred Republicans from pushing for better laws to pursue equal suffrage in the South is contradicted by events in the 51<sup>st</sup> Congress (1889 to 1891). During that session, Republicans completely transformed the rules of the House of Representatives partly—and quite explicitly—in order to pass voting enforcement legislation, and they very narrowly missed doing the same in the Senate, as Valelly (2009) has painstakingly documented (on this, more below). In short, the source of federal legislative

inaction after the mid-1870s must be sought somewhere other than a Republican abandonment spurred by the perception of a hostile northern white electorate.<sup>41</sup>

*Party Model:* The party model suggests an explanation that is both more easily observed in the post-bellum period and rooted in long-run dynamics reaching back to the antebellum period. A major holdover from the antebellum period was the Democratic Party's inter-regional alliance for white supremacy. The same competitive logic that led Republicans to enfranchise African Americans drove Democrats to oppose the successful implementation of this policy. Without political dominance in the South, Democrats had little chance of controlling the federal government. The implication for equal suffrage was clear: "The [Democratic] party needed white control of the South as a stepping stone to national power, and [thus] the Negro vote ... [had] to be neutralized somehow" (Grossman 1976:27). This competitive imperative ensured that Democrats from any part of the country would strenuously oppose any effort to strengthen equal suffrage enforcement in the South.

In light of the continuation of this white supremacist alliance, the reason why the federal government failed to act when it became clear that stronger laws were needed is more

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<sup>41</sup> A different electorate model hypothesis, directly contrary to the one assessed in this section, would be that preferences of the northern white electorate for racial equality in voting are what drove the Republican Party to continue its quest for equal suffrage in the South. If true, this might mean that the Republicans' work of political articulation to downplay racial cleavages in favor of racial equality in voting—recall that electoral majorities across the northern states explicitly rejected equal suffrage in the late 1860s—worked so well that the northern electorate came to demand what not very long ago they rejected. Thus far no one in the literature has advanced this hypothesis, and I have not encountered any pattern of evidence to suggest that it should be advanced. Nevertheless, the change between the late 1860s and the decades thereafter is notable: While in the late 1860s, many Republicans expressed concerns that support for Black political equality could undermine their electoral base in the North, this, as I have been arguing in the present section, was not a concern in the decades that followed. This suggests a degree of acceptance of equal suffrage policies on the part of the northern electorate, which itself could have been a product of the Republican Party's articulation of a new social vision based on Black political equality (in line with the political articulation mechanism). But it does not follow that the northern electorate developed "decisive" preferences that in turn drove Republican Party policy. I thank an anonymous reviewer of a journal article based on this chapter for alerting me to the desirability of making this point.

straightforward than either elite or electorate models acknowledge: the Democratic Party partially regained federal power in the mid-1870s and maintained it for 14 years. The Democratic Party's effort to eviscerate the voting enforcement legislation during the 1879-1881 session (discussed above) was not an anomaly: "From 1866 to the turn of the century, not a *single* Democrat in the House or Senate *ever* voted in favor of a piece of civil rights legislation" (Kousser 1992:149).<sup>42</sup> Given Democrats' adamant pro-exclusion stance, a necessary condition for stronger federal laws to pursue equal suffrage in the South was the continuation of Republicans' unitary control of the federal government; without control of the House, Senate, and Presidency—something that Republicans possessed between 1861 and 1874 when major anti-exclusion laws and constitutional amendments were enacted—it was impossible for Republicans to pass strengthening legislation. Logically speaking, the absence of a necessary condition for an outcome (in this case, strengthening legislation) is sufficient to preclude that outcome (Mahoney, Kimball, and Koivu 2009). The Democratic Party's partial control of the federal government between 1875 and 1888, therefore, was sufficient to ensure that the federal government could not take further action to make good on the promise of the Fifteenth Amendment.

Why did the Democratic Party regain partial control over the federal government in 1874 and sustain it for more than a decade? If the Democratic Party's resurgence was driven by the northern white electorate, then a more direct version of the electorate model might apply (as King and Smith 2008 suggest): perhaps the Republican Party lost unitary control of the federal government, because northern white voters punished the party for its pro-equality efforts in the

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<sup>42</sup> Examining roll calls for the same legislation as Kousser (1992), Wang (1997:46-47, 65-66, and 81-82) reports only marginally different results: five pro-rights votes by Democrats across the entire period.

South. An examination of the parties' electoral fortunes by region shows, however, that this was not the case. Instead, Democratic victories *in the South* (i.e. slave states on the eve of the Civil War) accounted for almost the entirety of this party's resurgence. These victories in the South, in turn, derived partly from popular support for the Democratic Party by southern whites but also from Democrats' use of fraud, intimidation, and sometimes violence to control southern ballot boxes, particularly in the 1874 election and thereafter (Perman 1984; Foner 1988). That the Democratic resurgence in the mid-1870s was almost entirely a southern affair is evident when one examines regional electoral patterns related to the three major institutions of law-making, the Presidency, the Senate, and the House of Representatives.

In the first six *presidential* elections after the war (1868-1888), Democrats won only once, in 1884. With a Democratic president, improving federal efforts to support equal suffrage in the South through legislation was out of the question. Democrats' victory in 1884, however, was not due to a shift in the northern electorate away from the Republican Party (what follows is summarized in Table 2.5). First, Republicans lost four northern states in the 1884 election, all by less than 2 percentage points; similarly, the party lost three northern states in both 1868 and 1880, and four of them in 1876. Second, Republicans' four losses in 1884 did *not* mark the emergence of Democratic competitiveness in states where Republicans had previously dominated. This is clear when one examines how Republicans fared in earlier elections in the states that were lost in 1884: In the four elections between 1868 and 1880, Republicans had lost New Jersey three times, New York twice, and Connecticut and Indiana each once; moreover, Republican victories in these states were never by more than 3 points, save for the 1872 election (an election that itself stands as a strong rebuttal of the northerners-punish-Republicans thesis—see the discussion of House election variability below).

The *continuity* in the competitive environment faced by Republicans in presidential elections between 1868 and 1888 also can be captured by summing for each election the northern states in which any of the following was true: (a) Republicans lost; (b) Republicans won by less than two points; (c) Republicans won by more than two points but no more than four. Again, 1872 is an exception, but the other years show marked continuity: 1868 ( $a + b + c = 6$ ); 1872 (0); 1876 (10); 1880 (7); 1884 (6); and 1888 (8). In all other northern states, Republicans won by more than 4 points.

Overall, then, Republicans generally dominated the North in presidential elections during this period, consistently winning more than 80 percent of the nearly two dozen states (21 total in 1868 and 1872; 22 thereafter). At the same time, Democrats also were consistently competitive in a few key states, the most important of which was New York, whose three dozen electoral votes were 10 more than the next largest state. The upshot is that the Democratic Party competitiveness in the North was *consistent but limited*; there was not a general shift toward the Democratic Party in rejection of the Republican Party's southern policies. Further, this consistent but limited Democratic competitiveness in the North meant that Republicans continued to have a vital interest in supporting equal suffrage in the South. Democrats' consistent competitiveness in large states such as Indiana and New York meant that Republicans could not afford for the South to be solidly Democratic—and African American voting in that region was the ingredient necessary for eroding that solidity (Wang 1997; Valelly 2004).<sup>43</sup>

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<sup>43</sup> This problem existed in the minds of historical actors, not just later analysts. Campaigning in Ohio in 1879, soon-to-be Republican President James A. Garfield explicitly identified the problem of the 'solid South' for the G.O.P. He said that if the use of fraud, intimidation, and violence succeeded in producing a uniformly solid South, then the Democratic Party would be in the position of needing just 37 electoral votes in the North to win the presidency (Hinsdale 1880:140). New York alone had 35 electoral votes at this time.

Table 2.5: Republican Presidential Election Performance in Northern States, 1868-1888

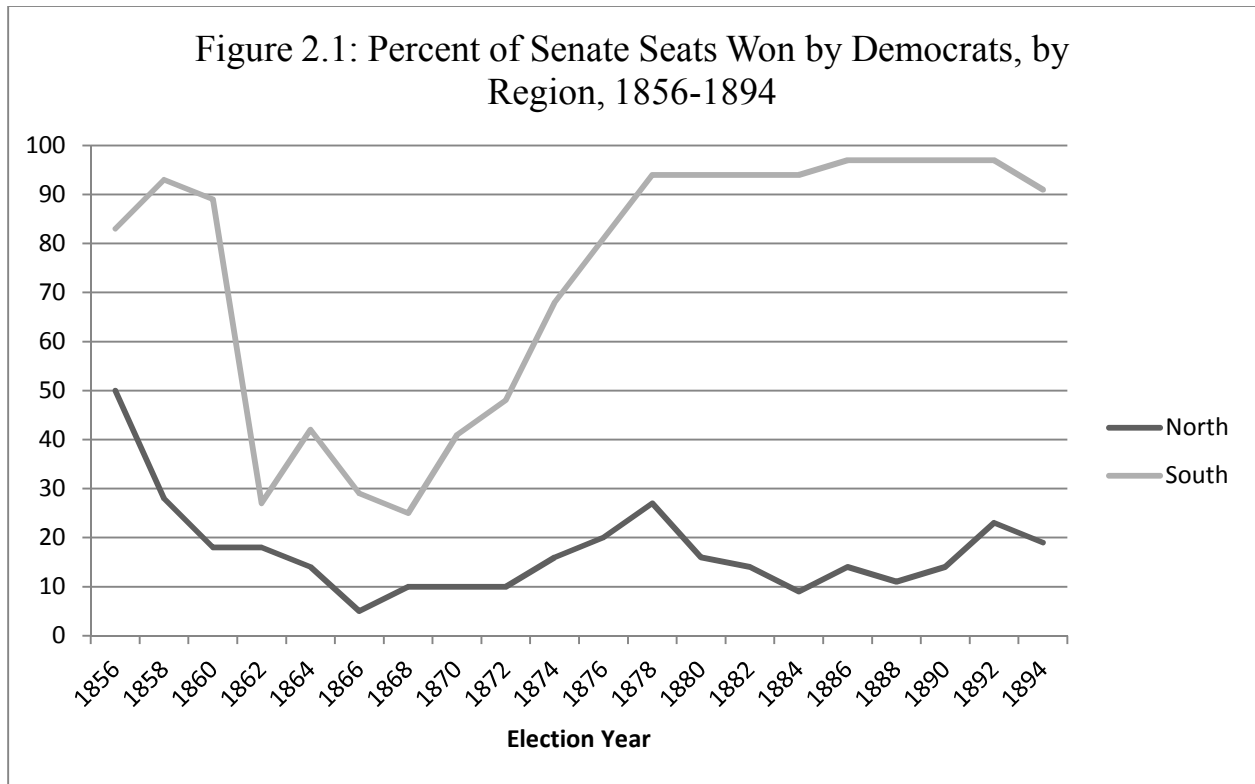
	1868	1872	1876	1880	1884	1888
# of States	21	21	22	22	22	22
# GOP wins	18	21	18	19	18	20
# won by $\leq 2$ points	1	0	2	4	1	2
# won by $> 2$ but $\leq 4$	2	0	4	0	1	4
# won by $> 4$	15	21	12	15	16	14

Source: The American Presidency Project, University of California, Santa Barbara. <http://www.presidency.ucsb.edu/elections.php> (accessed 15 March 2011).

As with the Presidency, any power that Democrats gained in *the Senate* was driven largely by developments in the South—not by a shift away from the Republican Party on the part of the northern electorate. Also like the Presidency, Republicans generally continued to control the Senate in the period after 1874 and through the 1880s. There were two exceptions. One was the 1879-1881 session (see Figure 2.1), when Democrats had majority control of the Senate. The second exception was the very next session (1881-1883), when Republicans in fact controlled the Senate but only because a third party senator from Virginia (Mahoney from the Readjuster Party) agreed to caucus with Republicans and break the tie between the two major parties. While Democrats did not have technical control over the Senate during this session, the Readjuster Party was an offshoot of the Democratic Party that supported African American suffrage but not, critically, federal intervention (Pearson 1916). Therefore, Democrats had the majority on suffrage policies.

Nevertheless, Democrats did not gain power in the Senate during these two sessions because of a major shift in the northern electorate: Democrats controlled just 27 percent of

northern Senate seats in the 46<sup>th</sup> Congress (1879-1881) and only 16 percent in the 47<sup>th</sup> session (1881-1883). The 27 percent figure is high only in a relative sense: Only twice between 1860 and 1890 did Democrats occupy 20 percent or more of the North’s Senate seats (the 1877-1879 session was the other time) (see Figure 2.1). Instead, the party’s virtual monopoly in the South is what drove Democrats to power in these two sessions: In the 44<sup>th</sup> Session (1875-1877), Democrats gained a majority of southern Senate seats for the first time since before the Civil War, and by the 46<sup>th</sup> Session (1879-1881) they occupied 30 of the region’s 32 Senate seats—which was the *minimum* number of southern Democratic senate seats for the remainder of the period under analysis.



Source: Martis (1989)

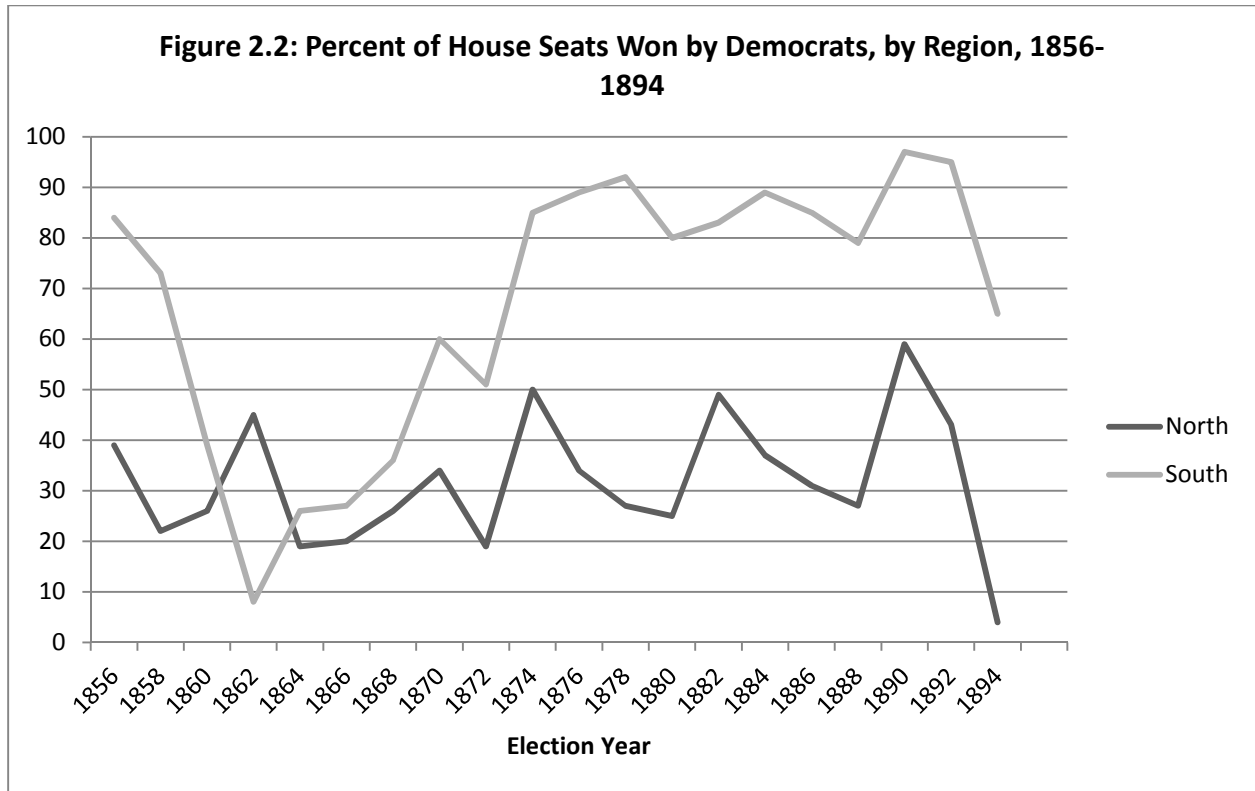
If lawmaking power resided only in the Senate and the Presidency, then Democrats would have had a veto over strengthened suffrage laws in only four of the seven congressional sessions between 1875 and 1889. It was in the *House of Representatives*, however, that Democrats had their greatest power in this period. In fact, Democratic control of the House was so consistent that it made any pro-exclusion veto powers held by the party in the Senate and the Presidency redundant in every session but one: Democrats controlled the House continuously between 1875 and 1889, except for the 1881 to 1883 session. Did *this* power derive from a shift in the northern electorate away from the Republican Party, possibly as punishment for its equal suffrage policies in the South? Once again, the answer is no. The same fraud, intimidation, violence, and popular support that pushed the Democratic Party to a near perfect monopoly in the South with respect to the Senate and presidential voting had a similar effect on southern representation in the House of Representatives. In the 1874 elections, Democrats captured 85 percent of the southern House seats. This was a more than 35-point increase over the average from the 1868-1872 elections, and it was a gain not to be reversed during Democrats' 14-year veto period: In elections between 1874 and 1886, Democrats on average won 86 percent of southern House seats, with a minimum of 80 percent (see Figure 2.2). With this much control of southern House seats, Democrats needed very little help in the North to control the House of Representatives—only about 30 percent of the seats (as pointed out by Ware 2006 and confirmed by the author). The 1886 elections illustrate this dynamic: Although Democrats won just 64 of 138 *northern* seats (31 percent), they secured 103 of the 121 southern seats (85 percent), giving the party a 51-percent majority in the House for the 1887-1889 session. Democrats' average level of support in the North for the 1874-1886 election period was not much higher than this minimum requirement for control of the House, standing at just 36 percent.



Moreover, this average level of support for Democrats in the northern House elections did not mark a significant departure from the war years and the immediate aftermath—which further shows that Democrats’ national resurgence in the mid-1870s was *not* driven by the northern electorate’s rejection of Republicans because of their support for equal suffrage. Between 1860 and 1872, Democrats won an average of 27 percent of northern House seats.<sup>44</sup> Once again, therefore, the story of Democratic resurgence starting in the mid-1870s is set in the South; dramatic increases there in combination with a low but relatively constant level of support in the North gave Democrats veto power over Republican attempts to strengthen the federal effort to eliminate racial exclusion in southern elections.

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<sup>44</sup> It also notable that some of this 9-point difference can be accounted for by the fact that the first period (1860-1872) contains four presidential election years and three midterms, while the second one (1874-1886) contains three presidential elections and four midterms. As Ware (2006) points out for the late nineteenth century, and as continues to be true into the twenty-first, the party that controls the presidency tends to lose House seats in the midterm elections. For all but one session, this meant the Republican Party. This difference mattered: If one shifts the analysis to a comparison of 1862-1874 and 1876-1888, so that the first period has more midterm elections, then the gap between the two periods is just three points instead of nine (30 vs. 33 percent). To be sure, this still indicates a slight uptick in support for Democrats but hardly a significant one. Moreover, the long view reinforces the story of low but consistent support for Democrats in northern House elections. Starting with the 1856 election and ending with the 1894 one, and examining four session increments such that each set of four contains two midterms and two presidential election years (e.g 1856-1862, 1864-1870, etc.), the range of support for Democrats in northern House elections is fairly compressed, with a minimum of 25 percent (1864-1870) and a maximum of 36 percent (1880-1886); all three of the other periods (1856-1862, 1872-1878, and 1888-1894) are identical, with 33 percent for Democrats.



Source: Martis (1989)

To be sure, despite general continuity, there was more election-to-election variability in northern support for Democrats in House elections as compared to the Presidency and the Senate. Is this variability consistent with the hypothesis that the northern white electorate punished Republicans for the party’s support of racial equality? Recall that in answering this question—in interpreting election outcomes—my only goal is to decide whether, in relation to this hypothesis, there is enough evidence to “reject the null”; I am not trying to explain the election outcomes, much less show that northern white voters cast their votes against racial exclusion. As the following discussion of specific elections shows, there is *some* evidence in favor of this backlash interpretation, but also substantial evidence against it; in short, there is insufficient warrant for

rejecting the null hypothesis that voters in northern House elections did *not* punish Republicans for supporting equal suffrage.

(1) Election of 1874: Democrats won 50 percent of the northern seats. This is often cited as *the* election that signaled to Republicans that northern whites would no longer support equal suffrage policies in the South. Three major kinds of evidence question this interpretation: (1) Just two years before, the 1872 election was practically a referendum on these policies, because a faction of the Republicans (the Liberal Republicans) broke from the party in large part due to these policies and allied with Democrats to capture the presidency. Yet, their presidential candidate lost every northern state by more than four points, and Democrats won less than 20 percent of northern House seats. (2) Democratic success in the North returned to its normally low level in the 1876 election (34%), even though Republicans passed the Civil Rights Act of 1875 (which banned racial discrimination in hotels, restaurants, etc.) in the last session of the 1873-1875 Congress. (3) Many historians (e.g. Foner 1988) think the economic depression that took hold in 1873 was the most important cause of Republicans' 1874 defeats.<sup>45</sup>

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<sup>45</sup> Citing the decline in prosecutions after 1873 (see Wang 1997:300), one reader of this chapter suggested that the tough economic times after this year led the northern white electorate to demand a shift of funds away from voting rights enforcement in the South, which in turn aided the Democratic resurgence in the South. However, on a per population basis, spending on election enforcement was generally higher after 1872-1874, both in general and in the South (James and Lawson 1999:125-126; Burke 1970:27).

(2) Elections of 1878 and 1880: Democrats won 27 and 25 percent of northern seats in these two elections. Comparing the first to the second election, Republicans shifted from a conciliation policy toward the South to an abandonment of that conciliation in the face of widespread fraud, etc, in the South in the 1878 elections (see “elite model” discussion above). Moreover, the 1880 election happened after Republicans acted in Congress with near unanimity to thwart Democratic efforts to repeal the voting enforcement legislation (see “electorate model” discussion above). Despite these pro-equality actions on the part of Republicans between the elections, Democrats did slightly worse in 1880. That Democrats did poorly in both elections suggests that northern voters were generally indifferent about conciliation.

(3) Election of 1882: Democrats won 49 percent of northern House seats in this year, nearly double what they had managed in the previous election. While this increase in Democrats’ northern fortunes is notable, there is no evidence that it was linked to Republicans’ equal suffrage policies. Between the 1880 and 1882 election, the balance of power in the Senate prevented Republicans from taking any action related to equal suffrage in the South. There was no economic panic or depression at the time, but many Republicans attributed their party’s 1882 losses to their failure to enact civil service reform, a failure they then remedied during the lame duck session in January 1883.

(4) Election of 1890: Democrats won 59 percent of northern House seats. Though it comes much later than the direct electorate hypothesis suggests, the 1890 election results are the strongest *prima facie* evidence that the northern electorate punished Republicans for supporting equal suffrage in the South. This is because the Republican-led House in 1890 passed a bill to strengthen federal control of elections. While this sequence is consistent with the electorate hypothesis, there are three major pieces of evidence that erode the plausibility of this interpretation. (1) Republicans' lead plank in the 1888 campaign was to pass the legislation that the House then passed—and Republicans won not only the Presidency but also, by a wide margin, the House of Representatives. (2) Like in 1874, the country was in the grip of an economic panic at the time of the 1890 election. (3) Just a couple of years later, Democrats gained control of the House, Senate, and Presidency and used this power to repeal major parts of the enforcement laws—and then won *just four percent* of the northern House seats in the next election (1894); notably, the country was in the grip of another economic panic during the 1894 election.

How the Democrats' 14-year veto power came to an end also contradicts the hypothesis that northern white voters punished the Republican Party for trying to advance equal suffrage in the South: In the 1888 campaign, Republicans *led off* their policy platform with a pledge to pass “effective legislation” to guarantee equal suffrage in the face of Democrats’ “suppression of the ballot by a criminal nullification of the Constitution and laws of the United States,” and Republicans emerged from that election in control of the Presidency, the House, and the Senate.

Moreover, leading with this pledge and accusing one's opponents of "criminal nullification" suggests neither that Republicans feared northern voters (electorate model) nor that the story of equal suffrage ended at the federal level with a mid-1870s bargain struck by economic and political elites (elite model).

These events do make sense in terms of the party model, however, and not only because of the *consequences* of the election, which I will detail shortly. They also conform to the party model in two other ways. First, the Republican platform shows that the party continued to hold fast to the policy of equal suffrage, consistent with Republicans' interest in becoming a truly national party. Second, the evidence is scant that they won the election because of their advocacy of equal suffrage. Republicans had been advocating strengthened election laws since 1880 but without winning unitary control of the government. Moreover, though they did well in the North in 1888, they did not do uniquely well: They held Democrats to 27 percent of northern House seats, something that also happened in two of the seven sessions that Democrats held veto power (and in four of the sessions, Democrats won no more than 34 percent). Republicans did do better in the South in 1888 than they had done in some time; this was the only election between 1874 and 1892 that Democrats' share of southern House seats dipped below 80 percent, though just barely (to 79 percent). This was no upsurge—Republicans increased their share of the South's 121 House seats from 16 to 25—and there is no evidence that equal suffrage advocacy is what made the difference. The party model's duopoly mechanism sensitizes the analysis to the role that very small shifts in voting can have in making possible large shifts in policy, and the 1888 election is one significant illustration.

But were the *consequences* of the election outcome what an application of the party model to post-bellum federal policy would predict? Given Republicans' unitary control of the

federal government, one would expect significant activity related to equal suffrage policy in the 1889-1891 congressional session. As we are about to see, the actual historical events conform closely to these expectations even though stronger enforcement legislation ultimately did not make it into law.

For the first time since the lame duck session of 1875—the last time that Republicans had unitary control of the federal government—Congress in 1890-1891 had before it civil rights legislation, the Elections Bill. In order to pass this legislation and thereby provide for increased federal control over southern elections, Republicans moved to centralize power in the House of Representatives, a move they deemed necessary because with only a slim majority their plans were vulnerable to failed quorum calls engineered by Democrats (Valelly 2009). Republican proponents of centralizing power in the Speaker of the House explicitly linked this congressional reform to the project of strengthening federal enforcement of voting rights (Ibid.:131-132). By a party-line vote this congressional reform effort succeeded, and passage of the Elections Bill quickly followed, also along party lines: 154 Republicans defeated 147 Democrats and just two fellow Republicans (Wang 1997). Republicans had promised in the campaign stronger legislation to ensure equal suffrage, a commitment reiterated by President Harrison in his First Inaugural Address, and they were able to make good on it in the House of Representatives through an institutional transformation of that chamber.

Republicans in the Senate narrowly missed treading a similar path. After months of delaying tactics by Democrats, Senate Republicans in their party caucus voted to do something unprecedented in the institution's history: to craft and propose rules to limit debate. The effort's explicit purpose was to pass the Elections Bill (Crofts 1968:315-316). Despite a few defectors from the western states, Republicans then in a series a votes succeeded in getting the Senate both

to take up the Elections Bill and the debate limitation proposal. The motion to limit debate, however, ultimately failed on a 34-35 vote. Even then, however, the drama did not conclude until after two opposing senators rushed on the last train to New York in a bid to secure the vote of an absent senator (if pro-suffrage advocates had secured it, then the Republican vice president stood ready to break the tie in their favor). That senator, a Republican from California, turned out to be one of seven Republican defectors (all but one a westerner) who joined the perfectly unified Democrats in killing the bill (Crofts 1968). Republicans transformed the House rules in order to pass the Elections Bill but fell short of doing so in the Senate. Across both the House and the Senate, 95 percent of Republicans (188 of 197) supported expansion of efforts to eliminate racial exclusion in southern voting, but this was insufficient in the face of Democrats' perfectly unified alliance for white supremacy.

The Elections Bill of 1890 was the last time until the 1940s that improved federal protection of voting rights made it onto the congressional agenda. Though Republicans did not abandon the project in the mid-1870s, as elite and electorate theorists contend, they did indeed do so in the early 1890s. Senator Hoar, who was a leader in the effort to get the Elections Bill through the Senate in 1890-91 never wavered in his conviction that the federal government should strengthen the legislative apparatus governing voting rights, but his faith in the feasibility of doing so did erode. As he wrote in his autobiography about enforcement legislation: "But such legislation, to be of any value whatever, must be permanent. If it is only to be maintained in force while one political party is in power, and repealed when its antagonist comes in, ... it is better, in my judgment, to abandon it than to keep up an incessant, fruitless struggle" (quoted in Crofts 1968:351). Yet, it was not only that Democrats' inter-regional alliance finally overwhelmed Republicans with a sense of futility. Republicans' national political interests also



shifted in the 1890s, as a larger number of western states, newly formed, came into their coalition. With this broadening of their coalition through the emergence of new states in the West, Republicans no longer needed African American voting in the South to the degree they once did (see Valelly 1995). While the national political interests of the duopoly were sharply divided in relation to equal suffrage between the 1860s and 1880s, this ceased to be true in the 1890s, and racial exclusion in southern voting disappeared from the national agenda.

## CONCLUSION

The chapter has revealed a tight link between the party system and legal racial exclusion at the state level in both the antebellum and post-bellum North, and at the federal level with regard to the post-bellum South. *Contra* the elite model, the two major parties were sharply divided on the question of the racial order, making elections highly consequential for racial exclusion and equality. *Contra* the class and electorate models, these election outcomes were not mere reflections of class forces or shifting mass opinion on racial policy. Relatively autonomous from societal elites and the public at large, political parties had substantial and independent effects on the dynamics of legal racial exclusion across the nineteenth century. Parties mattered.

This analysis both confirms Tocqueville's posited link between democracy and racial exclusion and adds specificity to the claim. Since this Tocquevillian link could also be generated by a general preference for racial exclusion among voters—in accordance with the electorate model—greater summary detail regarding the relative explanatory merits of the electorate and party models is in order. To be sure, voter preferences for racial exclusion did matter in the nineteenth-century United States: voters on numerous occasions did have the opportunity to vote for racial equality under the law in referenda during the antebellum period, but they almost never

did. Yet, as we have seen, even though the northern white electorate continued to vote in a similar fashion on racial exclusion referenda after the war, legal racial exclusion receded in the post-bellum North. The national political interests of the Republican Party, and the power it gained through elections, trumped the electorate's preference for exclusion, turning the North toward legal racial equality. Republicans' national political interests were themselves linked to the long-term dynamics of the party system: The formation of the Democratic Party as an inter-regional alliance for white supremacy during the antebellum period, and the continuation of this alliance after the war, meant that Republicans needed African American voters to gain a foothold in the South and thereby ensure national power. Because Democrats were able by the mid-1870s to dominate southern elections and thereby gain legislative veto power at the national level, Republican efforts to advance equal suffrage in the South failed. Thus, with regard to the relationship between democracy and racial exclusion across the nineteenth-century United States, what comes to the fore is the logic of a two-party system in which, driven by political interests and strategies for coalition-building that were relatively autonomous from the policy preferences of the electoral majority, one member of the duopoly advocated racial exclusion while the other member opposed it.

This chapter has placed political institutions and political actors at the center of the story of how legal racial exclusion developed in the United States across the nineteenth century. Like nearly all countries with first-past-the-post elections, the United States developed a two-party system at the national level. While the nature of political rule during the colonial period determined that the United States would become a racial ethnocracy, or so I argued in chapter one, the two-party system played a significant role in shaping both the geographical patterns and political struggles over legal racial exclusion across the first century and more of independence.

The colonial legacy of people-making coupled with the economic interests of landholders in the South virtually ensured that legal racial exclusion would be an enduring feature of this region. But why anti-black legal racial exclusion developed well beyond the South, and why the legal status of *free* African Americans became a national issue during this time, was another story. Economic interests take us a long way down the explanatory path for the South, but it does not get us very far outside of the South (and indeed, sometimes one is halted before even beginning down the path: for example, manufacturers in the North depended on cotton from the South, but they also were an important base of the Whig Party, which generally opposed legal racial exclusion in the North). To understand why legal racial exclusion developed outside the South, one needs to integrate the two-party system into the analysis. This institutional feature of the US polity helped to ensure that there were *political* interests outside the South that were supportive of legal racial exclusion. In a proportional electoral system, the South might have developed its own party. But in a plurality, two-party system, political actors were bound to join hands across the regional divide in the name of controlling the federal government, particularly the presidency. Thus, the nature of the party system, that it was a two-party system, facilitated the development of a duopolistic political actor in favor of legal racial exclusion—i.e. the Democratic Party's inter-regional alliance for white supremacy.

Yet, the enduring and substantial significance of the Democratic Party's exclusionary alliance might never have become clear were it not for the specific struggle over slavery. Among the five racial ethnocracies, it is not difficult to identify major political actors who favored a level of inclusion greater than the national status quo in those countries where non-Europeans were in the minority (i.e. Australia and Canada). What set the US apart from the other two cases were two conditions: that the excluded population was a larger portion of the overall population

and therefore a greater electoral prize; and the cataclysmic struggle over slavery. The second was more important. The struggle over slavery's extension and then over slavery's abolition was *not* a struggle initially about the political equality of *free* African Americans. To understand how it became a struggle over Black political equality, the analysis must take account once again of the two-party system and the prior development of the Democratic Party. The struggle over slavery's extension determined that the Republican Party would emerge as a regional party. By emerging in opposition to slavery's extension to the western territories (the one principle that united all those who called themselves Republicans), and then by abolishing slavery in the context of war, the Republicans found themselves cut off from the South after the war. But this was an unusual development—in the prior seven decades there had not been a regional party in the US, precisely because the two-party system helped to build political bridges across what otherwise might have been a regional divide. Perhaps it was at this point in time, with the war over and the Republicans standing as a regional party with national power, that an elite bargain on the basis of Black exclusion, *a la* Marx (1998) and Woodward (1974), might have emerged. But the base of the party (abolitionists, etc.), and the ideological principles on which the party had staked its name (even Downs 1957 says such ideological stands have constraining effects) made this quite unlikely, and indeed it never happened, not in 1865, 1875, or even 1895.

With the South re-entering the Union and therefore the centers of federal political power, and with the white South by and large in opposition the Republican Party, how could Republicans continue to pursue patronage and political vision through control of the government? The party could not afford to be regionally isolated, even if the non-South was larger in population. The population difference was not enough, because southern white supremacists continued to have allies outside the South, in the form of their Democratic Party brethren. The

Republican Party, then, also needed an inter-regional alliance. In complementary form to the Democratic Party's southern base of white supremacists, the Republicans went in search of African Americans and the fairly small population of whites in the South who would support them. Thus, the two-party system and duopolistic competition turned what might have remained localized struggles over the status of African Americans into a national one—and also ensured that the first phase of this national political struggle would fail.

This national struggle over black political equality was over before the nineteenth century was, but not by much. The clearest lesson of this struggle, basically stated by Senator Hoar (see above), was this: legal equality for African Americans on a national level was virtually impossible so long as one member of the US's political duopoly was highly unified behind white supremacy, as it had been throughout the nineteenth century. This sets one task for the next two chapters: to examine the dissolution of the Democratic Party's inter-regional alliance for legal racial exclusion, which is the goal of chapter three. Another potential lesson, impossible to know at the time but possible to contemplate, was this: Might the obstructionist potential of the Senate, amply demonstrated in relation to the Elections Bill of 1890, become a powerful resource for blocking political efforts to enshrine Black equality into law? Chapter four will examine this obstructionist role of the Senate, and in so doing it also will emphasize another element that was possible to discern in the 1890s by virtue of the states represented by those Republicans who defected from the rest of the party on the Elections Bill: the role of an alliance between the South and small population states, disproportionately empowered by the Senate's equal representation of very unequal populations, in thwarting the move toward legal racial equality. Along the way, chapter four also will consider to what degree, once the Democrats' inter-regional alliance for racial ethnocracy dissolved, *Republicans* contributed to the defense of the southern racial order

in the generation before this order's demise. once this order re-emerged on the national agenda in the 1930s and 1940s.

### CHAPTER 3

## SHIFTING ALLIANCES: THE BREAK-UP OF THE DEMOCRATIC PARTY'S INTER-REGIONAL UNITY ON THE RACIAL ORDER

After the failure of the Elections Bill of 1890-1891 and Democrats' repeal of suffrage enforcement laws in 1893-94, civil rights for African Americans disappeared from the national agenda for more than four decades—save for some attempts to *expand* racial *exclusion* in the 1910s and the consideration of one pro-civil rights measure in the early 1920s. It was not until the late 1930s that civil rights returned to the national agenda in an enduring way, remaining there until the passage of meaningful legislation in the 1960s. This re-emergence was interlinked with the break-up of the Democratic Party's inter-regional alliance for white supremacy. In fact, the two processes were basically one, as indicated by the anti-lynching bill of 1937-1938, which marked the enduring re-emergence of civil rights to the national agenda.<sup>46</sup> During the first session of the 75<sup>th</sup> Congress in 1937, the House of Representatives passed a bill to provide for federal intervention to curb lynching. This was the “first Democrat-sponsored anti-lynching bill to pass the House” (Jenkins et al. 2010:83). Indeed, it was the first Democrat-sponsored civil rights legislation of any kind to pass the House in more than a century of the party's existence, and it passed with overwhelming support from Democrats outside the South.<sup>47</sup> In the Senate, the bill also was pushed by non-southern Democrats, and in the two cloture votes that attempted to end a six-week filibuster three-quarters of them voted against the southern wing of

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<sup>46</sup> For the identification of 1938 as a turning point, see Jenkins et al. (2010), Finley (2008), Young and Burstein (1995), and Sitkoff (1978).

<sup>47</sup> Of 199 non-southern Democrats in the House who voted, 92 percent supported the anti-lynching bill in 1937 (Jenkins et al. 2010:83).

their party.<sup>48</sup> Senator Ellender from Louisiana stated unambiguously what he thought was at stake at the beginning of his lengthy comments opposing the bill: “I believe in white supremacy, and as long as I am in the Senate I expect to fight for white supremacy” (quoted in Sitkoff 1978:292). In relation to this defense, Senator Byrnes from South Carolina identified the historical significance of who comprised the opposing sides on the anti-lynching proposal: “The South may just as well know ... that it has been deserted by the Democrats of the North...” (quoted in Zelizer 2012:36).

The 1938 filibuster by the southern Democrats of a bill proposed by non-southern Democrats to intervene in the southern racial order marked the beginning of an overt intra-party cleavage on a set of issues that would remain on the national agenda for more than a quarter century. The next two chapters look both forward and backward from 1938. This chapter focuses on the period before 1938 in order to examine the process that led to a new period in the party system. For more than a hundred years, Democrats outside the South were unwavering allies when it came to protecting the southern wing of their party from federal intervention in the racial order. With the Democrats’ inter-regional fracture in 1938 and after, the party system became markedly less stacked against the elimination of racial ethnocracy.<sup>49</sup>

The question of how and why the Democratic Party split regionally on the question of the racial order usually has been addressed implicitly during the pursuit of two other questions, one

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<sup>48</sup> See Appendix 4.1 for a list of all Senate roll calls, including a breakdown by southern Democrat, non-southern Democrat, and Republican. This roll call data set is discussed and analyzed in chapter four.

<sup>49</sup> The fracture became most plainly evident in 1948 when Democrats adopted their strongest civil rights plank yet and Minnesota’s Hubert Humphrey admonished his party “to get out of the shadow of states’ rights and to walk forthrightly into the bright sunshine of human rights,” which led a number of southern delegations instead to walk out of the auditorium and form the Dixiecrat alternative to the Democratic Party. But though 1948 was the year that the Democratic Party started to lose its solid southern base (see Ladd and Hadley 1978:137 for presidential voting data), a regional division regarding federal intervention in the southern racial order had been evident in the House and the Senate for a decade by that time. For the Humphrey quote, see <http://www.americanrhetoric.com/speeches/hubertthumphey1948dnc.html> (accessed 14 August 2012).



concerning the entry of African Americans into the Democratic Party coalition outside the South and the other regarding the re-emergence of civil rights on the national agenda. But as already mentioned briefly, these were tightly entwined processes: civil rights did not re-emerge on the national agenda in an enduring way until the Democrats' regional split; one major reason for both this re-emergence and this split was the entrance of African Americans into the Democratic coalition; the reason that this entrance brought significant numbers and was not followed by a quick exit is that the Democrats' regional split was enduring rather than episodic; and one major manifestation of this split's enduring character was the fact that civil rights remained on the national agenda. Thus, to look for answers in the literature regarding the reasons for the Democrats' regional split, it is helpful to consult studies that aim to explain both why African Americans entered into the Democratic coalition outside the South and why civil rights re-emerged on the national agenda.

Whichever question is pursued, the answer is usually very similar to the one that South Carolina Senator "Cotton" Ed Smith gave during the 1938 anti-lynching bill debate: non-southern Democrats had joined the (from his perspective, ignominious) Republican tradition of solicitously pursuing the Black vote in response to the growing power of that vote outside the South (Zelizer 2012:36). Whether the focus is on African Americans' shift toward the Democratic Party (Weiss 1983; Ladd and Hadley 1978:57-60), the re-emergence of civil rights on the national agenda in the 1930s and 1940s (Young and Burstein 1995; McAdam 1982; Sitkoff 1978), or the regional split in the Democratic Party (Reiter 2001), major emphasis goes to large-scale African-American migration out of the South and the political power that African

Americans gained by virtue of moving to politically competitive states where they could vote.<sup>50</sup>

For the sake of brevity, I will refer to this as the Black Vote Hypothesis (BVH). Though there are important and interesting differences among works advancing the BVH, they share a similarity of scale and timing. Whether New Deal relief programs attracted African Americans to the Democratic Party and *then* the Democratic Party started to court them for further support (Weiss 1983; Ladd and Hadley 1978:57-60), or whether this process unfolded alongside a more active effort by political actors linked to FDR's New Deal administration to attract Black voters (Sitkoff 1978), the basic story is that this process occurred at the national level starting in the 1930s. This national-level, top-down process in the 1930s is said to have unleashed a competition between the traditionally favored Republicans and newly favored Democrats for Black votes outside the South, a competition that pushed civil rights onto the agenda and kept it there for the next three decades (Young and Burstein 1995).

While I do not dispute the causal importance of the BV for keeping civil rights on the national agenda between the 1940s and 1960s, this chapter nudges against the timing, scale, and one key assumption of the BVH.<sup>51</sup> In doing so, I join Karol (2009:105), who observes, based on

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<sup>50</sup> Reiter (2001) adds economic policy differences to civil rights differences to explain how the Democratic Party developed a bi-factional structure by the 1940s.

<sup>51</sup> There is plenty of evidence that starting in the 1940s presidential candidates and their advisors were fairly concerned about attracting African American voters. Exhibit one is the unsigned memo to FDR in 1940 regarding the critical importance of the Black vote in a dozen non-southern states (McMahon 2000:26). Exhibit two is the exhaustive analysis of the 1944 elections by Republican operative Herbert Brownell which argued that the election could have been swung to his side if the party had done a better job of appealing to African Americans (Moon 1948:35-36)—the same Herbert Brownell who went on to be Eisenhower's Attorney General in the 1950s and who in that capacity wrote the proposals that became, after much modification by the Senate, the Civil Rights Act of 1957. Best known is exhibit three, the famous Clifford memo to President Truman regarding the 1948 election, in which Clifford argued that the South could be safely ignored and that the true path to victory ran through the African American neighborhoods of the North (Berman 1970). All of this makes sense in terms of Young and Burstein's (1995) useful measurement of the potential strength of the Black vote in relation to the electoral college during this period. Because of the large-scale migration of African Americans away from the South and toward large, industrial states in the North between the 1910s and 1940s, the states outside the South with an African American population of at least four percent (i.e. enough to swing close elections) accounted for an increasing share of the electoral college votes needed to win the presidency. In a period when 266 electoral votes were required to win, these non-

some of the studies upon which this chapter's analysis also draws, that "there was more gradualism and regional variation in the incorporation of African Americans in the Democratic Party than the conventional account allows" (see also Ware 2006:219).<sup>52</sup> To understand how it came to be by the middle to late 1930s that the non-southern wing of the Democratic party broke from its traditional defense of the southern racial order, it is necessary to examine how this intra-party cleavage started to develop in the decade before the 1930s, and to appreciate what a departure (in some states and locales, though not others) the 1920s were from just the decade before that. Moreover, an examination of the two decades prior to the New Deal allows a more nuanced view of the role that African American migration out of the South played, which brings me to the assumption that I want to call into question: that there was only one possible response to a growing African American population in the North, namely, for both parties to compete for their votes.<sup>53</sup> As will be seen, the 1920s was marked by ambiguity, with divergent Democratic reactions to this change in the racial composition of the electorate, from cries of "Negro domination" by Democratic politicians that would have fit well in the 1860s, to a concerted

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southern states with a sizeable African American population accounted for just 76 electoral votes in 1924, but 178 in 1936, and then 278 in 1948 (Though Young and Burstein distinguish non-South and Border states, I count them together for reasons that will become clear later in this chapter and in the next) (Young and Burstein 1995:25).

<sup>52</sup> Weiss (1983) focuses on several important cities—Chicago, Cincinnati, Cleveland, Detroit, New York, Pittsburgh, and Philadelphia (and in the South, Knoxville) (see 305-315)—but save for New York, in none of these did the Democratic Party make inroads before 1932. So her argument largely fits her data, but other data suggest a different story.

<sup>53</sup> This assumption in turn is based on an additional assumption, also usually unstated, that the Democratic Party's history and traditions—and one should add, racist opinion outside the South, which nearly all agree was pretty formidable before the 1950s—were irrelevant to how the party would respond to African American migration. A second type of inevitability assumption invokes the growing universalism of the Democratic Party, as well as World War II's impact. One might argue that this was due to the universalism of the New Deal. However, besides the fact that incorporation preceded the New Deal in a number of states and locals (the first modification to the top-down BV story), there is the fact that the Democratic Party had a first universalist phase during the antebellum period—e.g., the party was consistently open to European immigration and pushed for universal manhood suffrage regardless of property—and during that phase circumscribed its universalism by race. As for a different hypothesis, linked to the fight for democracy in WWII as a stimulant for de-racialization, there is, again, all the change that preceded the war (the southern wing of the Democratic Party filibustered the northern wing's attempt to use federal power to address the southern racial order *in 1938*), as well as the fact that the First World War was fought in the name of the same cause.

effort to bring African Americans into the party. In one, somewhat tortured, sentence, then, the argument of the present chapter is this: The changing relationship between African Americans and the Democratic Party outside the South—which itself was a key factor in both the regional split of the Democratic Party and the enduring re-emergence of civil rights on the national agenda—revealed itself most dramatically at the national level in the 1930s, but to a considerable extent this was the culmination of earlier developments at that the state and local levels that themselves were not an inevitable result of the growing Black vote.

I develop this argument in four steps. The first section is a brief overview of Democratic presidential politics through 1932, which shows that there was little or no effort at this level to cultivate a new relationship with African Americans. The second, most substantial, section examines developments in states and major cities in the very states outside the South where there is consensus that appeals to African American voters were an important part of politics between the 1940s and 1960s. By examining these states and major cities therein, I show that in many cases the relationship between the Democratic Party and African Americans changed before the New Deal and therefore could not have been primarily driven by national-level developments in the 1930s.<sup>54</sup> This is also the section, however, where I establish variation in the northern Democratic response to African American migration, suggesting that an inclusionary approach was not the only possible path. A third section examines the relationship between the Republican Party and African Americans between 1920 and 1932. Here I suggest that those Democratic politicians tempted by an exclusionary response would have had that temptation reduced by Republican actions, because these made African Americans increasingly available for new

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<sup>54</sup> While this (i.e. competition for the presidency) would predict proposals flowing from the presidency to Congress, the flow in fact was in the opposite direction (and generally resisted by FDR), which helps to explain why the Democratic Party openly divided on the question of federal intervention in the southern racial order already in 1937-1938.

partisan loyalties. A fourth section then examines the first several years of the Roosevelt administration in order to show the role that some members of the administration, including First Lady Eleanor Roosevelt, played in attracting African Americans into the party and in driving a wedge between the Democratic Party's southern and non-southern wings. Having examined in some detail the background to the Democratic Party's regional split, the concluding section returns to the Senate in 1938, and lays the groundwork for the fourth chapter's analysis of the fate of civil rights in this institution.

#### THE NATIONAL LEVEL TO 1932

President Grover Cleveland was the Democratic president who signed the legislation to repeal most of the voting rights enforcement laws in 1893-94.<sup>55</sup> After he left office in 1897, there was only one Democrat in the White House during the period that ended with FDR's election in 1932, Woodrow Wilson from 1913 to 1921. Wilson was born in the South but had spent most of his adult life in the North, including as governor of New Jersey. When campaigning in 1912, Wilson did make some overtures toward African Americans, leading W.E.B. Du Bois and the NAACP's outlet, *Crisis*, to support his candidacy (Sarasohn 1989:170-172; Weiss 1968).<sup>56</sup> But once Wilson took office, it was clear that the inter-regional alliance to protect segregation in the South was alive and well. In fact, the Wilson administration instituted racial segregation in federal workplaces, enacting a "conspicuous reversal of a fifty year tradition of integrated civil

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<sup>55</sup> In 1901, the House considered a bill to collect information on suffrage restrictions in the South, that in turn could be used to reduce southern representation in accordance with the 14<sup>th</sup> Amendment (which stipulated that representation of a state could be reduced in proportion to the percentage of adult males were ineligible to vote). Defeating the proposal, non-southern Democrats voted in lockstep with their southern counterparts, and against an equally unified Republican Party (Jenkins et al. 2010:61-62).

<sup>56</sup> Du Bois also advocated voting for the Democratic candidate in 1908, because by doing so African Americans "had the opportunity of splitting the northern and southern wings of the party ..." (Meier 1956:187-188). As Du Bois put it, "The Negro voter, today therefore, has in his hand the tremendous power of emancipating the Democratic party from its enslavement to the reactionary South" (quoted in Ibid:188).

service” (Weiss 1968:64; see also Patler 2004; Blumenthal 1963). With the segregation of the workplace also came a marked increase in occupational segregation, pushing African Americans to the bottom rungs of the federal civil service. Segregation and employment discrimination, to be sure, had existed before the Wilson administration, but the discrimination was never systematic and workplace segregation “depended largely on individual administrators” (King 2007:9). After 1913, this segregation was a matter of policy and African American “employees in Federal agencies were disproportionately concentrated in custodial, menial, and junior clerical positions and were frequently passed over for appointment at all” (King 2007:4; see chapter 2 of King 2007 for evidence). On the more symbolic side of exclusion, Wilson and his Cabinet also hosted a White House viewing of D.W. Griffith’s cinematic celebration of the Ku Klux Klan as redeemers of the South, *The Birth of a Nation* (1915).

It was also during the Wilson administration that a series of proposals were introduced in Congress to expand segregation. Democrats controlled both the House and the Senate between 1913 and 1917. A proposal to ban racial intermarriage across the country never made it out of committee in the House, but a bill with the same prohibition for Washington, D.C. (where the federal government had exclusive jurisdiction) passed by an overwhelming margin, 238 to 60. On three roll calls, 86 percent of non-southern Democrats voted with southern Democrats to support the ban on ‘miscegenation’ (Jenkins et al. 2010:65-66).<sup>57</sup> In the end this did not become law, as it was never released from the Judiciary Committee in the Senate,<sup>58</sup> but activities in Washington, D.C., in both the White House and the Congress, left little doubt that party

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<sup>57</sup> Republicans were almost equally unified against the measure until the final roll call, when Republican support on passage came overwhelmingly from those who represented states with anti-miscegenation laws (Jenkins et al. 2010:65-66).

<sup>58</sup> The Judiciary Committee was *not* chaired or dominated by non-southern Democrats. See the 64<sup>th</sup> Congress at <http://www.judiciary.senate.gov/about/PreviousCommitteeMembership.cfm#70-61> (accessed 2 August 2012).

continued to matter in the shaping of African American chances for remedy from legal racial exclusion. As King (2007:20) puts it with reference to the first Democratic takeover of Congress and the White House in nearly two decades: “[T]his partisan shift must be seen as the fundamental factor behind the diffusion of segregated race relations within the Federal government and the Federal government’s role of defender of segregation.”<sup>59</sup>

According to Sitkoff (1978:26), “[d]uring the twenties, ... the Democrats did not even bother to compete for the Negro vote nationally.” The Democratic Party did not win any presidential elections in the 1920s, but there also was little indication that policies would have been different from the Wilson era had Democratic candidates been successful. While campaigning in Ohio in 1920, Democratic presidential candidate James M. Cox impugned the campaign of his Republican opponent for appealing to African American voters, and referred to Harding’s party as “the Afro-American party” (quoted in Sherman 1964:153). The 1924 Democratic Convention nearly resulted in the adoption of a plank condemning the Ku Klux Klan (discussed below), and the 1928 Democratic Convention resulted in the nomination of a religious minority, Catholic Al Smith. But at the same convention that nominated Smith, African Americans (who were not delegates but only alternates) were forced to sit segregated behind chicken wire, and from that vantage point to witness the nomination as vice president a former governor of Arkansas who in that capacity was known for his frequent “denunciation of ‘Niggers’” (Burner 1968:238; Weiss 1983:185). The 1932 convention was in Chicago, not

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<sup>59</sup> In the Border states of Kentucky, Maryland, and Oklahoma, Democrats attempted to southernize fully their race relations. In the first decade of the twentieth century, Democrats in Maryland tried repeatedly to disenfranchise African Americans through various means, but these were opposed by Republicans and defeated in voter referenda (Callcott 1969:101-138). A similar pattern happened in Missouri (Grothaus 1970). Oklahoma, where there was no real competition from the Republican Party, the state government adopted the grandfather clause in its attempt to disenfranchise African Americans, but the Supreme Court ruled such measures unconstitutional in *Guinn v. United States* (1915) (Franklin 1980:22-24). And in several cities across mainly the Border states, including first Baltimore and then Louisville, Oklahoma City, and St. Louis, laws were adopted for the purposes of racial segregation in housing—but the Supreme Court also struck these down as a violation of property rights in 1917 (Wright 1985; Rice 1968).

Houston, so African Americans were not subjected to an enclosure. But they were still only alternates, not delegates, and they once again saw the nomination of another vice president from the Jim Crow South: ‘Cactus’ John Garner, who was “from Uvalde, Texas, a town which was said to ban the presence of Negroes. ...[It was not lost on African Americans that] if something should happen to Roosevelt, then the South with its proscriptive policies toward Negroes would be in the saddle” (Gosnell 1966 [1935]:32).

## STATES AND MAJOR CITIES TO 1932

The preceding discussion is consistent with the conventional view that there was no significant change in the relationship between the Democratic Party and African Americans with respect to national-level politics prior to the 1930s. To the extent that national-level changes helped to bring African Americans into the Democratic Party and thereby split it regionally on the question of the racial order, these changes generally awaited the arrival of the New Deal. But the story in states and major cities outside the South is a different one, though by no means uniformly so. I now want to take two steps: to show, first, that in many states and major cities significant linkages between the Democratic Party and African Americans were developing well before the New Deal and therefore must be integrated into an account of how African Americans were brought into the party and why the party’s inter-regional alliance to defend the southern racial order splintered in the 1930s; and second, that this response—i.e. an attempt to bring African Americans into the party—was by no means inevitable, that an exclusionary option not only existed in principle but was also applied in practice. Taken together, these two steps reinforce arguments in chapter two regarding the relative autonomy of parties and party actors—in this case, relative to the growing strength of the Black vote.



The states and cities discussed are not a random assortment. In order to examine the extent to which African Americans' shift into the Democratic Party, or at least the Democratic Party's efforts to effect such a shift, preceded the 1930s and 1940s, I searched the secondary literature on roughly the same set of states that appeared in the 1940s memos regarding the significance of the Black vote in presidential elections (see above, footnote 51), namely, the largest states in terms of population and therefore electoral votes outside the South. The ten largest states, with their electoral votes for 1932 in parentheses, are as follows: New York (47), Pennsylvania (36), Illinois (29), Ohio (26), California (22), Michigan (19), Massachusetts (17), New Jersey (16), Missouri (15), and Indiana (14).<sup>60</sup> Taken together, these 10 states accounted in 1932 for all but 25 of the 266 electoral votes needed to capture the presidency. The five largest states alone accounted for 60 percent of the total needed (i.e., 160/266). In the period of civil rights voting analyzed in chapter four of the dissertation, i.e. 1938 to 1964, Democrats in these states provided almost perfectly unwavering support: of the 420 votes that Democrats cast in these states, all but 17 (i.e., 96 percent) were in support of civil rights.<sup>61</sup> By way of comparison, the figure for all non-southern states, regardless of party, was 58 percent. Thus, it is clear that the Democratic Party became a consummately strong supporter of civil rights in these states. Did the courtship await the New Deal, or did it begin much sooner and therefore perhaps help to determine that African Americans would be part of the New Deal coalition outside the South?

The state party platform data on civil rights commitments collected and coded by Feinstein and Schickler (2008) allow one to detect murmurings of change in the 1920s. It was

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<sup>60</sup> Myrdal ([1944] 1962:192) observed that in six cities in five of these states—New York, Philadelphia, Pittsburgh, Cleveland, Detroit, and Chicago—the combined proportion of the African American population climbed from 2.5 percent in 1920 to 4 percent in 1920, 7 percent in 1930, and 8 percent in 1940. Moreover, as a share of all African Americans outside the South, these six cities alone accounted for 48 percent in 1940 (28 in 1910; 36 in 1920; 44 in 1930).

<sup>61</sup> When Republicans, who voted almost as often in these states, are included, the figure is 83 percent.

not the Republicans alone who incorporated commitments and policy proposals related to civil rights into their platforms. Feinstein and Schickler (2008) were able to get data on eight of the 10 largest states under discussion (all but Massachusetts and Pennsylvania), and in five of these states there was at least some attention to civil rights (in Michigan, California, and Illinois the Democratic state platforms made no mention of civil rights until the late 1930s and early 1940s).<sup>62</sup> Among the five states where the Democratic party addressed civil rights in their platforms, New Jersey stands alone. For several years in the 1920s both major parties had platforms that were scored as “4” by Feinstein and Schickler (2008:26)—which is reserved for platforms that call “for a government policy of outlawing discrimination in one issue dimension in what appears to be an enforceable manner.”<sup>63</sup> To put this in perspective, no state party in the 1920s reached the maximum of five (distinguished from ‘4’ by two issue dimensions instead of just one), and the only other state platforms that reached a score of 4 in the 1920s were the Republican platforms in California and Missouri, both in 1922. It is reasonable to conclude, therefore, that the Democratic Party was actively trying to bring African Americans into their coalition in New Jersey well before the New Deal.

Caution is warranted, however, in interpreting some scores lower than appeared in New Jersey as pertaining to civil rights *for African Americans*. Among the other four states, Indiana and Missouri went beyond a statement of principle opposing discrimination (score of ‘1’) to propose an actual policy to address it in the nongovernmental sphere and/or to advocate for the

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<sup>62</sup> The Republicans were not much different in Illinois and Michigan, where they started to address civil rights four to six years earlier than Democrats, in 1936 and 1938 respectively. California was more of a contrast, as in 1922 the Republican Party’s civil rights platform scored the second highest possible, something that was true in the 1920s only of the Republican Party in Missouri and both the Democratic and Republican Parties of New Jersey (Feinstein and Schickler 2008).

<sup>63</sup> For the purpose of these summary scores, an issue dimension relates to any civil rights issue—e.g. fair employment, voting rights, anti-lynching, desegregation of the armed forces, etc. (see Feinstein and Schickler 2008:9n43).

practice of nondiscrimination in government (thereby reaching a score of '2'). But Ohio and New York's Democratic platforms made only a statement of principle, and it is in these cases that caution is required. It is not just that a mere statement of principle is arguably meaningless: in the context of the 1920s, it might not have pertained to African Americans at all.

This is because the early 1920s was the short-lived but nevertheless significant peak of the revived Ku Klux Klan's power across the United States (Pegram 2011; McVeigh 2009; Jackson 1967). The KKK tried to tie up the loose ends of exclusion left by the two major parties: while Republicans historically had been hostile to non-Protestants, and while Democrats historically had been hostile to African Americans, the KKK preached an Americanism that was exclusionary on both religious and racial grounds. It was a brand of white supremacy for Protestants only. Ever since the Irish immigrants were incorporated into the Democratic Party during the antebellum period, Catholics had been a major part of the Democratic coalition outside the South. It is therefore not surprising that the KKK's surge in the early 1920s caused the first inter-regional convulsions for the Democratic Party. Delegates to the 1924 Democratic national convention confronted two major sources of conflict: a serious contender for the party's presidential nomination, Al Smith, who was a 'wet' (i.e., anti-prohibition), big city Catholic (New York); and a proposed plank to condemn the KKK. The debate over the anti-Klan plank was vituperative, and included three-time presidential nominee William Jennings Bryan getting relentlessly booed for his suggestion that the more subtle compromise plank be adopted. John W. Davis, who eventually got the nomination after more than 100 ballots because neither of the main contenders, Smith and McAdoo, could get the necessary two-thirds support, called the anti-

Klan plank conflict “that North-South fight” (quoted in Burner 1968:135).<sup>64</sup> In the end, the anti-Klan plank was rejected by the thinnest of margins (542 in favor and 543 opposed), but it exposed widespread antagonism toward the Klan by Democrats outside the South, particularly in the largest states.<sup>65</sup>

Thus, when state platform planks outside the South condemned discrimination in principle only in the early and mid-1920s, these statements might only have been swipes at the KKK for its anti-Catholicism, not part of a strategy to bring African Americans into the party.<sup>66</sup> This is almost certainly why Democratic platforms scored ‘1’ in a number of states where there were practically no African Americans but there were Catholics—e.g. South Dakota and New Hampshire. With a score of ‘2’, on the other hand (as in the cases of Indiana and Missouri), it is more reasonable to presume that the platform did not merely make a statement of nondiscrimination and equality against the claims of the Klan and in support of (only) Catholics and Jews of European descent. A closer look at these states, besides permitting an examination of those states whose platforms were not analyzed by Feinstein and Schickler (2008), also will allow us to see what lies behind the numbers, which of course are just one rough pass at the

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<sup>64</sup> The South’s delegates voted unanimously against the anti-Klan plank, except for Alabama, which voted unanimously in favor of it (Bain and Parris 1973). The Alabama entry is not a misprint: The leader of the delegation, Underwood, was hoping to get the nod for the presidential nomination and persuaded his delegation to support the anti-Klan plank in hope of increasing his chances (McVeigh 2001:6). A quarter century later Richard Russell, senator for Georgia, also sought the presidential nomination in both 1948 and 1952. He made no concessions on civil rights (he was the leader of the southern bloc in the Senate that fought civil rights throughout the 1938 to 1964 period), and won only the southern delegations. His apprentice, Lyndon Baines Johnson, would take a different approach to civil rights in pursuit of the White House, in crucial ways with Russell’s support as will be seen below.

<sup>65</sup> Among the 10 largest currently under discussion, more than 99 percent of the delegates of Massachusetts, New York, and New Jersey favored the anti-Klan plank; about 70 percent of the delegates in Ohio, Illinois, and Pennsylvania did so; but only about 40 percent of the delegates from California, Missouri, Michigan, and Indiana did so (Bain and Parris 1973). As we are about to see, however, the Klan was an issue that Democrats in California, Missouri, and Indiana used against Republicans in order to appeal specifically to African Americans.

<sup>66</sup> Feinstein and Schickler (2008) do not mention the issue of the KKK in their article, either with regard to their platform coding scheme or otherwise.

question of the relationship between African Americans and the Democratic Party outside the South before the New Deal.

Feinstein and Schickler (2008) do not have data for Massachusetts, and the most that the state Democratic Party of New York mustered in the realm of civil rights before the 1930s was a statement of non-discrimination that might not have been intended for African Americans anyway. Yet, in these two states' two major cities, it is clear that African Americans were starting to find the Democratic Party more appealing well before the New Deal. Already by 1910, estimates suggest that somewhere between one-third and one-half of African American voters in Boston opted for the Democratic gubernatorial candidate (Meier 1956:183). In New York City's Tammany Hall, the Democrats' local political machine, "cultivated blacks throughout the 1920s" and "many Negroes voted the Democratic ticket in municipal and state elections long before the advent of the New Deal" (Wolters 1975:205). According to Gosnell (1966 [1935]:32), Democrats' control of local patronage meant that there were "many inducements offered to Negroes to forsake their customary allegiance to the Republican party." As Du Bois argued in his defense of local Democratic political boss Ferdinand Morton, before Morton took the leadership of the United Colored Democracy and thereby 'Black Tammany' in 1916, the New York City police force employed no African Americans and there were no African Americans representatives in either state or local government. But as of 1924, the city employed "fifty or more policemen, [as well as] hundreds of Negro clerks, stenographers, typists, investigators, parole officers, [and] court attendants" (quoted in Lubell 1964:49). Moreover, African Americans gained not only jobs but also participation in the party as appointed and elected officials: Morton himself became the first African American member of the New York Municipal Service Commission in 1923; in 1924, the Democratic Party elected its first African

American candidate, Henry W. Shields, to the State Assembly from the Twenty-First District; and in 1930 the Democratic Party nominated for municipal judgeships two African Americans who subsequently won election (Van Deusen 1936:269). In the context of reporting on the 1924 elections, the *New York Times* editorial board also argued that re-emergence of the Klan, which outside the South was much closer to the Republican Party (on this, more below), mattered: “In this city the Republicans have never been able to poll the negro vote since the revival of the Ku Klux Klan [around 1915]. Governor Smith and Mayor Hylan both have had the support of from 75 to 90 per cent of all the negro voters ...”<sup>67</sup>

Indiana and California were two major states where the KKK and its increasingly close relationship to the Republican Party started to bring the Democratic Party and African Americans closer together in the early 1920s. The Klan “enjoyed its greatest success” in Indiana, where it “captured the Republican machinery and elected Ed Jackson as governor along with a host of other Klansmen to state and local positions” (McVeigh 2009:3). This was the election of 1924, and it was during this election campaign that major factions within Indiana’s Democratic Party made a concerted attempt to draw African Americans into the party.<sup>68</sup> Both the NAACP at its national convention in 1924 and the major African-American newspaper in Indianapolis signaled the possibility of doing so. NAACP Executive Secretary James Weldon Johnson declared that Republican candidates in Indiana had been “touched with the tar brush of the Ku Klux Klan” and it was therefore incumbent upon African Americans to vote against them (quoted in Thornbrough 1961:613), while the newspaper editorial board in Indianapolis argued that “[t]he Republican party as now constituted is the Ku Klux Klan of Indiana” (quoted in

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<sup>67</sup> “Must Name Klan, Democrats Insist: Leaders Say Strong Denunciation is Vital to Success in This State.” *New York Times*, 26 July 1924.

<sup>68</sup> The effort was not unified, at least not when it came to the question of party unity at the national convention: two-thirds of Indiana’s state delegation voted against the anti-Klan plank discussed above (Bain and Parris 1973).

Thornbrough 1961:612). The paper went on to observe that “[t]he nominees for Governor, House, Senate, and County offices with one possible exception are all Klansmen” and that Klan influence is so great in the party that one could say that “in fact there is no Republican party” (quoted in Thornbrough 1961:612). The state Democratic platform condemned the Klan in all but name and explicitly criticized the Republican Party for its ties to this movement, arguing that “the Republican party of our state has, for the time being, retired from the political arena, having been delivered into the hands of an organization which has no place in politics and which promulgates doctrines which tend to break down the safeguards which the Constitution throws around every citizen, and [which is] repugnant to the principles of government advocated by Lincoln and [Indiana Civil War era Republican] Morton” (quoted in Giffin 1983:139).<sup>69</sup> Probably more importantly, the Democratic gubernatorial nominee campaigned on the anti-Klan issue to cultivate African American support.<sup>70</sup> Moreover, “for the first time in history a Negro Democrat was nominated as a candidate for the Indiana house of representatives” (Thornbrough 1961:612; Giffin 1983:138). Although Democrats did not prevail (as they rarely did during this time period in Indiana), their efforts paid off with African Americans in Indianapolis, where “in 1924 the Democratic state and national tickets carried almost every predominantly black precinct” (Giffin 1983:158). As compared to 1920 when just 25 percent of their vote went to the Democratic presidential candidate, the predominantly African American wards of Indianapolis cast more than 60 percent of their votes for Democrat John W. Davis in 1924 (Giffin 1983:164).

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<sup>69</sup> In what might very well have registered a ‘1’ in the coding of Feinstein and Schickler (2008), the platform went on to promise this: “We will not permit the issues to resolve themselves into a fight either for or against any race, creed or religion” (quoted in Giffin 1983:139).

<sup>70</sup> For example, describing the Klan as “the paramount issue in the [Indiana] state election,” a *New York Times* reporter described a campaign scene in which the Democratic nominee responded to a question about the Klan by overtly repudiating the organization and by invoking both the necessity and desirability of religious freedom and equality before the law regardless of race (in a context—discussing the abolition of slavery—that made it clear what the nominee meant by ‘race’). “Davis Ends Tour of Western States.” *New York Times* September 21, 1924, p.1.

The Klan and its Republican ties also played a role in alerting African Americans in California to the potential desirability of a partisan shift. When he was Los Angeles district attorney, Democrat Thomas Lee Woolwine “appointed several blacks to his office and waged an active campaign against the Ku Klux Klan when it appeared in southern California” in the late 1910s and early 1920s (Flamming 2001:282). When Woolwine ran for governor in 1922, his Republican opponent had the backing of the Klan. In this election, the State Colored *Republican* League ... actively supported” the Democrat Woolwine (Flamming 2001:282—my emphasis). Though Woolwine did not win, his candidacy and campaign—according to Flamming (2005:206-207) Woolwine frequently faced Klan sabotage efforts at campaign stops and Woolwine himself made his earlier battle with the Klan an important campaign issue—seemed to shift African American perceptions of the Democratic Party, and those of the Democratic Party, or at least to aid in this shift. African American candidates for the first time ran in Democratic primaries for state assembly seats in 1926, though without winning the party’s nomination until 1934 (Flamming 2005:212-213). Yet even if they had won the nomination they probably would have had a difficult time winning the general election. The Democratic Party was “traditionally pathetic” in Los Angeles County, as evidenced by the fact that registered “Republicans outnumbered Democrats by more than three to one in 1930” (Flamming 2005:311). And the picture was similarly bleak for Democrats statewide. A major partisan shift, and with it the migration of African Americans into the Democratic Party, awaited the New Deal in California. But even before this shift, the response of major Democratic politicians to the Republican-Klan connection prompted some rethinking of the historical antagonism of the Democratic Party toward African Americans—and among an African American population that for the most part had recently arrived from the South.



The pre-1933 change in the relationship between African Americans and the Democratic Party in Missouri was both more far reaching than in most of the other 10 major states and more surprising. The surprise comes not from the extent of the change as much as when and where it happened. Missouri was a “Border state”—one of a handful of states that practiced slavery on the eve of the Civil War but sided with neither the North nor the South in the conflict. This is the origin of the term. More pertinent to legal racial exclusion and the relationship between the Democratic Party and African Americans is that the Democratic Party quickly returned to power after the war and continued to rule for some time in the name of white supremacy. Unlike in the South proper (the 11 states that fought against the North in the Civil War), however, the Democratic Party was not able to monopolize power. Near the turn of the century, the Republicans were resurgent, and two party competition was considerable here, and also in nearly all Border states.<sup>71</sup> At the same time, the maintenance of political rights for African Americans co-existed with school segregation by race and other efforts at ‘social’ segregation institutionalized in law. Moreover, a substantial faction of the Democratic Party did try to disenfranchise African Americans in the early years of the twentieth century and to implement laws for segregation in transportation. But these efforts failed in part because other Democrats, along with all Republicans, opposed them. In light of these exclusionary efforts alongside African American voting rights, Missouri exemplifies the argument sketched above: that a considerable African American population outside the South did not make it inevitable for the

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<sup>71</sup> This was true for West Virginia, Kentucky, and Delaware. It was not true of Oklahoma—there was, for example, no Republican governor in that state until 1962 (Sundquist 1968:531). Oklahoma was not a state until 1911, and so technically does not fit the Civil War definition of a Border state, but it is usually treated as such. This makes sense: Border states were distinctive for having large African American populations and *de jure* school segregation by race, but *without* denial of the franchise to African Americans. Attempts at disfranchisement were made, and they went the farthest in Oklahoma, but these attempts were not enduringly successful in the way they were in the South proper. Analyzing Maryland, Callincott (1969) attributes the failure to disenfranchisement to two party competition, an argument that seems compelling. In fact, Oklahoma is consistent with the argument, because it is the state outside the South where disenfranchisement efforts had the most success, and it is also the Border state where the Democratic Party enjoyed the greatest amount of power (Franklin 1980:22-24).

Democratic Party to take the inclusive route in the first three or four decades of the twentieth century.

There was a struggle within the Missouri Democratic Party over what should be the proper political relationship with African Americans, and it divided largely along urban and rural lines. As early as 1902, Democratic party officials in Kansas City stated that “[t]he Democratic party no longer claims to be strictly a white man’s party” (quoted in Grothaus 1970:28). Just the year before “city Democrats supplied half of the votes” in the state senate to defeat a railroad car and waiting room segregation law (the other votes were from Republicans, who “unanimously opposed” the measure) (Grothaus 1970:29). This pattern of city Democrats allying with Republicans to defeat ‘regular’ Democrats’ efforts to enact Jim Crow laws repeated itself in 1903 and 1907 (Grothaus 1970:34 and 80).<sup>72</sup>

But the struggle between urban and rural Democrats did not end after the repeated defeat of these segregationist measures. In the period between 1910 and 1930, when the African American population increased considerably, both in the cities and, because of cotton expansion, the rural southeastern portion of the state, “[t]he Democratic party’s responses varied from the skillful recruitment of Kansas City negroes ... to callous campaigns of intimidation and terror in rural Missouri that were frankly designed to eliminate the Negro from participation in Missouri’s politics” (Mitchell 1968:64).

Continued adherence to white supremacist political principles in the rural areas meant that statewide politicians did not take the Kansas City express to African American incorporation. In the 1910s, Missouri Senator Reed sponsored an amendment to exclude the immigration of

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<sup>72</sup> Unlike in West Virginia where African Americans had been serving in the state legislature since 1897 (see Posey 1934), there apparently were no African Americans in the Missouri state legislature until 1921 when Walthall M. Moore from St. Louis took his seat. W.B. McGregor, letter to the *Kansas City Star*, 14 January 1950, reprinted as “MISSOURI’S FIRST NEGRO REPRESENTATIVE,” p.340 of *Missouri Historical Review*, vol. 44 (1950).

Africans into the country (Grothaus 1970:83-85). The Missouri Democrats' gubernatorial nominee in 1920, John M. Atkinson, "urged white Democratic women to balance the vote of Black women and pointed out that his opponent had been educated in Ohio's mixed [racially integrated] school system" (Grothaus 1970:97). One Democratic Party organ (*The Boonville Weekly Advertiser*) backed the nominee and then some, arguing that "[t]he red-blooded, true Missourian who has any pride, and desires that this should be a white man's government should vote the Democratic ticket, and avert the evil consequences that will result in the event of a Republican-Negro victory in this state" (quoted in Grothaus 1970:97-98). In 1922, Missouri's state Democratic platform announced adherence to the general principle of equality and non-discrimination, but KKK-signed fliers in at least one county declared in that year's congressional race that elections were "For White Voters only. Nigger—you are not wanted" (quoted in Mitchell 1968:64). Democratic newspapers in the area "called for the maintenance of a 'white man's government'" (Ibid:65).

The 1924 Democratic National Convention perfectly captured this intra-state and intra-party conflict. Harry B. Hawes, who represented a district from St. Louis in the House of Representatives, was at the forefront of efforts to include the anti-Klan plank in the national platform. The proposal lost by a narrow margin, as mentioned. Hawes' defeat was in part due to his state's own delegation, a majority of whom voted against it. Hawes probably saw this last part coming, because there had been "a near riot" when urban delegates at the *state* convention tried to introduce an anti-Klan resolution; in fact, supporters of the proposal never were able to read it, much less get it passed (Mitchell 1968:75-76; Baines and Parris 1973). In that same year the Democrats' gubernatorial nominee was widely believed to be a Klan member (Grothaus 1970:110).

It was in 1926 that Democratic politics in Missouri started to shift on a statewide basis, not just in the cities. At the state convention, rural and urban Democrats were able to agree upon the importance of attracting African Americans into the party, and the state platform tried to do exactly that (as evident in the Feinstein and Schickler platform data discussed above). What was once a strictly urban phenomenon for the Democratic Party in Missouri became generalized, and “by 1928” Democrats “appealed for the support of Black voters” on the state level (Grothaus 1970:96). In the 1928 gubernatorial campaign, an aide to the Democratic candidate Francis M. Wilson spoke euphemistically about the state party’s history of white supremacy, proclaiming that “[t]he Negroes of St. Louis should be encouraged [to vote Democratic] even if it means turning our back on some of our old traditions” (quoted in Mitchell 1968:115-116). Wilson’s nomination by Democrats in 1928 “indicated the emergence of the machine’s power and the urban influence in the [Missouri] Democratic Party” (Grothaus 1970:120). In that same election, St. Louis Democrats nominated an African American to run for Congress. Though he did not win (losing to Republican Dyer, who had sponsored the 1922 anti-lynching bill in the House), and though Arthur Mitchell of Chicago, Illinois would become in 1935 the first African American to represent the Democratic Party in Congress, McLemore’s nomination represented “the first time that Democrats *anywhere* had nominated a Negro for Congress” (Mitchell 1968:162—my emphasis). In the 1928 presidential election, Republican Herbert Hoover won Missouri easily, but Democrat Al Smith won St. Louis—the first time a Democratic presidential candidate had carried the city since 1888 (Mitchell 1968:119). In the Kansas City local elections of 1930, estimates indicate that 7 out of every 10 African American votes went to Democrats, up from 47 percent in 1928 (Mitchell 1968:131). Two years later Roosevelt carried only four of the 15

largest African American wards outside the South, one of which was in Kansas City (the others were in New York City).

Like in New York City, politics at the local level and in particular the workings of urban political machines drove this changing relationship between the Democratic Party and African Americans. As Grothaus (1970:137) summarizes, “Missouri Blacks, attracted by the benefits offered by the Pendergast machine and ward bosses and repelled by the failures and slights of Republicans, had joined the Democratic party. The trend began well before the depression and the New Deal and developed out of local issues.”<sup>73</sup>

Thus, alongside the re-emergence of the Klan and its links to the Republican Party, an additional factor in the remaking of the relationship between the Democratic Party and African Americans appears to have the more general process of urbanization and its impact on forms of political organization. Most of what has been said about the state and local level thus far does not invalidate the persuasiveness of the Black vote hypothesis (BVH) but rather shifts it downward in scale and back in time. Yet, as attention turns to Chicago, it becomes evident that to the extent that urbanization and African American migration to growing cities were important to this changing relationship, the process was anything but a smooth one. In fact, Chicago shows that these social processes could produce a very different political outcome.

The alternative Democratic response to the BV, already seen in the case of Missouri in the struggle between urban and rural factions within the party, was also evident in Chicago, “where [before the New Deal] the local Democrats had traditionally been hostile to the aspirations of blacks” (Wolters 1975:205; see also Pinderhughes 1987; Grimshaw 1992). This is

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<sup>73</sup> Interestingly, Harry Truman, the only President who arguably spoke with moral clarity on the issue of civil rights outside the context of an impending crisis wrought by their denial, was “[o]ne of the chief beneficiaries of the powerful Pendergast organization” (Mitchell 1968:164). In his 1934 Senate campaign Truman won “every Negro precinct” in Kansas City and, Grothaus (1970:146) says, nearly 90 percent of the African American vote.

evidenced by the 1927 Chicago mayoral contest. The Democratic campaign in that year would have fit just as well in 1867 as 1927, and it represented a response to African American migration out of the South that was the opposite of the BVH's expectations (Guglielmo 2003:98-110; Hirsch 1990:66).

Anticipating the next day's election and reflecting back on the campaign in 1927, the *Chicago Tribune* said "to the end, the colored question was exploited not only openly but almost flamboyantly" (quoted in Guglielmo 2003:98). Guglielmo shows why such a judgment was made, and why it applied primarily to the Democratic campaign of William E. Dever. In a Dever campaign memo stipulating the "general outlines of the campaign," the general strategy was that "Mr. Dever must appear in the role of a Knight Errant who will save the citizens from a very real peril that even the most illiterate can understand"; at the top of the list of perils was "the colored voters" (quoted in Guglielmo 2003:99). The strategy was to exploit "skillfully" the fact that the GOP candidate William Thompson had "in his primary campaign ... promised the colored voters that if elected he would afford them facilities to spread out"; the Dever campaign aimed to show that Thompson, if elected, would further the "invasion" of African Americans (quoted in *Ibid.*). The chairman of the Cook County Democratic Organization, George Brennan, told the press early in the general election campaign that Dever would be re-elected because "I cannot believe that the people of Chicago will ... turn the city over to be ruled by the Black Belt [i.e. a set of contiguous neighborhoods populated predominantly by African Americans]" (quoted in *Ibid.*). Sounding a similar theme in his stump speeches for Dever, a Democratic State Representative from the South Side said that the question at the center of the election was "shall the white people continue to rule Chicago?" (quoted in *Ibid.*). An identical theme appeared on the posters that Democrats hung around the city: "Is the Negro or the White Man to Rule

Chicago?” For those with a slightly more subtle aesthetic taste, another poster read “Negroes First—William Hale Thompson for Mayor” (quoted in *Ibid.*:100). Another leaflet had a picture of a train in Georgia filled with African Americans and a caption that read: “This train will start for Chicago if [Republican] Thompson elected” (quoted in Lubell 1964:51-52).

Democrats in Ohio in the early 1920s also responded to African American migration in a manner directly contrary to the BVH. In the 1920 campaign against Republican nominee Warren G. Harding, the Democratic presidential nominee, Ohio’s own James W. Cox, impugned the campaign of his Republican opponent for appealing to African American voters, claiming that Harding’s party was in fact “the Afro-American party, whose hyphenated activity has attempted to stir up troubles among the Negroes upon false claims that it can bring social equality” (quoted in Sherman 1964:153). In making these claims, Cox was in step with his state party, and the steps they were taking demonstrate that there was another way that non-southern Democrats more generally might have responded to the Black migration. “During the campaign the Ohio Democratic state committee issued circulars” that attempted to exploit “the racial anxieties of whites” (Giffin 1973:29). One of these, titled “A Timely Warning to White Men and Women of Ohio,” argued that the “influx of negroes” into the state was in fact an “invasion of negroes” that had produced “the threat of negro domination in Ohio,” a threat that “Ohioans . . . must handle . . . in somewhat the same way as the South is handling it,” lest there be a revival, but this time in Ohio, of “the dark days when negroes controlled the Governments in the South” (quoted in Giffin 1973:29-30).

Thus, there is definitely evidence—e.g. from New York, Indiana, and Missouri—that African American migration outside the South and the growing power of the BV attendant to this process influenced the Democratic Party to break with their historical traditions and to attempt to

forge closer ties with African American voters. This went farthest where the Democratic Party had the most overall electoral success—e.g. in New York and Missouri. The point here, however, is that this happened well before the New Deal and the process was at the state and local level rather than the national/presidential one. Thus, the BVH receives support, but with specifications regarding timing and scale that are different from the conventional view. This evidence also rebuts the argument that Democrats stumbled upon African American support as a result of New Deal programs, and only then reached out to them in an explicit fashion (e.g. Weiss 1983). Moreover, this process went forward well before African American migration reached its largest proportions (i.e. during the 1940s—see Table 3.1), which itself counters the view that the Democratic politicians were somehow compelled to take an inevitable step by the sheer force of electoral demography. Also running counter to this interpretation is the fact that coexisting with the effort to bring African Americans into the party in a context of urbanization and migration was a directly contrary effort in the major states of Ohio and Illinois to play the race card toward exclusionary ends, consistent with what the Missouri Democrat quoted above euphemistically referred to as “some of our old traditions.”



Table 3.1: African Americans as a Percentage of the Total Population in Large States and Major Cities of the Non-South, 1910-1950

	1910	1920	1930	1940	1950
New York	1.5	1.9	3.3	4.2	6.2
<i>New York City</i>	1.9	2.7	4.7	6.1	--
<i>Manhattan Borough</i>	--	--	12.0	15.8	--
<i>Buffalo</i>	0.4	0.9	2.4	--	--
Pennsylvania	2.5	3.3	4.5	4.7	6.1
<i>Philadelphia</i>	5.5	7.4	11.3	13.0	--
<i>Pittsburgh</i>	4.8	6.4	8.2	9.3	--
Illinois	1.9	2.8	4.3	4.9	7.4
<i>Chicago</i>	2.0	4.1	6.9	8.2	--
<i>East St. Louis</i>	10.0	11.1	15.5	--	--
Ohio	2.3	3.2	4.7	4.9	6.5
<i>Cleveland</i>	1.5	4.3	8.0	9.6	--
<i>Cincinnati</i>	5.4	7.5	10.6	12.2	--
<i>Columbus</i>	7.0	9.4	11.3	--	--
<i>Dayton</i>	4.2	5.9	8.5	--	--
<i>Youngstown</i>	2.4	5.0	8.6	--	--
<i>Toledo</i>	1.1	2.3	4.6	--	--
<i>Akron</i>	1.0	2.7	4.3	--	--
California	0.9	1.1	1.4	1.8	4.4
<i>Los Angeles</i>	2.4	2.7	3.1	--	--
Michigan	0.6	1.6	3.5	4.0	6.9
<i>Detroit</i>	1.2	4.1	7.7	9.2	--
Massachusetts	1.1	1.2	1.2	1.3	1.6
<i>Boston</i>	2.0	2.2	2.6	--	--
New Jersey	3.5	3.7	5.2	5.5	6.6
<i>Newark</i>	2.7	4.1	8.8	10.6	--
<i>Atlantic City</i>	21.3	21.6	23.6	--	--
<i>Jersey City</i>	2.2	2.7	4.0	--	--
<i>Camden</i>	6.4	7.3	9.6	--	--
Missouri	4.8	5.2	6.2	6.5	7.5
<i>St. Louis</i>	1.2	4.1	7.7	9.2	--
<i>Kansas City</i>	9.5	9.5	9.6	10.4	--
Indiana	2.2	2.8	3.5	3.6	4.4
<i>Indianapolis</i>	9.3	11.0	12.1	13.2	--
<i>Gary</i>	2.3	9.6	17.8	--	--

Sources: The 1910-1930 figures for cities, except for Manhattan Borough, are from U.S. Bureau of Census (1935:67-69). The Manhattan Borough figures along with all other city figures from 1940 are from Weiss (1983:182-183). The state figures for 1920-1950 are from Young and Burstein (1995:45-49) and for 1910 from <http://www.census.gov/population/www/documentation/twps0056/tabA-13.pdf> (accessed August 10, 2012).

Notes: (1) The cities included are those that had at least 10,000 African Americans in 1930. (2) -- indicates unavailable data from the above sources

The above discussion was meant to identify significant variations across these 10 major states—to establish that links between Democrats and African Americans started well before the New Deal in a context of urbanization and Black migration out of the South, but also that these social processes were consistent as well with an exclusionary pathway that eventually became the road not taken but might have been. The discussion was *not* meant to classify states or cities in any fixed fashion: studies yet to be completed, or studies missed in my search, almost certainly would identify, for example, cases of Democrats pursuing the inclusive path in Ohio and the exclusive one in New York.<sup>74</sup> And there is a third possibility as well, likely to go undetected in research, namely, that Democrats continued in many locales to see African Americans as a durable and therefore unavailable part of the Republican coalition but did not try to exploit racial fears and anxieties about African American migration into the region.

Whatever the exact balance of inclusive, exclusive, and neutral Democratic strategies across these states, it is possible, as the above discussion has shown, to say that at least in the major cities (and in some cases at the state level) of New York, California, Massachusetts, New Jersey, Missouri, and Indiana, already in the 1920s the Democratic Party was making concerted and fairly successful efforts to bring African Americans into the party. Such efforts became evident also in Illinois and Pennsylvania, not apparently in the 1920s but still before the New Deal. As discussed, Democrats in the 1927 Chicago mayoral race ran “a viciously racist campaign” (Hirsch 1990:66). But even while they were doing this, there were key players in the Cook County Democratic Organization (CCDO) who were pursuing the inclusive strategy—

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<sup>74</sup> Nothing was said above about Michigan. There is limited information on the relationship between the Democratic Party and African Americans before the 1930s, but what is available suggests that Detroit was more like Chicago than New York. Thomas (1992:263) notes that “[w]hen Murphy ran for mayor in 1931, the major black newspaper could find few legitimate reasons to oppose him except that he was a Democrat,” and that “Democrats received only a trickle of black votes in 1932 and 1934” (Ibid:264). Also, reformers in Detroit had successfully eliminated the potential for successful urban political machines (Levine 1976:132; Thomas 1992:149 and 252).

suggesting once again that there were two opposing ways in which Democrats could and did react to the Black migration, with two very different consequences for the party's relationship with African Americans. In the 1931 mayoral campaign, the Democratic candidate, Cernak, "scrapped the ... [earlier] strategy of trying to make color and partisan lines neatly correspond and instead made an effort to attract African-American voters into the Democratic fold" (Guglielmo 2003:107). This was consistent with the approach that Cernak had been taking "[f]or several years before the election," as he "attempted, with some success, to build a Democratic base of support in the Black Belt [i.e. the predominantly African American neighborhoods]" (Ibid). This strategy became easier to pursue when the CCDO chairman died in 1930 and Cernak took his place. The "first party slate" under his leadership "included an African American along with assorted European Americans" (Ibid:108). In the 1931 election, he "stumped some in the Black Belt, denounced race/color bigotry (of which he claimed to have been a victim), and widely distributed campaign literature to African Americans" (Ibid:109), stating his explicit intention to "make more Democrats among Negroes and to keep them in the party" (quoted in Ibid.).<sup>75</sup> Cernak's strategy did not prevent racist campaign literature from being distributed in his name (e.g. one flyer said "WAKE UP TO THE MENACE OF THOMPSON AND HIS NEGROES. VOTE FOR CERNAK AND HIS WHOLE DEMOCRATIC TICKET. ... IF THOMPSON IS ELECTED Thousands of Negroes will get Jobs that otherwise go to White Men"—quoted in Ibid.), but neither side would claim them, and Democrats actually accused Republicans of planting them. At the same time, Thompson's Republican campaign treated the Democratic opponent as if he were the same as all previous ones, stating in flyers: "Don't Bring

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<sup>75</sup> His claim to being subjected to bigotry received evidential support in the 1931 mayoral race. A Czech, Cernak was subjected to "repeated barbs" from Thompson, who called Cernak a "Bohunk" and asked him the location of his pushcart (Guglielmo 2003:108).

the South to Chicago! Don't Start Lynchings in Chicago! Vote the Straight Republican Ticket!” (quoted in *Ibid*:109). In the end, Cernak won, and African Americans formed an important part of his coalition and that of his successor, Ed Kelly (Hirsch 1990:63-74).

Pennsylvania is another state where the Democratic Party shifted to appeal to African Americans before the advent of the New Deal, but not until the 1932 election.<sup>76</sup> Robert L. Vann, editor of the African-American newspaper the *Pittsburgh Courier* had been a Republican and in fact had directed African American publicity for the three GOP presidential campaigns of the 1920s. But in 1932 he argued that African Americans should rethink their partisan affiliation, advising them that they “go home and turn Lincoln’s picture to the wall” (quoted in Wolters 1975:204). Joseph Guffey, leader of the Democratic Party in Pennsylvania since 1916 sometimes formally but always in fact (Halt 1965:9-16), and soon-to-be Senate candidate (in 1934), saw opportunity and persuaded Roosevelt aides “to establish the first really effective Negro division of the Democratic campaign committee” (Wolters 1975:204). Upon Guffey’s recommendation Vann became the manager-in-chief, and after the election “Guffey persuaded President Roosevelt to appoint Vann as assistant to the attorney general ...” (Wolters 1975:204). Guffey also made it explicit that African Americans were to receive 10 percent of the party patronage across the state, and he put his weight behind a public accommodations bill to guarantee equal access to hotels, restaurants, and the like. Although Roosevelt did not carry Pennsylvania in 1932, Guffey’s election and post-election efforts to bring African Americans into the Democratic coalition soon started to pay off, as they “contributed significantly to the upsets that sent Guffey

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<sup>76</sup> Prior to that election, any outreach effort might have been futile anyway. Pittsburgh and Philadelphia were “overwhelmingly Republican” (Wolters 1975:204), and as Halt (1965:17) observes, “[a]s late as 1930, the honor of running for a major office on the Democratic party ticket [in Pennsylvania] was not regarded as a great honor.”

to the United States Senate [in 1934],” and a fellow Democrat to the governor’s mansion (Wolters 1974:204-205).<sup>77</sup>

## REPUBLICANS AND AFRICAN AMERICANS, 1920 TO 1932

As the story of Vann’s defection from the Republican Party and Guffey’s efforts to generalize it suggest, another angle of the pre-1933 change in the relationship between Democrats and African Americans outside the South concerns what the Republicans did. Between the inclusive and exclusive routes for Democrats, Republican actions in the 1920s increased the feasibility of the inclusive one by increasing the availability of African Americans as Democrat coalition members.

One action has already been mentioned: the Republican Party maintained close relations with the Ku Klux Klan outside the South (McVeigh 2009). As we have seen in the discussions of New York, Indiana, and California, this Klan connection introduced a rift between some African Americans and the party to which they traditionally had given their support. African Americans in Missouri even took note of the Republican-Democrat contrast at the national level, despite the fact that, as discussed, Democrats for the most part maintained their white supremacist bent in presidential politics prior to the 1930s. The 1924 campaign for the presidency was a three-way contest (it also included La Follette, the Progressive Party’s candidate), and Coolidge the Republican was the only one *not* to denounce the Klan (Topping 2008:10). At the same time, the Democratic candidate, John W. Davis, apparently issued the strongest anti-Klan statement,

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<sup>77</sup> Though it is not part of the largest 10 states analyzed in this chapter, West Virginia (which was, however, on the list of states in the 1940 memo to FDR regarding the significance of the Black vote—see above, footnote 51) is another state where Democrats, despite a history of attempted Black disfranchisement as recently as the 1910s, were actively competing for African American votes by 1932, though apparently it was not until that year that these attempts bore any success: “[I]t was not until the campaign of 1932 that colored citizens in the state, in any large numbers organized and supported the Democratic Party”; in that election, “the traditional policy under which Negroes supported the Republican Party was broken in the State of West Virginia” (Posey 1934:52).

despite the fact that his party had not approved the anti-Klan plank at the convention (Giffin 1983:153; McVeigh 2009).<sup>78</sup> For doing so, he was awarded a silver cup from “the Negroes of Missouri” in recognition of “his matchless efforts in fighting for the cause of human rights” (quoted in Harbaugh 1962:13).<sup>79</sup> Thus, while an appeal to Catholic voters *might have been* Davis’ motivation for renouncing the Klan (and the word ‘racial’ in his statement just as easily could refer to southern and eastern Europeans in that time period—see Guglielmo 2003:7-9),<sup>80</sup> African Americans in a key state where urban Democrats were undertaking considerable efforts to bring them into the party coalition recognized the significance of Davis’ denunciation and thereby, implicitly, the Republican candidate’s silence.

In its 1924 national convention, the NAACP called for “a new political emancipation,” this time of African Americans from their loyalty to the increasingly unresponsive Republicans (Giffin 1983:139; Sherman 1964:167). The Klan is one issue that was on the leadership’s mind (see Indiana discussion above), but there was another one that was alienating politically active African Americans from the Party of Lincoln: Though the Democrat Woodrow Wilson had been responsible for systematizing racial segregation in federal workplaces, the Republican presidents

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<sup>78</sup> Davis said this while campaigning in New Jersey: “If any organization, no matter what it chooses to be called, whether Ku Klux Klan or by any other name, raises the standard of racial and religious prejudice or attempts to make racial origins or religious beliefs the test of fitness for public office, it does violence to the spirit of American institutions and must be condemned” (quoted in McVeigh 2009:187).

<sup>79</sup> Harbaugh (1962:13) notes the irony that there are two silver cups in Davis’ collection, the one mentioned in the main text and the other from the South Carolina legislature in appreciation for Davis’ unwillingness to accept a fee for defending school segregation in *Brown v. Board of Education*.

<sup>80</sup> As Guglielmo (2003:9) notes in his study of Italian immigrants in Chicago in the first decades of the twentieth century, “the federal government’s naturalization applications throughout much of the early twentieth century asked applicants to provide their race *and* color [my emphasis]. For Italians, the only acceptable answers were North or South Italian for the former [i.e. ‘racial origin’] and white for the latter.” Guglielmo says that he happened on the critical importance of the race/color distinction (even if an ambiguous one, he admits) in the course of his project, which he originally conceived “as a ‘wop to white’ study, an Italian version of Noel Igantiev’s *How the Irish Became White*.” He “quickly realized, however, that Italians did not need to become white: they always were in numerous, critical ways. Furthermore, race was more than black and white. If Italians’ status as whites was relatively secure, they still suffered ... from extensive *racial* discrimination and prejudice as Italians, South Italians, Latins, and so on” (7)

that followed him in the 1920s generally continued his policy. The NAACP took note in a resolution adopted at the 1926 convention: “We are astonished to note under President Coolidge and the Republican administration a continuation of that *segregation* of colored employees in the departments at Washington which was begun under President Wilson” (quoted in Sherman 1964:166).

In addition to the Republican Party’s Klan connection and support for federal segregation policies, a third action made African Americans much more politically available by 1932 than they had been at the end of the Wilson administration in 1921. This action in turn was prompted by a major change in the Democratic Party: its nomination of a Catholic (Al Smith) to be the party’s nominee in the 1928 election. Hoover and the Republicans knew this development presented a major opportunity to make some headway in the significantly anti-Catholic South for the first time in several decades, and they of course were not going to do so by pushing for Black equality (Burner 1968; Sherman 1973; Lichtman 1979). Under the guise of an anti-corruption campaign “the three most important black leaders of the deep South (including the only two members of the Republican National Committee) were neatly disposed of before the campaign began” (Lichtman 1979:152). Hoover chose a man to head his campaign who allegedly had ties with the Klan. Under his direction, Republicans “circulated racist propaganda and portrayed [Democrat opponent] Smith as favoring complete equality of the races” (Ibid). The Hoover campaign in the South claimed that Smith, who had been governor of New York, was one of the main reasons that “Negroes allegedly had been extending their influence throughout New York” (Ibid.). The campaign also “disseminated pictures of blacks and whites dancing together in New York clubs and of white people taking orders from black employers” (Ibid). Moreover, Lichtman’s (1979:153-154) review of the private correspondence of Hoover’s publicity chief

reveals that he (the publicity chief) was well aware of these tactics. Hoover tried to do his part, too, though in a more subtle way. Hoover had been Secretary of Commerce under Coolidge, and unlike most others in the Coolidge administration, he desegregated the Commerce department—but while campaigning in the South he on several occasions denied ever having done so (Lichtman 1979:154).

The strategy worked in that Hoover won five southern states, which except for the case of Tennessee in 1920 was the first time since 1876 that a Republican had won even a single state within the region that had rebelled in the Civil War. But the campaign did not go unnoticed. In response to this southern strategy, the editorial board of the *Chicago Defender* (a major African American newspaper) rebuked the Republicans for allying themselves with racists. Condemning both Democrats and Republicans in the South, the NAACP issued a statement by leading African Americans that called the election “this campaign of racial hatred” and which claimed “that in the Presidential campaign of 1928, more than in previous campaigns since the Civil War, the American negro is being treated in a manner which is unfair and discouraging.”<sup>81</sup> An African-American Alderman in Chicago summarized the implications of the campaign in this way: “The Republican party has shown us the gate. Now let all the colored people walk out this gate” (quoted in Gosnell 1966[1935]:30).

Even one of the few positive actions that Republicans took in the 1920s, though incomplete, was entirely undone by Hoover. In 1922, the NAACP was finally able to get Congress to consider an anti-lynching bill that would allow for federal intervention under certain circumstances. The bill passed overwhelmingly in the House of Representatives, where nearly all

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<sup>81</sup> “Negroes Protest Bias in Campaign.” *New York Times* October 26, 1928, p.11 (discussed in Lichtman 1979).



non-southern members voted for it.<sup>82</sup> Though it was never taken up in the Senate, this incomplete effort was viewed more favorably by African Americans than either the federal segregation that Republicans continued or the Klan connections that they maintained. Yet during his presidency, when nearly five dozen African Americans were lynched, Hoover “resolutely refused to condemn this form of mob violence” (Wolters 1975:203).

Thus, in the 12 years before the New Deal, Republican administrations, and in particular the Hoover administration, undertook a number of actions—continuing the federal segregation first systematized by Wilson; developing a close relationship with the Klan; and adopting a strategy in 1928 to appeal to southern whites at the expense of those they oppressed—that had the potential to drive African Americans from the party, a potential that was greater to the degree that another partisan home could be found. As discussed above, African Americans were looking increasingly to Democrats outside the South at the state and local level, but the national level, where the South was still the heart of the party, was another story. Nevertheless the opening was there. As the *Chicago Defender* observed in 1932: “The managers of the Democratic party now have an unparalleled opportunity—if they will grasp it. It is their privilege to profit by the blunders of the Republicans” (quoted in Wolters 1975:204).

This implies that any progress made by the Democratic Party in attracting African Americans in presidential elections before the New Deal was insignificant, which indeed is the conventional view (Topping 2008; Weiss 1983; Sitkoff 1978; Sherman 1973). But it is also the

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<sup>82</sup> However, Democrats comprised only a very small portion of the non-southern House membership: just 13 voted on the bill, though seven did vote in favor of it (Jenkins et al. 2010:71). Jenkins et al. (2010) note that all the Democratic supporters were from Illinois, New York, New Jersey, and Massachusetts, while the opponents were from California, Missouri, Maryland, and Arizona. Though Jenkins et al. (2010:88) see this majority support for civil rights on the part of non-southern Democrats as significant, in a context of the large House membership (more than 300 members outside the South), the numbers are simply too small to draw any meaningful conclusion: one has no idea how Democrats outside those few locales would have voted had they been elected; there were 303 Republicans in that Congress.

case that no systematic study of which I am aware has examined the African American vote across multiple states and cities in the 1920s. Weiss (1983) does this for the 1932, 1936, and 1940, and she indeed shows a major shift of support toward the Democratic Party and Roosevelt by African Americans in the election of 1936. Comparing 1932 to 1936, the increase in percent-Democratic voting in predominantly Black precincts in several cities in the largest states was as follows: Chicago (21 to 49); Cincinnati (29 to 65); Cleveland (17 to 61); Detroit (31 to 66); Philadelphia (27 to 69); Pittsburgh (41 to 74); New York (51 to 81); and Indianapolis (49 to 75). These are dramatic increases, and the Democratic support by African Americans increased still more in 1940.<sup>83</sup>

But it also seems that attention to this dramatic shift might obscure a preceding one that was less extensive but still significant—at least the limited data that are available suggest as much. Between 1920 and 1924, African-American Democratic voting in presidential elections jumped in New York City from just 3 percent to 28 percent, and then bumped up a few more points in 1928. For the same period, Indianapolis jumped from 25 to 64 before falling somewhat to 53 percent. Voting for Democrats in predominantly African American precincts in Philadelphia stood at just 27 percent in 1932, but this was 4.5 *times* greater than 1924, and somewhere between 5 and 10 points greater than in 1928, depending on the estimate. Even Chicago’s 21 percent African American vote for Democrats in 1932 represented an increase over 1920 and 1924, when the figure was only 10 percent.<sup>84</sup>

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<sup>83</sup> By 1940, the Democratic presidential vote in predominantly Black districts was 52.2 percent in Chicago, about 2/3 in Cincinnati, Cleveland, and Philly, 75 percent in Detroit, and more than 80 percent in New York City and Pittsburgh (Weiss 1983:30).

<sup>84</sup> Most figures in this paragraph are from Weiss (1983:10-11, 30-31, 206-207). The 1924 Philadelphia estimate and one of the estimates for 1928 are from Wolfinger (2007:31). The Indianapolis figures come from Giffin (1983:164). Though Weiss (1983:10-11) does not give any precise figures for Cleveland, she does say that “the black Democratic vote” there in 1928 was “substantially larger than ... in previous presidential elections.”

To be sure, these smaller and earlier shifts were not the result of an overt Democratic attempt in the arena of presidential politics to bring African Americans into the coalition: recall that African Americans were confined to being alternates (not delegates) and seated inside chicken wire at the 1928 convention. But these earlier shifts probably reflected a growing disdain for Republican actions, along with possibly a positive response to some limited actions by Democrats (e.g. Davis' denunciation of the Klan in 1924). They also probably reflected shifts at the local and state level: it is notable that the biggest increases in Black Democratic voting before 1932 came in New York and Indianapolis, where, as discussed above, Democrats at the state and local levels were engaged in concerted efforts to bring African Americans into the party.<sup>85</sup> And it is notable, too, that the shifts were much more limited in Chicago, where, as also discussed above, the local Democratic party was running overtly anti-Black campaigns as late as 1927.

I now turn to the first several years of the Roosevelt administration. This period encompasses a major turning point in the history of the Democratic Party, namely, a change in a key provision of the party's constitution at the 1936 convention. But even before this convention and the election that followed it, key players in the Roosevelt administration were consolidating and generalizing at the national level the advances that had been made at state and local levels, and thereby also closing the window of possibility for the exclusionary response to the Black migration that some non-southern Democrats were still pursuing.

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<sup>85</sup> Also, Sitkoff (1978:41) observes that in 1932 FDR won only four of the 15 largest African American wards outside the South, and all of these were in New York City and Kansas City, Missouri.

## NATIONAL LEVEL, FROM 1933

When Roosevelt took office in 1933, just 12 years had passed since the close of the Wilson administration. This was, by one presidential term, less time than separated Wilson from his Democratic predecessor (Grover Cleveland), yet *from the outset* there was much less similarity between the FDR and Wilson administrations when it came to their respective relations with African Americans than between Wilson and his predecessor.<sup>86</sup> All of the following happened in the very first year of the administration: First, a former president of the Chicago chapter of the NAACP, Harold Ickes, was appointed to the Cabinet as Secretary of Interior. He broke the Wilsonian tradition almost immediately by desegregating the workplaces under his control, an action then followed by other cabinet members and agency heads (Sitkoff 1978:66). Second, First Lady Eleanor Roosevelt, in the first of many actions that would make her “a self-designated ambassador to black Americans” (Weiss 1983:254) and that would lead *Opportunity* magazine to describe her in 1936 as “unparalleled in the history of America” for her civil rights advocacy from a position of power (quoted in Sitkoff 1978:64), successfully pushed to have African American reporters included in White House press conferences (Sitkoff 1978:43). Third, President Roosevelt did in his first year of office what Hoover had failed to do in four years: to denounce forthrightly lynching and mob violence. This won Roosevelt praise from the NAACP’s Du Bois, who explicitly contrasted Roosevelt’s action with previous presidents (Sitkoff 1978:62-63). All of the above, of course, well precedes the 1936 election that made the Democratic Party aware that substantial majorities of African Americans could be persuaded to

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<sup>86</sup> This contrast is surprising in light of some elements from FDR’s political biography: He was Assistant Secretary of the Navy under Wilson and in that capacity carried out the segregation directives. He was the Democratic vice presidential candidate in 1920, the same election that the presidential candidate pejoratively described the Republican Party as the “Afro-American party.” And he had developed such good relations with the South, that several southerners sought an elimination of the two-thirds requirement for Democratic presidential nominations out of fear that otherwise the Wall Street types would stop FDR’s nomination (Sherman 1964; Sitkoff 1978; Weiss 1983)—which they indeed were trying to do (Craig 1992).

vote Democratic in presidential contests. Something had happened between 1921 and 1933, then, and I tried in the preceding discussion to show one major element of what that was: though the scene was uneven, and though an exclusionary path was still being pursued, to a significant degree Democratic politicians outside the South had been attempting to bring African Americans into the party well before Roosevelt took office.<sup>87</sup>

To be sure, Roosevelt had a “well-known aversion to pushing for civil rights and [thereby] splitting the party ...” (Reiter 2001:114). In a now widely cited statement to Walter White of the NAACP in 1935, FDR made explicit this aversion and its rationale:

I did not choose the tools with which I must work. Had I been permitted to choose them I would have selected quite different ones. But I've got to get legislation passed by Congress to save America. The Southerners by reason of the seniority rule in Congress are chairmen or occupy strategic places on most of the Senate and House committees. If I come out for the anti-lynching bill now, they will block every bill I ask Congress to pass to keep America from collapsing. I just can't take the risk (quoted in Lieberman 1998:257).

But that did not prevent him, and in particular the First Lady, from coming under attack in the South for their actions. As early as August 1934, rumors were circulating in the South about Eleanor's inappropriate egalitarian behavior, which is probably unsurprising given her growing

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<sup>87</sup> Many scholars point to the New Deal as the origins of a racialized system of welfare state institutions (Katznelson 2005; Lieberman 1998; Quadagno 1994). Nothing I say here is meant to signal disagreement with this literature. Instead, while this literature looks forward from the New Deal to assess its consequences, I am looking backward from the New Deal period to appreciate the significant degree of change since the Wilson administration. Moreover, the key actor in the racialization of welfare state institutions—southerners in Congress—is also a key actor in my account.

friendship with Walter White of the NAACP. As told by an ally of FDR from Louisville, who was an ambassador to Great Britain: “The tale is that she was visiting in South Carolina recently, and was scheduled to make a speech in one of the larger towns. She is said to have ridden to the auditorium, through the streets of the town, in an open car in which she sat next to a Negro woman, with whom she conversed sociably all the way” (quoted in Lash 1971:520). Because of these rumors, which apparently were not true, the ambassador said “Mrs. Roosevelt has made herself offensive to [white] Southerners by a too great affection for Negroes” (quoted in Ibid.). FDR himself was not immune from criticism. One “popular jingle” circulating around the South during the 1936 campaign had Eleanor and Franklin telling each other “You kiss the niggers/ I’ll kiss the Jews/ We’ll stay in the White House/ As long as we choose” (quoted in Weiss 1983:161). In January of that year, a headline in a southern periodical called out FDR by name and commanded him: “Stop—and stop quickly—THE EFFORTS OF THE DEMOCRATIC PARTY TO FOIST THE NEGRO AND SOCIAL EQUALITY UPON THE WHITE PEOPLE OF THE SOUTH” (quoted in Weiss 1983:161).

Anyone displeased with FDR for his non-Wilsonian but still quite limited ways of answering ‘the Negro question’ would have received no solace from the Democratic National Convention of 1936. This convention was marked by a number of ‘firsts’: the “first time” African Americans were seated as delegates; the “first time” that African-American press members were allowed in the “regular” press box; and the first time a Black clergy member delivered an invocation to open one of the convention sessions (Weiss 1983:185-186). The last of these prompted Senator Smith of South Carolina to storm out of the convention and explain what he believed was befalling his party: “The doors of the white man’s party have been thrown open to snare the Negro vote in the North. Political equality means social equality, and social

equality means intermarriage, and that means mongrelizing of the American race” (quoted in Sitkoff 1978:109). Exhibit A in the case that the Democratic Party was falling prey to the allegedly grave dangers of political equality was Congressman Arthur Mitchell of Chicago. In a sure sign that the Democratic Party in that city had traveled quite a distance since the mayoral campaign of 1927, Mitchell was elected in 1934 “as the first Negro Democratic congressman in the history of the United States” (Gosnell 1966 [1935]:90-91). Not wasting any time in advertising the party’s new approach in Chicago, convention organizers gave Mitchell the task of delivering one of the speeches to second FDR’s nomination, which of course entailed yet another first: “the first time that a black person had spoken from the floor of a Democratic convention” (Weiss 1983:186).<sup>88</sup>

Something else happened at the 1936 convention, which had nothing directly to do with the status of African Americans but that would have far-reaching implications for that status. As discussed in Chapter 2, one of the institutional bases of inter-regional unity within the Democratic Party was the adoption of a rule at the 1832 convention specifying that all presidential nominations must win a delegate majority of two-thirds. Any faction that could marshal one-third plus one could block a candidate. The South always had about one-fourth of the delegates, which created a “latent strategic threat” in that “a candidate who clearly violated the tradition of keeping race a regional rather than a national issue faced the necessity of winning almost all the votes of the non-segregated states, a strategy unlikely to be adopted by serious

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<sup>88</sup> The reader might notice that I am drawing heavily upon Weiss (1983) to document the Roosevelt administration’s political outreach to African Americans. This is a methodologically self-conscious move, because Weiss frames her work as a critique of Sitkoff (1978). Whereas Sitkoff (1978) explicitly emphasizes such outreach efforts, Weiss’s main argument is that the racial politics were of negligible importance in bringing African Americans into the party; what really mattered were the relief policies of the New Deal. Yet, Weiss herself presents an array of evidence to support Sitkoff’s thesis, which is *not* that the relief policies were unimportant but only that the politics were also very important. My goal is not to settle this debate for the sake of doing so: instead, I am affirming the importance of political strategy in the 1930s in part to show the process that led to the Democratic Party regional split, and in part to contextualize this 1930s racial politics as a continuation of a pattern that started before the New Deal.

presidential candidates” (Rubin 1976:111). Of course, as of 1936 no presidential contender, FDR included, had tried to move the issue of race up to the national level. At the same time, the rule had wreaked havoc at a number of conventions, most recently in 1924 when neither of the two main contenders could achieve two-thirds support on more than 100 ballots, which resulted in the nomination of an uninspiring third candidate. To be sure, though, it is not the case that the implications for party racial policy were “only dimly perceived,” as Rubin (1976:117) contends. According to Bass (1988:310), who reviewed the minutes from the Convention Rules Committee meetings, southerners worried that the rule change could “punish the cause of the south and states rights.” But they also did not think they could stop the change, and thus instead they sought in exchange a modification in delegate appropriation rules whereby the stronger Democratic areas would get more delegates than weaker ones.<sup>89</sup>

A range of scholars point to the elimination of the two-thirds rule as a crucial turning point in the history of the Democratic Party, both in general and with respect to the question of the racial order (Reiter 2001; Bass 1988; Sitkoff 1978; Rubin 1976; Sundquist 1968). Mentioning the *Brown* decision and Black migration out of the South, Rubin (1976:110-111) rightly argues that “no matter how important these pressures were, the ability of the Democratic Party to respond to these challenges would have been limited had not” this “major institutional ‘lock’ on racial conflict been lifted” by the elimination of the two-thirds rule in favor of simple majority voting for presidential nominations; “this critical change in the rules subsequently

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<sup>89</sup> Because the strength of the Democratic Party outside the South in presidential continued to grow after 1936, this modification did not have southerners’ desired effect.



contributed to the emergence of a new and dynamic era of party race relationships for the Democrats.”<sup>90</sup>

With the elimination of the two-thirds rule at the 1936 convention, FDR gained a measure of autonomy vis-a-vis the South, and it seemed to show in his second term. During FDR’s first term, Walter White of the NAACP described the Justice Department as the “U.S. Department of (White) Justice” (McMahon 2004:41), without meaning to be self-referential. But White and the NAACP had more to cheer about in FDR’s second term. In 1937, FDR appointed the first African American to the federal judiciary, William Hastie. Then in 1939 he appointed Frank Murphy, a former member of the NAACP Board of Directors (and the former governor of Michigan who refused to send in the guys with guns during the sit-down strikes of 1937), to head the Justice Department. As Attorney General, Murphy formed the Civil Liberties Unit in 1939, which two years later would be renamed the Civil Rights Section. After he left for the Supreme Court, and after his replacement, Jackson, did as well, FDR appointed Francis Biddle in 1941, who as the administration’s solicitor general had filed an *amicus curiae* brief on the side of Illinois Congressman Arthur Mitchell (he of the historic seconding speech at the 1936 convention) in his suit against racial segregation in interstate transportation (McMahon 2004:41, 144-145, 161). These types of appointments were part of a pattern: FDR made nine changes to the Supreme Court (eight appointments and one elevation to Chief Justice), eight between 1937 and 1941, and seven of these nine changes had the endorsement of the NAACP (McMahon 2004:2).

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<sup>90</sup> Bass (1988) notes that the intra-party strife that followed 1936 meant that adopting the rule after 1936, if not impossible, would have at least elicited a tremendous battle (313). But he also suggests, quite reasonably, that the change from two-thirds to majority rule in the 1936 convention itself produced this strife: “Indeed, the demise of the two-thirds rule can be said to have marked the beginning of the gradual estrangement of the solid south from the ranks of the Democracy [i.e. Democratic Party]” (314)

Two other events happened in FDR's second term that probably would not have occurred before the elimination of the two-thirds rule, at least not without serious consequences for his 1940 re-nomination chances. The first one stemmed from a 1938 trip by Eleanor Roosevelt to Birmingham, Alabama in order to participate in the founding meeting of the Southern Conference on Human Welfare. Though she did not use words to criticize the South's customs even when asked her opinion in press conferences, Ms. Roosevelt did levy criticism with one particular deed. The meeting was not initially segregated, and the police tried to bring it into conformity with the law. Ms. Roosevelt, who had been sitting on "the colored side" of the room, requested instead that her chair and that of a Black woman with whom she was sitting be placed in the middle of the stage (Weiss 1983:256). This won her no friends among segregationists in the South, and the events of 1939 did not change that. Howard University in Washington, D.C. was trying to find a venue large enough to host African-American singer Marian Anderson. When university officials requested Constitution Hall, the Daughters of the American Revolution refused on the grounds that the audience would be racially mixed and integrated, which prompted Ms. Roosevelt to resign from the organization and to discuss the resignation in her syndicated "My Day" column. Then, instead of getting Constitution Hall, or the auditorium at the largest whites-only high school in Washington, D.C. (which did not flatly reject hosting a racially integrated audience but created related roadblocks), Howard University officials were able to get the Lincoln Memorial! They did so with the assistance of Secretary of Interior Ickes and the direct approval of FDR (who said it would be okay "to have Marian sing from the top of the Washington Monument", and whose White House announced in the midst of the controversy that Marian Anderson would be performing for the King and Queen of England when they visited) (Weiss 1983:257-266). So instead of a high school, Anderson performed from the steps

of the Lincoln Memorial for a non-segregated audience of 75,000 (Weiss 1983:262). Harold Ickes had introduced her with a statement that included a declaration that “Genius draws no color line” (quoted in *Ibid*).

## CONCLUSION

To be sure, FDR did not pursue a legislative route of change in the domain of civil rights. But all of the above indicates a growing rift between the administration and the South on the question of the racial order—probably nothing more clearly than celebrating African-American singer Marian Anderson at the Lincoln Memorial in front of a ‘mixed’ audience. And though FDR was not pursuing a legislative route to change, non-southern Democratic members of the House and Senate were. The temporal pattern of conflict in this case also is roughly consistent with the abrogation of the two-thirds rule at the national convention, though non-presidential actors were not necessarily as influenced by this change.

It was in 1935 that the first serious sign of division became evident in Congress, at least retrospectively. This was the first time that a Democratically-controlled chamber of Congress considered legislation to protect the civil rights of African Americans in the South. Like in 1922, the bill provided for federal intervention in the absence of effective state control over lynching, but this time its sponsors were both Democrats, Wagner of New York and Costigan of Colorado. The 17-member Judiciary Committee reported it favorably, though at the time only two of its members were Democrats from the South (Jenkins et al. 2010:79n160). As Sitkoff (1978:291) describes it, opponents of the bill carried out a “restrained filibuster” that lasted only a few days. Moreover, on the two roll calls to bury the bill, the first unsuccessful and the second successful, non-southern Democrats largely showed their fidelity to the southern wing. Though in the first,

unsuccessful vote, they went against the South by a narrow margin (14 to 16), non-southern Democrats voted 21-14 in favor of adjournment on the second roll call (Jenkins et al. 2010:82).

The question of whether this was a hiccup or an intestinal disorder for Democratic unity on the racial order was answered in the next session of Congress. Though 1948 is burnt in the minds of many, because that is the year when southern delegations walked out of the Democratic convention due to the adoption of a strong civil rights plank, it was in fact 1937-38 that was “pivotal” (Jenkins et al. 2010:82; see also Finley 2008; Sitkoff 1978). As mentioned at the beginning of this chapter, the year 1937 saw the first Democrat-sponsored civil rights legislation of any kind to pass the House in more than a century of the party’s existence. But compared to this outcome in the House in 1937 and even the failed 1935 effort in the Senate, matters were different in the Senate when it took up the measure in 1938—as they would continue to be for the next 25 years. The filibuster this time ran well into a second month, and this time it was not a gentlemanly disagreement but a “battle” that “smacked of fratricide” (Sitkoff 1978:291).<sup>91</sup> According to Richard Russell, who over the next quarter of a century would become the dean of southern senators in their effort to defend racial ethnocracy, the same Richard Russell for whom one of the main Senate office buildings is now named, the proposal to introduce the federal government into the niceties of southern justice was clear evidence of the Communist influences that were taking over the New Deal (Ibid). This time, the non-southern Democrats did not fall into line, but instead filed two cloture motions to end the southern Democrats’ filibuster. Both motions failed miserably, 37 to 51 and 42 to 46. But this time 70 percent, then 75 percent, of the

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<sup>91</sup> If southern Democrats were aware of the Gallup poll that was released during the debate—it indicated that 57 percent of the South and 72 percent of the country as a whole was “favorable to Senate passage of anti-lynching legislation” (Sitkoff 1978:291-292)—they either did not believe it or did not care. One might also note that this was not a conflict over economic policy transferred to the non-economic realm: Reiter (2001:113) shows that in the Senate non-southern Democrats were *more* conservative on economic policy (i.e. government role in economy) than southern Democrats between 1933 and 1940.

50 non-southern Democrats voted *against* the southern wing of their party. Though the pro-civil rights forces were close to a majority on the second vote, that would not have been sufficient.

The Democratic Party gave up its two-thirds rule at the 1936 National Convention, but the Senate would not give up its two-thirds rule for the entirety of the civil rights era. If meaningful civil rights legislation was going to get through Congress, then a two-thirds majority would have to coalesce in the Senate. Chapter four, therefore turns to the Senate.

**CHAPTER 4**

**PERPETUATING RACIAL ETHNOCRACY: THE SENATE AND CIVIL RIGHTS, 1938-1964**

After the failure of the 1890-91 Elections Bill, it was not until the late 1930s that civil rights returned to the national agenda in an enduring way, remaining there until the passage of meaningful legislation in the 1960s. This re-emergence was interlinked with what chapter three examined in some detail: the break-up of the Democratic Party's inter-regional alliance for white supremacy. In fact, the two processes were basically one, as indicated by the anti-lynching bill of 1937-1938, which marked the enduring re-emergence of civil rights onto the national agenda, and which was discussed briefly in chapter three.<sup>92</sup>

When the anti-lynching bill stalled in the Senate during the 1937-1938 session, nobody knew the special role that the Senate would come to play in the struggle to overthrow racial ethnocracy over the next generation. When the Senate rejected the anti-lynching bill passed by the House, it was the House that was an outlier among federal law-making institutions: neither the executive nor the judicial branch had shown any obvious commitment to advancing legal racial equality. This would all change over the course of roughly the next decade, as the Presidency and Supreme Court moved forward on civil rights, and as the House tried to do, only to be halted by the Senate. This is not to say that these other federal law-making institutions were attempting a full scale transformation along the lines that eventually emerged with the Civil Rights Act of 1964 and the Voting Rights Act of 1965. But after the southern racial order was

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<sup>92</sup> For the identification of 1938 as a turning point, see Jenkins et al. (2010), Finley (2008), Young and Burstein (1995), and Sitkoff (1978). Jenkins et al. (2010:82) describe 1937-38 as "pivotal."

left untouched for nearly half a century, these other institutions were attempting (the House) and succeeding in (the Presidency and Supreme Court) the modification of this non-interventionist status quo.

The Senate was a different story. In the battle over equal rights in the quarter century prior to the Civil Rights Act of 1964, the Senate stood as a citadel in the defense of institutionalized white supremacy, “the graveyard of civil rights legislation” (Filvaroff and Wolfinger 2000:22), “a defiant fortress barring the road to social justice” (Caro 2002:22). Outside of the racist politics of the South, there was no greater obstacle to the dismantlement of legalized segregation and exclusion than the United States Senate. For those who desired and demanded racial equality under the law, the Senate stood as the “Walls of Jericho” (Mann 1996).

This chapter examines the relationship between the Senate and civil rights in the generation leading up to the 1960s, focusing on institutions of minority obstruction particular to the Senate, as well as the question of partisan alignments and re-alignments outside the South. Because legislation was able to move forward in the House but not the Senate, most of the analysis focuses on two major institutions that distinguish the Senate from the House and that facilitate minority obstruction of majority rule: the filibuster rule and the equal representation of states that contain populations of vastly unequal sizes. The analysis of this second institution through logistic regression in turn leads to a third consideration regarding the insights that voting in the Senate can provide to the question of partisan realignment on racial policy in the twentieth century (see Carmines and Stimson 1989; Chen 2007; Feinstein and Schickler 2008; Karol 2009): The late 1930s marked the break-up of the Democratic Party’s inter-regional alliance for white supremacy, but did Republicans step into the breach filled by the non-southern Democrats’

departure? Or did the Republicans' conservative shift on racial policy happen after the mid-1960s civil rights transformation?

The first steps are preliminary. I begin by describing the roll call data set that forms the basis of this chapter's main empirical analyses. Then I lay out some evidence for the claim that, at the federal level, the Senate was a uniquely obstructionist institution in the generation before the civil rights breakthrough of the mid-1960s. Five subsequent steps focus specifically on the Senate. First, I examine the role of the filibuster institution in facilitating Senate obstruction. I show that for the most part the effects of the filibuster on civil rights legislation were indirect and structural rather than direct. I then turn in a second step to an examination of equal state representation, which gives markedly disproportionate representation to small population states. Using tabular analysis of roll call voting, and a measure of the impact of small states on roll call outcomes, I assess the degree to which this institutional difference between the House and Senate was relevant in civil rights voting patterns. This over-representation of small states was indeed very important: *inter alia*, I show that pro-civil rights senators consistently lost simple majority roll calls *despite representing a majority of the population*. Then in a third step I subject the significance of this institutional difference—the disproportionate weight of small population states—to a multivariate test (logistic regression) that controls for various other factors that might perhaps account for small population states' anti-civil rights voting records, including individual-level variables (e.g., party, ideology, seniority of senator) and state-level variables (e.g. racial composition of population, union density, urbanization). A number of these other factors were important both statistically and substantively. Yet, the quantitative analysis also shows that even when all of these factors are accounted for, the population size of states is still strongly predictive of civil rights voting. This finding indicates that in the case of civil rights



between the 1930s and 1960s the representation of small states was not merely a vessel for allowing other factors to do causal work (e.g. ideology of a senator, racial composition of a state). Instead, the relative size of states itself was explanatorily important, a finding that is consistent with a growing literature on the Senate in more recent decades (Knight 2008; Lee 2002, 2000, 1998). In a fourth step, I build on the logistic regression results concerning the party variable to address ongoing debates regarding partisan realignment on racial policy in the twentieth century. Then in a concluding discussion, I examine this Senate-centered approach in relation to other explanatory approaches to the civil rights transformation of the 1960s, including the role of the Cold War, public opinion, and of course the civil rights movement.

#### SENATE ROLL CALL DATA SET

The analysis in this chapter is based largely on a comprehensive set of Senate roll calls related to civil rights between 1938 and 1964. The data collection motivation was to determine patterns in support outside the South for the southern bloc's effort to block or weaken civil rights legislation. For this reason, I included all roll calls where non-southern senators did not vote with unanimity—a total of 44 roll calls for the period. Other sources purport to identify all significant votes, but offer lists with different roll calls for the same period, suggesting the difficulty of agreeing upon which are “significant” (Young and Burstein 1995; Katznelson et al. 1993; Burstein 1980). These prior efforts also exclude important roll calls and include ones that arguably were unimportant. Young and Burstein's (1995) analysis is based on the largest reported set—15 roll calls between 1938 and 1964. However, this list does not include, to cite a few examples, the anti-poll tax cloture motion in 1946; three key votes during the 1949 debate concerning Senate rules reform; a 1957 vote on the controversial jury trial amendment; votes in

the 1960 consideration of civil rights legislation on cloture and an amendment to strengthen voting rights protection; and several votes on Senate rules reform between 1961 and 1963. At the same time, Young and Burstein (1995) include votes on final passage of the 1957 and 1960 Civil Rights Acts—even though scholars agree that all the crucial roll calls happened *before* the vote on final passage, which in any case did not divide non-southern senators (Caro 2002; Mann 1996; Sundquist 1968; Berman 1966).

Disagreements arise because of the ambiguity of what constitutes an “important” roll call. In collecting data for this analysis, in contrast, I endeavored to include all roll calls related either to changes in the Senate Rules or directly concerned with civil rights.<sup>93</sup> The analysis begins in 1938, because that is the first year in which civil rights proponents in the Senate attempted to impose cloture to end a filibuster, and because this year marked the beginning of the first sustained contention over civil rights in Congress since the 1860s-1890s period (Finley 2008; Young and Burstein 1995). The analysis ends in 1964 with the first ever successful attempt to impose cloture on a civil rights filibuster, which directly led to the passage of landmark civil rights legislation (Loevy 1990). Because this analysis aims to identify patterns of support for the South among non-southern senators, those roll calls in which non-southern Democrats and Republicans aligned with unanimity against the South were not included—e.g., the final votes on passage of the Civil Rights Acts of 1957 and 1960.<sup>94</sup>

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<sup>93</sup> The identification process had three major sources: the existing literature cited above; the *Congressional Quarterly Almanac*, which provides a list of key roll calls for each session of Congress beginning in 1945; and secondary historical literature that discusses the course of civil rights legislation. This compiled list was then checked against the [voteview.com](http://voteview.com) website, which includes all roll calls.

<sup>94</sup> Allow me to provide a brief note on the party categories referenced in the discussion. Party and region corresponded almost perfectly for Republicans: except for a Texas senator elected in 1961, all Republicans came from non-southern states, so “Republican” and “non-southern Republican” are basically equivalent (and this single southern Republican is not included in the analysis of Republicans). “Southern Democrats” represented the 11 states that rebelled against the Union in the Civil War. Southern Democrats were a genuine bloc in the Senate, complete with official meetings convened to discuss strategies for blocking civil rights legislation (Finley 2008). Democratic

The search yielded a total of 44 roll calls, dozens more than any previous analysis has considered (see Appendix 4.1).<sup>95</sup> The roll calls were not evenly distributed: only about forty percent of them (i.e., 18) happened before 1958. Though all the roll calls concerned civil rights, it is necessary to distinguish two different kinds, “Direct” votes and “Rules” votes. Rules votes, of which there were 13 across the period, concerned reform of Senate rules, particularly Rule 22, which regulated filibusters and procedures to stop them (i.e. “cloture”). While these were not votes on civil rights measures per se, most major actors recognized a close link between the Senate rules and chances for civil rights legislation. “Senate liberals discussed the filibuster in the same breath as civil rights...” (Zelizer 2004:43), and in fact, “[t]he crucial significance of Rule 22 ... was recognized by all parties as the southern Democrats’ ultimate deterrent to unacceptable civil rights legislation” (Foley 1980:29).<sup>96</sup> The second type of vote encompasses

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senators from any other state are “non-southern Democrats”, though at times I refer to them simply as “Democrats”—while always attaching the regional modifier when referencing *southern* Democrats.

<sup>95</sup> I did not include votes related to racial exclusion but also to other major issues. This meant excluding a number of roll calls during WWII that concerned soldier voting and funding for the temporary FEPC established by Roosevelt. Because these measures were entangled with the war effort, southern senators were not willing to wield their obstructionist weapons—they, for example, focused on preventing the emergence of a *permanent* FEPC after the war (Finley 2008). The problem with including these types of votes is vividly illustrated by the House’s treatment of federal aid to education bills. On more than one occasion, Republicans supported a “Powell amendment” (named for Congressman Clayton Powell from New York, it would have banned the distribution of federal funds to racially segregated schools) in order to turn southern Democrats against the bill—a strategy that became clear when, having voted for the Powell amendment, Republicans then voted against the bill as a whole (Anderson 1964:81; and more generally, Sundquist 1968:156-187).

<sup>96</sup> These are not isolated assessments. Between the 1920s and 1960s, “the filibuster became almost entirely associated with the battle over civil rights” (Chemerinsky and Chemerinsky 1997:199). After learning of the outcome of the disastrous effort to reform Rule 22 in 1949, Wilkins of the NAACP declared this anti-civil rights vote the “most crucial vote on civil rights in the last ten years” (quoted in Topping 2008:143). The 1949 cloture reform “was understood at the time as the test for civil rights and, more broadly, President Truman’s agenda” (Koger 2010:108). Also, journalists referred to the filibuster regarding Rule 22 reform as a ‘civil rights filibuster’ (Koger 2010:208n15) A few years later, when 20 leading African American organizations published “What the Negro Wants in 1952,” items on the agenda included voting rights protection, equality in the military, abolition of interstate travel segregation, denial of federal funds to segregated schools, an FEPC, antilynching legislation, and the abolition of filibuster power through reform of Rule 22 (Topping 2008:171). The media also recognized the link between the filibuster rule and civil rights: In 1958, for example, *The New Republic* subject index added “see also Filibusters” to the “Civil Rights” entry. Republicans were reluctant to admit the link but sometimes did: Republican Senator Charles Potter of Michigan said the following in explaining why he was going to vote to adopt new Senate Rules in Jan 1957 (he had voted against such a motion in 1953 at the beginning of his first term): “I respectfully

roll calls directly tied to civil rights measures (e.g. procedural votes to consider legislation, proposed amendments, motions to table), and therefore I call these “Direct” votes.

Before proceeding to an analysis of these roll call data, the next section aims to provide a warrant for doing so by demonstrating the Senate’s uniquely obstructionist role at the federal level in relation to civil rights reform.

## SENATE OBSTRUCTION IN THE FEDERAL GOVERNMENT CONTEXT

The Senate’s uniquely obstructionist role can be appreciated only in relation to other federal law/policy-making institutions. I start with the Supreme Court and proceed to the Executive Branch and then the House of Representatives, which gets the most attention because it is most directly comparable to the Senate.

### Supreme Court

The role of the Supreme Court in civil rights after the Civil War is much debated, but there is broad agreement that the Supreme Court was an institutional force for undermining legal racial exclusion in the mid-20<sup>th</sup> century (e.g. Valelly 2004; Klarmen 2004). Civil rights made it onto the agenda of both the Senate and the Supreme Court in the generation before the Civil Rights Act of 1964. But while the Senate blocked passage of civil rights laws between 1938 and 1956 and then allowed the passage of only ineffective legislation in 1957 and 1960, the Supreme Court struck down many elements of institutionalized white supremacy in the 1940s and 1950s,

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remind my Republican colleagues that many of them ran for election on ... the program of President Eisenhower. A vital part of that program is the proposed legislation dealing with civil rights. I say to my colleagues that they will never have an opportunity to vote a on a civil rights measure in the Senate unless rule 22 is changed” (quoted in Sundquist 1968:233).

including the white primary, racial covenants in housing, segregated inter-state travel, and, most famously, school segregation (Klarman 2004). McAdam (1982) notes the great increase in favorable civil rights decisions: “Of the decisions handed down before 1931, only 43 percent (23 of 53) were supportive of black civil rights. The comparable figure for the 1931-1955 period is 91 percent (68 of 75)” (McAdam 1982:84; see also Berger 1969:65-168). While the Senate represented a major obstacle for civil rights advocates, the Supreme Court was a source of political opportunity.

### Executive Branch

For every president from FDR to Kennedy, it is easy enough to find critics who highlight the presidents’ fecklessness and political cynicism in the face of demands for civil rights reform (Bryant 2006; Burk 1984; Weiss 1983; Berman 1970; Anderson 1964). I certainly do not wish to say that there is a shortage of anecdotes for illustrating these points. Yet, by their action through the courts and via executive orders, presidents were by no means defenders of legal racial exclusion, and in fact many of their actions served to erode it.

First, positive action in the Supreme Court derived in part from action in the executive branch. While the Court famously struck down *Plessy v. Ferguson* in its 1954 *Brown* decision against legal racial segregation in schools, it was first asked to do so by the Truman administration in an earlier case concerning the whites-only University of Texas law school, *Sweatt v. Painter* (1950) (Balkin 2001:19). In the 1940s and early 1950s Court decisions that struck down racial segregation in inter-state transportation, racial covenants in housing, and school segregation, the Justice Departments of the Roosevelt, Truman, and Eisenhower administrations filed *amicus curiae* briefs in support of plaintiffs’ efforts to undermine legal

racial exclusion (Layton 2001:111-118; McMahon 2004:41, 144-145, 161). The Eisenhower administration also filed briefs in support of plaintiffs' ultimately successful legal effort to outlaw segregation in a range of domains within the nation's capital (Nichols 2007:28-29). Already during the Roosevelt administration, in fact, the executive branch was working through the courts to strike at major elements of exclusion. Weiss (1983:249) rebukes FDR for not getting involved in the 1944 *Smith v. Allwright* case that declared unconstitutional all-white primaries in the South, saying that the NAACP "went forward without benefit of encouragement from the White House or tangible assistance from the Department of Justice." Strictly speaking, this is true. But as others show, this was a decision taken by the Justice Department in the knowledge that, as Attorney General Biddle put it in his effort to explain non-involvement to FDR (because FDR demanded an explanation), the administration had already in 1941 "established the right to vote in primaries as a federal right enforceable in the federal courts in the *Classic* case," and therefore it was better not to antagonize southern whites unnecessarily (quoted in McMahon 2000:35; see also Lawson 1999:42).<sup>97</sup> Moreover, though there is no direct evidence that FDR had the explicit goal of paving the way to *Brown* with his Supreme Court appointments, it is the case that nearly all of his appointments had the approval of the NAACP, which starting as early as 1931 was trying to pave the way to *Brown* (McMahon 2004). It is therefore not surprising that justices endorsed by the NAACP produced a Supreme Court that overturned interstate segregation, racial covenants in housing, the all-white primary, and school segregation.

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<sup>97</sup> As this implies, the *Classic* case did not involve race directly. But once the right to vote in primaries was declared to be a federal right, then the all-white primary was doomed because it constituted an unambiguous violation of the Fifteenth Amendment—unlike, for example, literacy tests or 'understanding' tests whereby the right to vote was contingent on some unspecified knowledge of the state or federal constitution. McMahon (2000:34) says that "[w]ith no African Americans involved, CLU [Civil Liberties Unit] lawyers saw *Classic* as an ideal case to undermine racial exclusiveness in primaries, the only significant elections in the South."

During the long period of Senate inaction, presidents and the executive branch did not work only through the courts to promote legal racial equality. Starting in 1941, executive orders across multiple presidencies prohibited racial discrimination within government employment and by government contractors, desegregated the military, and prohibited discrimination in government-supported housing (Mayer 2001:182-217). Except for the last one, which awaited Kennedy's election, all of these orders were in place by 1950 and then were continued by subsequent administrations. Also notable is Truman's Committee on Civil Rights, which he established by executive order in December 1946, and which was a predecessor to the Civil Rights Commission formed by legislation in 1957 and still with us today. Truman's Committee on Civil Rights released its report, *To Secure These Rights*, in 1947, the same year that Truman became the first president to speak before the NAACP.<sup>98</sup> The report called for "a stunning sweep of civil rights initiatives," including desegregation of the military and legislation aimed at elimination of the poll tax and lynching, as well as discrimination in employment (Mayer 2001:191).

Based on the Committee's recommendations, Truman in 1948 became the first Democratic president to send civil rights legislative proposals to Congress. These proposals, *inter alia*, aimed at lynching, the poll tax, anti-discrimination in employment, and a ban on racial segregation in inter-state transportation facilities (the 1946 Supreme Court decision mentioned above, *Morgan v. Virginia*, addressed seating only on buses, not in terminals) (Billington 1973). None of these proposals made it into law, however. Moreover, "[t]hroughout the rest of Truman's term in office, southern obstructionism prevented passage of any civil rights measures" (Klinkner and Smith 1999:224-225).

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<sup>98</sup> Truman spoke before the NAACP from the Lincoln Memorial, in a speech broadcast nationwide (Klinkner and Smith 1999:213).

## House of Representatives

Although prioritization of civil rights by a president was a notable development, Truman's proposals to Congress "did not suggest anything new" (Garson 1974:233). Between the 1930s and 1960s, there were two phases of civil rights consideration in Congress, and Truman's proposals came near *the end* of the first one, which ran from 1937 to 1950. During that time, the House on eight occasions passed bills that would have provided for federal intervention in the southern racial order: two concerned lynching, five concerned the poll tax, and an eighth established a permanent fair employment practices commission (FEPC) to address racial discrimination in both public and private sector employment. Only one of these bills passed with less than the 66 percent support (the FEPC bill in 1950, 240-177, or 58 percent), and six of them passed with 70 to 75 percent support. Throughout the period, the South had about 110 members who voted generally as a bloc against civil rights legislation. Except for the 1950 FEPC vote, which had 177 House members in the opposition, the anti-civil rights forces never garnered more than 131 votes. In other words, House voting on these civil rights measures fell basically along South/non-South lines (Jenkins and Peck 2012; Jenkins et al. 2010).<sup>99</sup> The Senate considered all

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<sup>99</sup> I will pause here to take another pass at the Black vote hypothesis (BVH) discussed at length in chapter three. Was *this* pattern of voting in the House driven by the quest for African American votes? If it was, this was not because of the atomized interests of non-southern House members. In a work devoted to trumpeting the power of the Black vote outside the South, Moon (1948:9) says that African American voters were an "important and decisive factor in a dozen northern states and in at least seventy-five non-southern congressional districts." Seventy-five is a lot, but it proportionally represented just one-fourth of all non-southern House districts. Moon's figure was from the mid-1940s, but Congressional Quarterly offered an almost identical estimate a decade later, noting that African Americans comprised at least five percent of voters in 72 of 315 congressional districts outside the South. "Where Doe Negro Voter Strength Lie?" *CQ Weekly* May 4, 1956, pp.491-495. Analyses such as these also ignore that the *white* vote could not necessarily be counted on to be supportive of civil rights or neutral outside the South. This is an article of faith in "white backlash" analyses of the post-1965 period, but it is relevant before the 1960s as well. Alongside the African American migration into the North, there was also a very sizable *southern white* migration as well (see Gregory 2005). Though the impact of southern whites on non-southern racial politics has not been investigated, contemporaries such as the NAACP's Walter White and social scientist Gunnar Myrdal "spoke loudly about the political role of white southerners" in stimulating northern racism (Gregory 2005:283). More tangibly, nearly 50 "racially motivated strikes" (also known as "hate strikes") by white workers to protest the hiring or



of these measures during the first phase as well—anti-lynching in one session, anti-poll tax legislation in three sessions, and the FEPC in two sessions—but none of these measures passed. In all cases, pro-civil rights forces could not gather the votes to defeat a filibuster, though on three occasions they were able to get a majority (once for the poll tax ban and twice for the FEPC). The most striking vote came in 1950, when 55 of 88 senators voted to close debate and move to pass the FEPC bill; though this was 62.5 percent of those voting, pro-rights forces would have needed nine more to get to 64 and thereby the two-thirds of the Senate membership required to close debate (there were 96 senators at the time; Hawaii and Alaska were not yet states). Thus, while in the first phase of civil rights consideration Congress did not pass any legislation, this was not because of the House.

In light of the repeated failures to get House-passed legislation through the Senate, civil rights advocates in and out of Congress shifted their attention for a few years to revising the Senate rules (on this rules reform effort, more below). As Sinclair (1982:38) observes, “serious attempts to enact civil rights legislation ceased. ... The Senate filibuster had proved an insurmountable barrier to civil rights forces.” The second phase of civil rights consideration then ran from 1956 to 1964 (and beyond, but 1964 in terms of the analysis here). During this time three pieces of legislation actually made it through both chambers and onto the president’s desk

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promotion of African Americans in a single 18-month period in 1943 and 1944. More than half of these were in the Midwest, most in Michigan, Ohio, Illinois, and Indiana, where analysts usually presume that the strength of the Black vote was equal to the proportion of Black voters, ignoring the potential for countervailing influences from the white electorate (Kersten 2000:143-144). And this, to be sure, was not the extent of anti-black violence and conflict outside the South (see Klinkner and Smith 1999:230-231 for an overview). In the 1940s, for example, about a dozen African American families were able to move into the Sojourner Truth public housing facility in Detroit only after receiving the protection of more than 3,000 national guardsmen and police (Klinkner and Smith 1999:172). The methodological problem attendant to positing the ability of a single variable equation to capture the strength of the BV comes through clearly in Shannon (1951). After arguing that African Americans derived great power from their numbers in combination with the tight elections characteristic of New York, Pennsylvania, Illinois, Michigan, Ohio, and California, he goes on to note that due to the migration of Blacks *and* Whites out of the South, the racial tensions of South were “being transferred” to these states (Shannon 1951:55). How, then, could a politician or party calculate with reasonable certainty that ‘cultivating’ African Americans would increase one’s net vote?

for signing: the Civil Rights Acts of 1957, 1960, and 1964. But the House-Senate difference generally persisted nevertheless, albeit in a different form: not whether a bill would pass, but rather its relative strength in advancing civil rights is what came to distinguish the two chambers. This was particularly evident in the fate of two key provisions during the process leading to the passage of legislation in 1957. The first key provision was a proposed amendment that was widely perceived by all sides as weakening the effectiveness of the legislation, the *jury trial amendment*. The second provision became known as the *Part III* powers, after its placement in the administration bill. Though the bill was generally focused on voting rights, Part III gave the attorney general the power to file suits in pursuit of protecting *all* civil rights anywhere in the country. The jury trial amendment, on the other hand, sought to require jury trials for those accused of violating voting rights—with the idea that southern white juries would be unwilling to convict (as they had been in the late nineteenth century, a major problem for effective use of the enforcement acts—see Wang 1997). Anti-civil rights forces wanted to strike the Part III powers and amend the bill to include the jury trial provision. When the 1957 bill was considered in the House, the jury trial amendment came to a vote and was rejected. Then the House voted for a bill that retained the Part III powers originally proposed by the administration. In contrast, the Senate removed the Part III powers and voted to include the jury trial amendment.<sup>100</sup> Accordingly, Senator Russell, leader of the southern bloc, described the Senate bill as “infinitely less objectionable” than what the House had passed (quoted in Fite 1991:364).

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<sup>100</sup> It is common to find accounts of the Civil Rights Act of 1957 that claim that until Richard Russell raised the issue on the Senate floor, no one save for Attorney General Brownell and a few insiders really understood how far-reaching were the implications of the Part III powers (e.g. Anderson 1964; Mann 1996). If this were true, then that would call into question the meaning of the House’s support for Part III—maybe they just did not know for what they were voting. In fact, however, the issue was explicitly raised during House debates on the bill, and Emmanuel Celler, chair of the Judiciary Committee, forthrightly conceded the broad powers entailed by this provision of the bill (see Jenkins 2012:18).

In 1960, the differences between the House and Senate versions were not as great, though on the key provision—to provide for referees to ensure the rights of African Americans to vote in the South—the House version was stronger (Berman 1966:105-109). The House bill likely would have been stronger still, but the House leadership took steps to ensure that strengthening amendments (including Part III powers), which likely would have passed, were ruled non-germane during floor consideration (Sundquist 1968:247-248).<sup>101</sup>

The contrast between the House and Senate was plainly evident in 1964. When Kennedy sent his civil rights proposals to Congress after the events in Birmingham in spring 1963 (on this, more below), “[a]lmost no one who understood the dynamics of Congress believed that Kennedy would ultimately pass a strong civil rights bill” (Mann 1996:353).<sup>102</sup> One major concern of administration officials was that the House would pass legislation that was *too strong* to gain the support of 67 senators (Loevy 1990). The Kennedy bill contained neither Part III powers nor a measure to establish a permanent FEPC to eliminate employment discrimination. True to administration officials’ concerns, the House Judiciary Committee (which was chaired by Cellar from New York, in contrast to its Senate counterpart, which was chaired by Eastland from Mississippi) added Part III powers before the bill came before the House, and then once the bill was on the floor of the House the entire membership voted to include an FEPC provision (Evans and Novak 1966:377-379). Although the Civil Rights Act of 1964 was indeed transformative legislation, it passed the Senate only after three months of filibuster, which was broken only after

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<sup>101</sup> This move by the House leader, Sam Rayburn of Texas, appears to have been in collaboration with Senate Majority leader Johnson, who was planning to run for president and did not wish to be held responsible for weakening a stronger House bill—though he knew that a stronger House bill would have to be weakened if it were going to pass the Senate. In 1957, by contrast, no one was running for president; moreover, Johnson was not initially aware that Part III would sink the bill in the Senate if he could not get the votes to remove them (see Caro 2002).

<sup>102</sup> Similarly, after Kennedy’s death, Burk Marshall, who had been heading the legislative effort from the Justice Department, confessed to Johnson that “I didn’t have the foggiest idea how we were going to get it through the Senate” (quoted in Mann 1996:382).

compromises that some scholars contend led to a significant weakening of the House bill (Chen 2009; Rodriguez and Weingast 2003; but see Loevy 1990).

*Summary:* Speaking of the period from the early 1940s to the early 1950s, Lawson (1999 [1976]:140) drew this contrast in relation to developments at the federal level: “[T]he executive and judicial branches had expanded Negro rights. Presidential orders had challenged employment discrimination, dismantled segregation in the armed forces, and established an investigatory committee, while Supreme Court rulings had attacked inequality in voting, housing, and education. In contrast, Congress had thwarted black aims.” As we have just seen, it was not Congress as a whole, but rather the Senate that did the thwarting—and this continued to be the case, to varying degrees, for the remainder of the period. The next three sections examine institutional features of the Senate that might help account for this difference.

#### SOURCES OF MINORITY OBSTRUCTION, 1: FILIBUSTER

Besides membership size (the House has more than four times as many members), three major institutional differences between the House and the Senate are: senators face re-election every six years instead of two and thus are less subject to electoral pressure; in the Senate by virtue of Rule 22, a supermajority (two-thirds during the period under consideration) is required to close debate and therefore to pass legislation when a determined minority wishes to prevent simple majority rule; and third, while House districts are drawn roughly on the basis of population, states receive equal representation in the Senate and therefore small population states are vastly over-represented. This section and the next focus on the filibuster and equal

representation of states (the first difference will be integrated into the logistic regression analysis farther below).

Civil rights bills could pass the House with a simple majority but arguably required two-thirds in the Senate due to the filibuster rule. Was it because of the Senate's filibuster rule that legal racial equality could advance in the House, along with the executive and judicial branches, but not in the Senate? Southern Democrats seemed to think so. When the southern bloc gathered in 1949 to discuss proposals for Rule 22 in a meeting led by Senator Russell from Georgia, "[t]o a man, the southern caucus agreed with Russell that the defense of segregation hinged on the rules governing the Senate" (Finley 2008:133). Foley (1980:29) says that "[t]he crucial significance of Rule 22 ... was recognized by all parties as the southern Democrats' ultimate deterrent to unacceptable civil rights legislation" (Foley 1980:29). In the late 1940s and early 1950s the NAACP's board of directors said there was "little hope for enactment" of civil rights legislation without reform of Rule 22 (quoted in Topping 2008:141), and the American Jewish Congress declared passage of such legislation "impossible" without such reform (quoted in Zelizer 2004:43).<sup>103</sup> Writing about the same time, the eminent political scientist V.O. Key agreed, arguing that the greatest obstacle to civil rights reform was "the southern Senator and his actual, if not formal, right to veto proposals of national intervention to protect Negro rights" (Key 1949:8-9). Looking back on the failure of Truman's civil rights proposals in the late 1940s, Sundquist (1968:222) echoed this view: "The one insurmountable obstacle was the Senate filibuster ... Negroes could protest, presidents could recommend, party platforms could endorse, the House of Representatives could act; but no civil rights bill could become law without a change in the Senate ..." As late as the early 1960s, Rosenthal (1962:2) contended that

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<sup>103</sup> Pro-civil rights organizations expended considerable effort through the early 1960s to get Rule 22 changed (Topping 2008; Zelizer 2004; Boyle 1995; Lazarowitz 1982; Sundquist 1968).

“[w]ithout liberalization of the stringent cloture rule, the threat to filibuster would doubtless defeat civil rights bills that southerners really opposed.”<sup>104</sup>

Although opposing sides agreed about Rule 22’s significance for civil rights, and although many scholars support this significance, a more skeptical view exists. Wolfinger (1971:117) concedes that Rule 22 reform was “almost wholly a civil rights issue.” But rather than deserving “its fearsome reputation for defeating civil rights bills,” the filibuster “was instead a convenient scapegoat” (Wolfinger 1971:120). Koger (2010) seconds this view, arguing that the obstructionist side won almost all of the filibuster battles due to “asymmetrical intensity” (118): “The historical record suggests that Southerners’ ability to frustrate progress on civil rights was based on the greater intensity of their effort” (Koger 2010:116; see also Burstein 1998:119-121).

When cloture was imposed on a the southern-led filibuster against civil rights for the first time in 1964, the pro-rights forces did indeed exert an unprecedented amount of effort. President Johnson had pledged that *nothing* would get done until the filibuster was broken, and the pro-rights forces spent three months waiting out the filibuster and gathering the two-thirds majority required to beat it (Mann 1996; Loevy1990; Whalen and Whalen 1985). Nevertheless, while it is likely true that the southern bloc tried harder than Senate civil rights advocates before 1964, to say this is why they prevailed entails a rather selective view of causation. If one evaluated the outcome of a series of games in which Team X had to score half as many points as Team Y to win, one would not look first to differentials of effort to explain why Team X almost always won.<sup>105</sup> And yet, this is precisely the situation that prevailed in the Senate’s contest over civil

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<sup>104</sup> See also Mayhew (2003:33): “Obviously, the civil rights area is an exception to any general speculation that Senate floor majorities may have had it easy in earlier times . . .”

<sup>105</sup> Moreover, any analysis of effort differentials would have to take into account the proposition that a low likelihood of victory tends to suppress effort.

rights: in order to block legislation, anti-rights forces needed just 34 votes, while pro-civil rights advocates needed 67 in order to overcome this obstructionist effort.<sup>106</sup>

Compared to inferred differentials of effort, roll call outcomes provide a more promising basis for critiquing the filibuster thesis (Wolfinger 1971). Reading all of the references to the filibuster's power to block civil rights reform might lead one to assume that pro-rights forces in the Senate regularly gained simple majorities, just not the super-majority of two-thirds. In fact, however, pro-rights forces usually were unable to gain even a simple majority. This is most apparent on proposals to change Rule 22: on 13 roll calls between 1949 and 1963, pro-rights forces gained a simple majority just one time. In fact, across the period as a whole, not even a simple majority of *non-southern* senators supported Rule 22 reform (48 percent of the non-South's nearly 1,000 recorded votes favored the liberalization of cloture). The efforts of pro-rights advocates to gain simple majorities on Direct votes was more successful, but not dramatically so. An attempt to impose cloture on debate in order to proceed to a vote on a civil rights measure is a Direct Vote, and before 1964 just four of the 11 attempts to impose cloture yielded simple majority support.<sup>107</sup> This simple majority success rate was very similar to that on other Direct roll calls: among the other 20 Direct votes, pro-rights forces gained a simple majority just six times.<sup>108</sup> In total, then, there was a pro-rights simple majority on only 10 of 31

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<sup>106</sup> Before the seating of Hawaii and Alaska representatives in the Senate in 1959-60, these figures were 33 and 64.

<sup>107</sup> One of these, a 52-32 vote in favor of cloture on an FEPC bill (May 19, 1950) is not in the data set, because there was a second cloture vote almost two months later, and though four additional senators participated the second time, all who voted in both May and July voted the same way on both roll calls. For this reason, I included only the roll call with the most voting senators.

<sup>108</sup> But when one pays attention to the timing of success in gaining pro-rights majorities, then the civil rights advocates' emphasis on the filibuster starting around 1950 makes sense. Based on the first phase of civil rights legislation in the dozen years that followed 1938, it is easy to comprehend why civil rights advocates believed that filibuster reform was a necessary *and* sufficient condition for advancing Black equality. During that first phase, three different kinds of civil rights bills passed the House, two of them on multiple occasions, only to have their passage into law stopped by filibusters in the Senate. Moreover, as discussed, two of these measures—anti-poll tax

Direct roll calls, and just 1 of 13 Rules votes. The pro-rights position gained a simply majority on just one out of every four roll calls across the period.<sup>109</sup>

The general failure to gain a pro-rights simple majority in the Senate *is* a better argument for the irrelevance of the filibuster rule. In light of these data, it is indeed easy to see why the Senate was dubbed “the graveyard of civil rights legislation” (Filvaroff and Wolfinger 2000:22), but much less easy to understand why the filibuster would be considered the gravedigger.

But this is too hasty of a conclusion: in relation to civil rights legislation, the filibuster’s power was structural, and therefore the evidence for its relative importance is not as directly measurable as critics of the filibuster thesis imply (Isaac 1987:79-87). Throughout the period, filibusters sometimes shaped the legislative process directly (as when pro-rights senators tried but failed to impose cloture prior to 1964, sometimes despite having simple majority support), but more often the filibuster’s effects lay in its potential, not actual, exercise. This is evident in relation to the civil rights legislation that did pass in 1957 and 1960. Always willing and able throughout the process to filibuster and thereby require a two-thirds majority for passage of the bills, the southern bloc allowed them to go forward on a simple majority basis only after making sure that the bills were sufficiently weakened (Caro 2002; Mann 1996; Berman 1966; Evans and Novak 1966; Woodward 1957; Shuman 1957). There is some debate about why the southern bloc allowed *any* legislation to go forward in 1957 (cf. Caro 2002 and Koger 2010). What is not in doubt, however, is that the strongest provision in both the original administration proposal and

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and FEPC bills—actually garnered majority support in Senate cloture votes at least once. For this reason, it appeared that if a simple majority could gain the power to close debate—to impose cloture and thereby end a filibuster—then civil rights legislation would pass.

<sup>109</sup> Thus, the difference between the House and the Senate was not simply the filibuster rule. While civil rights legislation usually passed the House by at least a 2:1 margin (see above), it was difficult in the Senate to get even a simple majority. The coalition patterns, therefore, were different in the two chambers. While in the House, the votes fell largely along South/non-South lines, in the Senate southern Democrats usually were able to secure many allies outside the South. This difference between the House and the Senate did not occur in one or two congresses, but rather endured for a quarter of a century.



the bill passed by the House, the Part III powers discussed above, had no chance of being in the final bill unless supporters could get a two-thirds majority to close debate in the Senate. Nor was there any chance that a bill would pass that did *not* contain the jury trial amendment (which made the bill weaker)—again, unless pro-rights senators could build a two-thirds majority. Senator Russell from Georgia, leader of the southern bloc throughout the period, made it explicit that he was unwilling to let these two roll calls go forward (and thus the overall bill itself) until the outcomes were sure to be favorable to the southern bloc (i.e. until a simple majority would vote against the Part III powers and for the jury trial amendment). But if the southern bloc's will prevailed on these weakening amendments, then Russell was willing to let a weaker bill get through in order to help Senate Majority Leader Lyndon Johnson's presidential chances (see Fite 1991; Caro 2002).<sup>110</sup> Given the arduous efforts Johnson and others exerted in order to build a pro-South majority on these two measures (i.e., a majority that would support a jury trial amendment and the elimination of Part III powers, so the southern Democrats would allow the bill go through), it is clear that for some time during the debate there existed simple majorities on the *pro-rights* side of these issues, but that the threat of the filibuster eventually undercut these simple majorities (see Caro 2002).

Thus, even though the voting data contain many roll calls that were decided on a simple majority basis (*only* cloture votes overtly required two-thirds support), the key quotient throughout the period arguably was two-thirds. Moreover, what the roll call data set also does not reveal is that the side in need of the fewest votes also had the most resources for gaining such votes. One can agree with Koger (2010) about the reality of asymmetrical intensity (i.e. civil

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<sup>110</sup> At the time, Senator Russell had every reason to believe that Lyndon Johnson, himself a southerner, would use the presidency to aid the defense of Jim Crow. But Russell also knew that Johnson would never gain the Democratic nomination without showing that he had done at least something for civil rights—a lesson that Russell had drawn from his own failed bid to secure support outside the South in his quest for the presidential nomination in 1952 (Caro 2002; Fite 1991; Evans and Novack 1966).

rights opponents tried harder than civil rights advocates) while also arguing for the greater causal relevance of asymmetrical *resources*.

### Asymmetrical Resources for Coalition Building in the Senate

The degree of resource asymmetry was staggering. The Senate committee system was the most important source of resource asymmetry between southern Democrats and pro-civil rights forces. As “the backbone of the Senate itself,” (Clark 1963:11), the committees were indeed a powerful resource. Decision-making in the pre-1960s Senate was committee-based, and the committees were highly autonomous. Nearly 98 percent of bills that passed the Senate did so without a recorded vote, much less amendments, which meant in effect that Senate bills were Senate *committee* bills (Sinclair 1989:23-25).<sup>111</sup> To be sure, all senators sat on committees, regardless of their civil rights stances. But it was control of the committees, chairmanships, that really mattered. As Berman (1964:121) observed at the time, “It is difficult to exaggerate the power of a committee chairman. ... [W]hat the committee does is seldom different from what the chairman wants it to do” (see also Sinclair 1989:23-24; Matthews 1960:159-162). And in the area of committee chairmanships, the anti-rights forces had an overwhelming edge. This can be seen with respect to the Democratic Party, which controlled the chairmanships for most of the period by virtue of having a Senate majority. Goodwin (1970:129) provides a map of committee chairmanships by state and by party between 1947 and 1968. Counting each new congressional session as a new committee chairmanship (including if the same Senator held a chair position for multiple sessions), Goodwin identifies 170 chairmanships across the period, 140 of which were held by Democrats. The main reason for the anti-rights forces’ edge concerned the fact that the

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<sup>111</sup> Only about one-half of one percent were amended at the floor stage (Sinclair 1989:25)

southern Democrats controlled so many committees: these 11 states had 77 of the 140 chairmanship units across this period.<sup>112</sup> Yet, the dominance by anti-civil rights states of chairmanships was not due only to the South. Of the other 63 chairmanships, states that supported the South in opposition to civil rights 50 percent or more of the time controlled 38 of them (about 60 percent)—which meant that, including the South, generally anti-civil rights states controlled 115 of 140 chairmanships, or 82 percent of them.<sup>113</sup>

Anti-rights control of the committees was particularly evident in relation to what a variety of scholars identify as the five most prestigious committees: Appropriations, Armed Services, Finance, Foreign Relations, and Judiciary (see Goodwin 1970; Ripley 1969; Matthews 1960). In the mid-1960s, the Senate passed committee reform legislation, and in so doing identified four of these (all but Judiciary) as the most important (the bill stipulated that a senator could belong to no more than one of these four). As the most prestigious and powerful, these committees generally provided senators with the most resources for building coalitions. Ripley (1969:61) shows the great extent to which southern Democrats dominated these committees. Between the 81<sup>st</sup> and 87<sup>th</sup> Congresses (1949-50 to 1961-62), southern Democrats comprised 54, 56, 58, and 46 percent, respectively, of the memberships of these four choice committees, and they were 67, 67, 58, and 67 percent of the three highest ranking members of these committees during this time. On the two money committees, Finance and Appropriations, southern

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<sup>112</sup> Between 1949 and 1965 (81<sup>st</sup> to 89<sup>th</sup> Congresses), southern Democrats rose to 47 percent of all Democrats (1953) but then fell to 29 percent of all Democrats by 1965. At the same time, their share of committee chairmanships (or ranking member position, in 1953-54, when GOP controlled) during this time steadily climbed from 40 percent to 62 percent (Ripley 1969:61).

<sup>113</sup> These states were (number of chairmanship units; percent Democratic pro-CR voting in state): New Mexico (9; 50 percent); Arizona (9; 4 percent); Nevada (7; 19 percent); Montana (5; 41 percent); Oklahoma (5; 23 percent); Wyoming (2; 33 percent); Maryland (1; 38 percent).

Democrats were joined during this time by staunch allies in the defense of white supremacy.<sup>114</sup> The Finance Committee included fellow Democrats Kerr from Oklahoma (3 percent pro-civil rights on 33 votes; 81<sup>st</sup> to 87<sup>th</sup> Congresses on committee) and Frear from Delaware (8 percent pro-rights on 25 votes; 82<sup>nd</sup> to 86<sup>th</sup> Congresses), as well as Republicans such as Williams from Delaware (16 percent pro-rights on 37 votes; 81<sup>st</sup> to 88<sup>th</sup> Congresses) and Bennett from Utah (18 percent pro-rights on 28 votes; 83<sup>rd</sup> to 88<sup>th</sup> Congresses). The Appropriations Committee, which by all accounts was the most important, was yet more populated with white supremacist allies. Between the 80<sup>th</sup> and 87<sup>th</sup> Congresses—for all of these sessions—the following non-southern Democrats joined southern Democrats: Hayden from Arizona, who was chair of the committee (2 percent pro-rights on 43 votes) and Chavez from New Mexico (35 percent on 26 votes, not including 14 “did not votes”, which was the second highest of any senator across the period). Republicans on Appropriations also proved to be staunch southern bloc allies: Young from North Dakota (0 percent pro-rights on 39 votes); Bridges from New Hampshire (5 percent on 21 votes, not including 15 “did not votes,” the highest for any senator across the period; thus, the highest and second highest number of “did not vote” totals came from senators on the Appropriations Committee); Dworshak from Idaho (20 percent on 30 votes); and starting in the 83<sup>rd</sup> Congress, Mundt from South Dakota (18 percent on 34 votes). To put these figures in perspective, non-southern senators as a group voted in favor of civil rights 58 percent of the time (69 percent for Democrats and 47 percent for Republicans).

Southern Democrats and their anti-rights allies gained extensive power by virtue of their control of the committee system. Most legislation, the lifeblood of a politician in a competitive electoral system, went through the top committees. The top five committees, in fact, accounted

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<sup>114</sup> The committee membership data that follow are from Canon et al. (2002, Volume II) and Nelson with Bensen (1994, Volume I).

for nearly two-thirds of the roll calls in the Senate between the 80<sup>th</sup> and 90<sup>th</sup> Congresses (Goodwin 1970:102ff). According to Howard Shuman, who had been an aide to Senator Douglas in the 1950s and 1960s, southern Democrats used their power to develop a particular alliance: “[T]he quid pro quo was that the southerners, with their lock on the committees and on the money, parceled out the goodies to the trans-Mississippi Republicans and the Western senators. That’s how the senators got into their club. . . . They got there because they voted and worked for segregation when the chips were down” (quoted in Mann 1996:97). Attributing power to this committee-based hierarchy was not merely a rationalization invoked by pro-rights senators to excuse their inability to pass civil rights legislation. Even in retrospect, long after senators could be electorally punished for not securing civil rights legislation, pro-rights senators emphasized the obstructionist power that southern Democrats and other anti-rights senators had by virtue of their control of the committee system. Senator Gaylord Nelson, a liberal, said in a 1974 interview that, “[t]he conservative committee chairmen all supported each other [on civil rights] and created a bloc that was very difficult to break” (quoted in Foley 1980:11). Senators Frank Moss and Edmund Muskie offered similar comments to Foley, also in 1974.

For the most part, something more mundane than white supremacy *formally* determined the constitution of this system of committee control, namely, the rule of seniority. Southern Democrats dominated the committee chairmanships, because seniority on committees determined who was the chair. Southern Democrats, under much less electoral pressure than most of their non-southern colleagues because of the South’s one-party system and disenfranchisement of African Americans, had a much easier time building seniority. Some of the most pro-rights states, in contrast—the industrial states in the Midwest and East—were also

among the most competitive, which meant that senators had trouble maintaining their position and gaining seniority.

But seniority was never the entire story, and certainly not starting in 1953 when Lyndon Johnson of Texas became the Democratic Party Leader in the Senate. Although President Johnson in the mid-1960s proclaimed “we shall overcome” in support of transformative civil rights legislation, throughout his time as Majority Leader he was largely (not entirely) aligned with the rest of the southern bloc if for no other reason than that this bloc was a major source of Johnson’s power in the Senate. Thus, the anti-rights forces in the Senate controlled not only the committee system but also the Leader position. And because it controlled the Leader position, it also controlled the Steering Committee, which was the committee appointed by the Leader and charged with handling committee assignments. From the late 1940s through the mid-1960s, southern Democrats were always at least 45 percent of the Steering Committee membership (Ripley 1969:64). Moreover, although non-southern Democrats as a whole had a pro-civil rights voting record of 72 percent between 1959 and 1964 (the only years for which Steering Committee memberships are available), four of the non-southern Democrats on the Steering Committee had a combined pro-civil rights voting record of less than 20 percent.<sup>115</sup> Thus, by virtue of the southern Democrats and these four non-southern Democrats, the Steering Committee was dominated by anti-rights forces within the party.

Johnson and the Steering Committee had two formal leverage points over committee assignments: they could decide the initial assignment of a freshman senator; and they had the final say on veteran senator requests for transfer to another (usually more prestigious or

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<sup>115</sup> The four non-southern Democrats were Mansfield of Montana (11/31 pro-rights), Chavez of New Mexico (9/26), Bible of Nevada (4/32), and Hayden of Nevada (1/43). Steering Committee memberships since 1959 (not before) can be found in the annual *Congressional Staff Directory*.

electorally useful) committee. There was little daylight between the Steering Committee and Johnson (Rosenthal 1962), and Johnson used these powers to pursue what he wanted, which included support for maintaining a strong filibuster rule and for passing *weak* civil rights legislation (the latter in the hope of appealing to non-southern party members for the presidential nomination without at the same time alienating the southern bloc). Johnson also implemented an eponymous rule which provided “that no member of the party, regardless of his Senate seniority” was “to receive a second top committee seat until every Democratic senator” had “at least one such assignment” (Goodwin 1970:87). Johnson could and did use his own rule to subvert veteran senators’ transfer efforts when he did not think that a senator was supportive enough of Johnson’s own agenda. And he sometimes ignored the seniority rule altogether (some examples to follow; see Stewart 1971; Wolfinger 1971; Evans and Novak 1966).

Thus, the anti-rights forces controlled the standing committees, which decided the fate of senators’ bills and the resource allocations to senators’ states. These forces also controlled the leader position and the committee-on-committees (Steering), which fundamentally shaped individual senators’ positions within what Matthews (1960:148ff) described as the “Committee Caste System.” In other words, the structural power of anti-rights forces in the Senate was vastly greater than that of pro-rights senators, and, therefore, any causal appeal to ‘asymmetrical intensity’ (Koger 2010) is woefully incomplete without due attention to these ‘asymmetrical resources’ (which also includes the fact that because of the filibuster rule, anti-rights forces needed to scare up only about half as many votes). By its very nature, structural power need not be exercised in order to be effective; actors need only *anticipate* the exercise of power for it to shape social action (Isaac 1987). And because of the nature of the Senate, or any legislative body, most exercises of such power are *not* a matter of record. Nevertheless, it is worthwhile to share a

few examples that have become part of the historical record, in order to illustrate the importance of this resource asymmetry.

### Examples of Asymmetrical Resource Use to Shape Roll Call Voting

Some of these examples concern the manipulation of committee assignments in response to efforts by pro-rights senators to change the filibuster rule in order to make it easier to pass civil rights legislation. Before discussing these examples, brief background on the filibuster rule is necessary. Between 1949 and 1959, the filibuster rule was formulated in such a way that there was no provision for imposing cloture to end debate on the Senate Rules—i.e. a very small group of determined senators, in principle just a single senator in fact, could prevent a vote on a rules change. Whether it was the UAW and NAACP working in tandem, or Joseph Rauh of the ADA, or Senator Douglas from Illinois—different sources attribute credit to different actors—civil rights forces pursued a novel plan: if cloture could not be imposed to change the Senate Rules, then they would get the Senate to adopt an entirely new set of rules. Based on a provision in the U.S. Constitution stipulating that the Senate and the House shall make their own rules of procedure, civil rights advocates developed the theory that at the beginning of a congressional session the Senate could vote by simple majority to adopt new rules, including a rule that allowed a simple majority to close debate. Whether it was possible to pass such a motion was of course hotly contested by the anti-rights forces, who argued that the Senate was a “continuing body” (by virtue of losing no more than one-third of its membership each session, i.e., every two years) and therefore there was never a time when the Senate could adopt new rules outside of the constraints imposed by the existing rules. Those who voted to adopt new rules voted against the southern Democrats and the general anti-rights forces, though not with success.



First elected in 1956, Frank Church of Idaho had direct evidence of the consequences of crossing Lyndon Johnson and thereby the anti-rights forces on the ‘continuing body’ issue. Before the 1957 vote concerning the adoption of new Senate Rules (and thus presumably a more liberal cloture rule), Church says that Johnson approached him directly with the following advice : “There’s a lot going for you. But the first thing you ought to learn is that in Congress you get along by going along. We’ve got a motion here that Clint Anderson is going to offer and it relates to a matter that is not important to your state. The people of your state don’t care how you vote on this one way or the other, but the leadership cares. It means a lot to me. So I just point this out to you. Your first vote is coming up, and I hope you’ll keep it in mind, because I like you, and I see big things in your future, and I want for you to get off on the right foot in the Senate” (quoted in Caro 2002:859). But Church did not get it, and he voted the ‘wrong’ way. Johnson had a visible reaction at the time Church announced his vote and then he visibly ignored Church for six months. When Church tried to conciliate through a Johnson aide, the aide told him that he was wasting his time: “The Leader’s got a long memory” (quoted in Caro 2002:861). Senator Church probably would have stayed in the cold had he not acted to redeem himself by playing a key role in getting the Jury Trial Amendment passed during the Civil Rights Act of 1957 debates (Caro 2002:971-974). By Church’s own account, this changed everything, and after aiding Johnson in weakening the legislation, “Nothing was too good for me,” says Church, including a position on the coveted Foreign Relations Committee in 1959 (quoted in Caro 2002:988).

Likewise, in the late 1960s Edmund Muskie reflected on the price he paid for voting to liberalize cloture at the start of the congressional session in 1959, just after being elected to the Senate in 1958. Referring to Lyndon Johnson, Muskie said that “[h]e felt he had to punish me

[for supporting cloture liberalization] by giving me three committees I didn't want" (quoted in Goodwin 1970:93). Commenting on the outcome of the 1959 effort to adopt new Senate rules, editors at the *The New Republic* believed they understood why most did not take Muskie's path: "We can drop a tear over some of the new Senators, like those from Alaska, who were liberal in the election but not on the first vote [i.e. the vote to adopt new Senate rules]. Yet one can see their predicament. Lyndon Johnson held the whip hand. The newcomers want favorable committee assignments. They want regional legislation" (Editors, "Forward, March," *The New Republic* 26 Jan 1959, p.2). Something like 'smoking gun' evidence of this pattern of coercion with respect to the 'continuing body' issue came in the 1963-64 Senate investigation of Bobby Baker, secretary for the Democratic majority. Senator Frank E. Moss "testified that" Baker "had assured him that he could receive a desired [committee] appointment 'if I could tell him or Senator Russell that the Senate is a continuing body'—that is, if he would agree that the Senate should not adopt its rules (including cloture) anew at the beginning of each Congress" (Goodwin 1970:90)

There was also a warm gun in a memo that Senator Johnson and others circulated during the debate over whether to attach a jury trial amendment to the Civil Rights Act of 1957. Interestingly, the targets were not fellow Democrats. The memo indicates that the anti-rights forces' position at the top of the Senate hierarchy affected everyone, regardless of party, not just freshmen Democratic senators. The memo itself was unsigned, but Caro (2002) found it in the archives with a note to Lyndon Johnson to the effect that it was designed to persuade conservative Republicans, specifically "Jenner, Goldwater, [Frank] Barrett, et al." to vote for the jury trial amendment. The memo had plenty of the usual political arguments (e.g. the railroad unions are behind the amendment, and they might be more important than the NAACP in this or

that state), but the memo also came “close, in these last desperate days of a great battle, to putting in writing some realities of life in the Senate, *where projects vital to a senator’s future are at the mercy of leaders and chairmen with long memories*” (Caro 2002:977—emphasis added). The relevant passage from the memo said this: “Another factor which must be considered [when deciding how to vote on the jury trial amendment] is the future relationships which Senators will have with their fellow Senators. *This frequently affects the type of legislation they can pass in the Senate* [italics from original memo]. Those who feel they are better off legislatively cooperating with Douglas, McNamara, Javits and Clifford Case will naturally have a tendency to vote against the jury trial amendment. Those who feel they are better off cooperating with Russell, Mansfield, Pastore, Young, etc. . . . may have a tendency to vote” in favor of the amendment (quoted in Caro 2002:977). Caro (2002) does not outline each of these senators’ positions in the Senate hierarchy and their voting records, but it certainly worth doing so. Russell, Pastore, and Young all sat on the Appropriations Committee, with Young as Chair and Russell as chair of the subcommittee on agriculture; Mansfield was the assistant Majority Leader. All but Pastore had strident anti-rights voting records, and Russell and Young had never voted even once in favor of civil rights. Douglas, McNamara, Javits, and Case, on the other hand, maintained *100 percent* pro-rights voting records (each voting more than 30 times throughout their career), but none of them chaired a major committee at the time of the memo, and only Douglas sat on any of the five most prestigious (Finance).<sup>116</sup>

In explaining why the anti-rights forces regularly prevailed, Koger (2010) offers the term ‘asymmetrical intensity’, but he is hardly alone in citing differential willpower as the driving

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<sup>116</sup> For committee data, see Nelson with Bensen (1994, Volume I).

force behind this outcome (see e.g. Burstein 1998:119-121). But appeals to willpower confuse an equality of votes (each senator has just one on any given measure) for an equality of power. Power in the 1950s and early 1960s Senate was concentrated in the hands of the anti-rights forces. Asymmetrical *resources* (both in that the filibuster rule meant fewer votes needed to be purchased, and in that the Senate hierarchy meant that the anti-rights forces had the most purchasing power) strongly determined that no meaningful civil rights legislation would get through the Senate without extraordinary circumstances to propel such legislation forward. Such circumstances, of course, were the activities of the civil rights movement (CRM) and the southern white reaction against it. I will return to this issue in the last section of the chapter. Before doing so, the next two sections examine two major sources of non-southern support for the Senate's southern bloc. The next section examines the effects of another institutional difference between the Senate and the House (in addition to the filibuster rule), the equal representation of states in the Senate and thereby the disproportionate power given to small population states. While the above discussion has shown that Southern Democrats had considerable institutional resources at their disposal for coalition building, a growing literature on coalition building in the Senate (see below) suggests that small population states would have been the most likely allies of the South. This expectation receives strong confirmation in the roll call data set. The subsequent section then pursues this issue further through logistic regression, which also allows consideration of the extent to which Senate Republicans played a key role in squelching civil rights legislation, as a number of scholars suggest.

## SOURCES OF MINORITY OBSTRUCTION, 2: EQUAL STATE REPRESENTATION

In 1960, the Senate was considering a bill that would become the largely ineffectual Civil Rights Act of 1960. After the legislation passed, southern Democrats did not even pretend it was a threat. Senator Byrd from Virginia described the outcome as “in the main ... a victory for the South” (quoted in Sundquist 1968:250), a judgment with which “[pro-rights] Northerners agreed” (Ibid). Pro-rights senators saw this coming well in advance, and knew the only way to prevent it would be to impose cloture. But they failed, and by a wide margin: just 42 of the 95 voting senators supported the move to close debate—a necessary condition for passing a bill with teeth. Commentators then and since pointed out that, as Anthony Lewis put it in *The Reporter*: “The failure to win even a simple majority undercut the frequently repeated liberal argument that on civil-rights legislation a majority of the Senate is undemocratically thwarted by Rule 22. The vote demonstrated ... that there was no majority in the Senate for all-out civil rights legislation” (Lewis 1960:27 and 30). Mann (1996:258) echoes a similar view retrospectively: “The vote ... was a blow to the liberals. Gone was their argument that an outmoded cloture rule was preventing the Senate from acting.” So what was? In order to explain this dismal result, one might have pointed to the very weak support that Republicans gave to civil rights on this vote—just 12 of 32 (38 percent) voted in favor of it—and contrasted it with the comparatively much stronger commitment that non-southern Democrats demonstrated (30/41, nearly 75 percent). But Senator Douglas from Illinois, a Democrat, offered a different observation:

“Mr. President [i.e., of the Senate], before I turn to a discussion of the amendment which is before us, may I make a comment or two about the vote which we took this afternoon? It is true that those of us who sought to

limit debate ... received 42 votes as compared to the 53 who voted against us. ... I have had the figures analyzed, and they show that while only 45 percent of the Senators voted for cloture, they represented States which have slightly over 60 percent of the population of the country ...”<sup>117</sup>

So while it was perhaps not the case that “a majority of the Senate” was “undemocratically thwarted by Rule 22,” perhaps it *was* the case that a *majority of the population* was thwarted.<sup>118</sup> Indeed, recall that it was in the House of Representatives, which *is* apportioned on the basis of population, that civil rights legislation fared far better.

Table 4.1 shows the relationship between state population size and civil rights voting in terms of three different types of ordinal groupings. The proposition that smaller states were less likely to support civil rights is supported whether one divides the state populations at the median, or into terciles, or into quintiles. Moreover, while Table 4.1 presents results for *all* votes across the period, the same pattern holds both at different points in time—indeed, in every individual congressional session—and when one distinguishes ‘Rules’ and ‘Direct’ votes (not shown in Table 4.1). On Direct votes, the support for civil rights among the lowest two quintiles ranged from 41 to 47 percent, and 80 to 95 for the highest two quintiles. On Rules votes, the lowest two quintiles supported civil rights 28 and 37 percent of the time, while the highest two quintiles did so 61 to 67 percent of the time (not shown in Table 4.1).

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<sup>117</sup> *Congressional Record* (March 10, 1960), Volume 106, p.5180.

<sup>118</sup> This is a question rarely pursued in studies of the Senate. As Griffin (2006:410) notes in his study of this issue in the 107<sup>th</sup> Congress (2001-2002), “it has been nearly 80 years since scholars have assessed whether the senators hailing from states with greater voting weight [i.e., smaller population states] square off on nondistributional roll calls against senators from states with less weight [i.e. larger populations].”

Table 4.1: Relative State Population and Percent Pro-Civil Rights

	Low Population	Medium Population	High Population		
Halves	43.7		71.6		
Terciles	39.0	53.0	81.4		
Quintiles	37.0	43.7	52.2	72.9	85.7

Examining relative shares of the total anti-civil rights vote is another way that the role of small non-southern states in Senate obstruction becomes evident. Across the period there were a total of 1,244 Senate votes cast against civil rights in the non-South. The lowest two quintiles accounted for nearly 60 percent of these votes (725 of 1,244), while the two highest quintiles cast not quite 20 percent of the anti-rights votes (235 of 1,244). The contrast is sharper still in the domain of Direct votes. Across the period, the two lowest quintiles accounted for 64 percent of all 725 anti-civil rights votes cast on Direct measures, while the two highest quintiles accounted for just 13 percent of these votes. The disparity in relation to Rules votes was less (50 percent for the two lowest quintiles vs. 28 percent for the two highest;  $n = 492$ ), which itself was related to partisan/ideological differences that will receive more attention in the regression analysis.

Given this relation between relative state size and civil rights support, it would be worthwhile to probe further the significance of the Senate's representation system for the fate of civil rights by moving from the realm of rank differences in state population to that of actual differences in state population. If the population distribution across the states and these various divisions (e.g. quintiles) showed only minimal variation, then it would hardly be worth focusing

on how actual population differences related to roll call voting. But there was (and is) in fact great variation in population across states. While the South and non-South each had a share of the Senate seats that was roughly proportional to the southern and non-southern populations (on this, more below), there were vast population inequalities across the states of the non-South. Incorporating these population inequalities into the analysis yields interesting results. I noted above that senators representing states from the two lowest quintiles cast 60 percent of the non-South's anti-civil rights votes. This is obviously a disproportion (senators from two-fifths of the non-South's states cast three-fifths of the anti-rights votes), but it is nothing like the disproportion that emerges when one puts this in terms of the non-southern *population* rather than the non-southern *states*: while senators from states in the lowest two quintiles represented 40 percent of the non-South's states, these states contained less than 10 percent of the non-South's population. *Six in ten of non-southern votes against civil rights came from senators who represented less than one in ten of the non-southern population.* If one pushes up just one more quintile to senators representing states that fall in the bottom 60 percent of the population, then one can account for more than four out of every five votes cast by non-southern Senators in support of the southern bloc's defense of white supremacy. Once again, this is a disproportion (60 percent of states cast 80 percent of anti-rights votes), but the disproportion is much greater in terms of the population represented. Only about 20 percent of the non-South's population lived in the bottom three quintiles of states; thus, senators representing about 20 percent of the non-South's population cast about 80 percent of the non-South's pro-segregation votes. This information is summarized in Table 4.2.



Table 4.2: State Size and Share of Non-South’s Anti-Rights Votes as Compared to Share of Non-South’s Population

Population Quintile	Share of Non-South’s Anti-Civil Rights Votes (in percent)	Share of non-South’s Population (in percent)
Highest	7.3	56.2
2 <sup>nd</sup>	11.6	21.6
Middle	22.8	12.6
4 <sup>th</sup>	28.1	6.4
Lowest	30.2	3.1

Note: For purposes of calculating population share (right column), the highest quintile contains seven states and the remaining four contain eight. For purposes of calculating each quintile’s share of anti-rights voting, the quintiles are divided as evenly as possible (and the largest share of total votes belong to the highest quintile).<sup>119</sup>

Thus, in terms of rank order with respect to population, smaller states in the non-South were much less likely to support civil rights than were larger states; and in terms of actual population figures (as opposed to rank ordering), these smaller states accounted for a very small share of the non-southern population—despite, of course, having equal representation as states.<sup>120</sup> The upshot of this is that when it came to civil rights policy in the generation before 1964, the Senate was non-majoritarian in a double sense. It was not just that two-thirds of

<sup>119</sup> To elaborate, the quintiles used for calculating the total voting records were constructed from the individual roll call data that later will be subjected to multivariate analysis, but each quintile does not contain an equal number of states because throughout the period the number of states were not a multiple of five (there were 37 non-southern states until the late 1950s, and then 39 with the statehood of Hawaii and Alaska), and because the relative ordering of the states shifted over time (e.g. Arizona went from the lowest to the second lowest quintile between 1950 and 1960). In order to translate these roll call figures into actual state population figures, I divided the quintiles as well as terciles and halves in such a way that the division would upwardly bias the lower quintile, tercile, etc. to have more population rather than less—e.g. quintiles from lowest to highest contained 8/8/7/7/7 states before Hawaii and Alaska’s statehood, and then 8/8/8/8/7. This does not affect the overall roll call record for quintiles, which, again, were based on individual roll calls and therefore could be evenly divided (or as evenly divided as the distribution would allow). In other words, the population figure for the lowest quintiles, etc. is upwardly biased in this discussion, but the number of votes for the lowest quintiles compared to those above it is not.

<sup>120</sup> Alternatively, and to establish more concretely just how small were these small states and the degree to which the smallest among them defended Jim Crow, in 1960 there were nine non-southern states that had been voting since 1938 and that had a population of less than 750,000—i.e., the population of Cleveland, Ohio a decade after it *lost* 125,000 people in the 1960s. Across the period, these nine states had 2.6 percent of the non-South’s population but nearly 25 percent of its senators. These nine states cast almost 700 votes between 1938 and 1964, just 31.5 percent in favor of civil rights, and only one of these nine states, Vermont, had a pro-civil rights record above 40 percent.

Senators were required to pass legislation when a determined numerical minority wanted to prevent such legislation; it was also the case that the Senate gave (and gives) disproportionate voting weight to very small states, *and* these states used that disproportionate power to act in the interests of the southern bloc and against civil rights. How much did it matter? I now want to turn to a direct measure of the extent to which disproportionate population representation in the Senate affected roll call outcomes. When examining this measure and its results, one should keep in mind that civil rights measures were able to pass in the House, where representation is based on population.

#### Population-Weighted Roll Call Analysis

As discussed above, a common point about the 1960 cloture vote, which failed 42-53, was “that there was no majority in the Senate for all-out civil rights legislation” (Lewis 1960:30). In making this point, Lewis was on to something. As previously discussed, across the period civil rights forces in the Senate rarely had a majority (they did so on just 11 of 44 roll calls). However, as also noted above, Senator Douglas offered a different interpretation of the 1960 roll call, demonstrating that while a majority of senators did not support strong civil rights legislation, senators representing a majority of the population did in fact support such legislation. The analyses in this section so far suggest the distinct possibility that the 1960 vote was part of a larger trend wherein anti-rights senators representing a minority of the national population consistently defeated pro-rights senators representing a population majority.

In order to probe further the importance of small states in supporting the South, I examined the roll calls *in order to determine the regularity with which senators representing a minority of the population defeated senators representing a majority of the population*. Before

presenting the results, some preliminaries are necessary. I weighted the votes on each roll call according to the population represented by the senator. Because each state has two senators, each of the two senators from the state received a weight of half the state's population. In the regular roll call, each senator has one vote, whereas in the population-weighted roll call, each senator's vote is one multiplied by half of his/her state population. In a regular roll call analysis, one simply counts the votes for each side. In the case of the population-weighted analysis, however, one sums the population weights linked to the "pro" side and the "anti" side. If there are three anti-civil rights senators from states with populations of 1, 2, and 2 million, and three pro-civil rights senators from states with populations of 4, 6, and 5 million, then the regular roll call outcome is of course 3-3, but the population-weighted outcome is 2.5 million for the anti-side (i.e.,  $0.5 + 1 + 1$ ) and 7.5 million for the pro-side (i.e.,  $2 + 3 + 2.5$ )—or 75 percent pro-civil rights (i.e.,  $7.5/(2.5 + 7.5)$ ).

Unlike other analyses of Senate roll call data in this chapter, this analysis requires integrating the 11 southern states. If one is to determine to what degree the Senate's system of disproportionate population representation determined the outcome of roll calls (as opposed to investigating patterns of support for the southern bloc among non-southern senators), then it is necessary to take into account all those who voted, including the southern senators. Notably, *if* the South had contained a significant number of small population states during the period under consideration, then this population-weighted measure would not be a very revealing one. It is already well known that the South voted as a unified bloc against civil rights,<sup>121</sup> so if many of the southern states had small populations, then the small state story would be but a footnote. But as

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<sup>121</sup> Across the period and roll calls in this analysis, 55 senators from the South cast more than 900 votes, and more than 97 percent of these went against civil rights. Fifty senators never cast even a single vote in favor of civil rights. The five deviants were from Florida early in the period (by Claude Pepper, who by most accounts lost his seat due to his insufficient fidelity to the segregationist cause) and from Tennessee and Texas near the end. There were never more than two southern defectors on any given roll call.

mentioned earlier, the South in relative terms did *not* contain a small population. In fact, the South was slightly *under*-represented in the Senate based on its population: 22 senators for 24.5 percent of the national population. Thus, if it turns out that senators representing less than a majority of the population were able consistently to win majorities on civil rights roll calls, this would *not* be because the South drove the results.

On the 44 roll calls across the period, a majority of those voting favored civil rights just 11 times. On all 11 of these occasions, the voting majority was also a majority on the basis of population.<sup>122</sup> What about the other 33 roll calls? Were there one or two where those who lost the roll call were in fact the majority on a population basis? Six or seven? Actually, on 26 of the 33 roll calls where ant-rights forces had a majority, the senators who were on the losing side in fact represented a majority on a population basis. In total, then, on 37 of 44 roll calls across the period, the senators on the pro-civil rights side represented a majority on the basis of population, despite being a numerical minority on 33 of those 44 roll calls (i.e. despite losing a simple majority roll call).

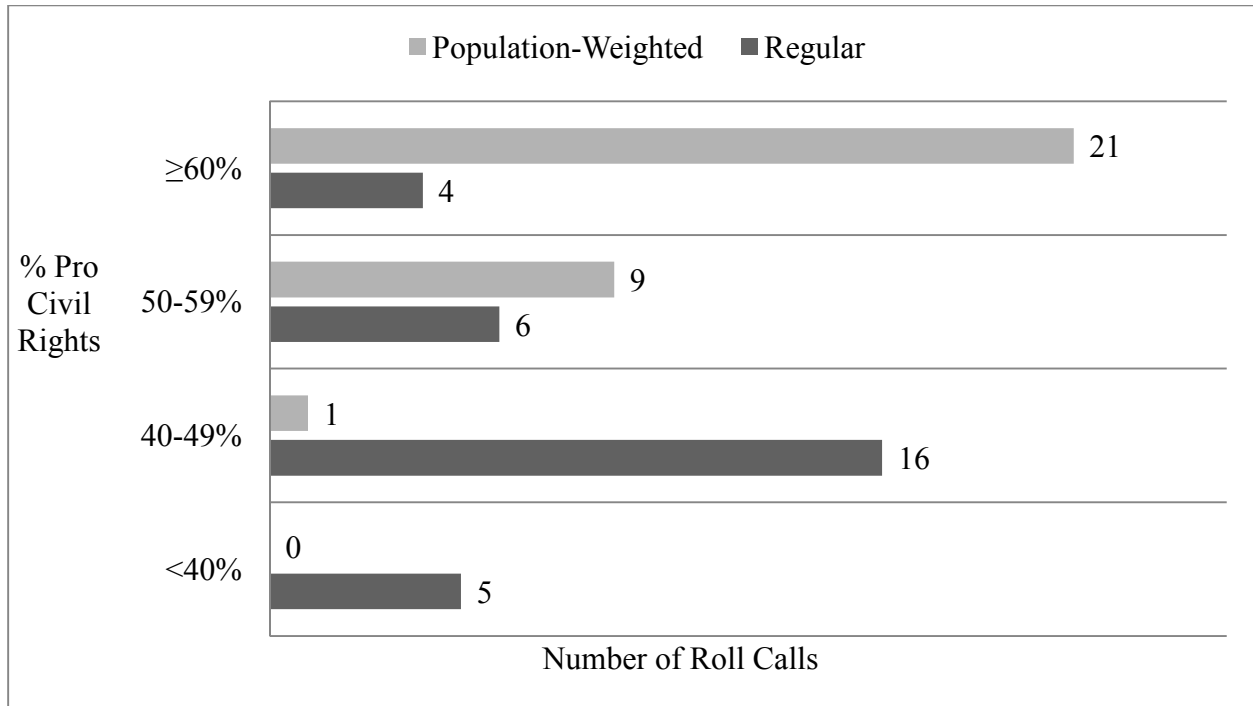
The story is most vivid with regard to the 31 Direct roll calls across the period—i.e. the roll calls that directly concerned the passage of civil rights legislation rather than changes in the Senate Rules that would make it easier to pass civil rights legislation. As mentioned, pro-rights forces managed a roll call majority on just 10 of these. Yet, as seen in Figure 4.1, *when the roll*

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<sup>122</sup> I am using the phrase “on the basis of population” in order to be clear that these senators did not always represent a majority of the population, though they usually did. If pro-civil rights senators represented 48.7 percent of the national population and anti-civil rights senators represented 43.8 percent of the population—as happened on the very first roll call in 1938, which pro-rights forces lost 37 to 51—then the pro-rights senators represented a majority “on the basis of population” (i.e.  $52.6$  percent, or  $48.7/(43.8 + 38.7)$ ) but obviously not a majority of the population. However, on only four of the 31 Direct roll calls did this happen; on all others for which I identify a pro-rights majority “on the basis of population”—26 in total—the pro-rights forces did represent more than 50 percent of the population.

calls are adjusted for population, then pro-rights forces had a majority on all but one of the 31 roll calls. In fact, this population majority was 60 percent or more on 21 of the roll calls.

Figure 4.1: Percent Pro-Civil Rights Voting among All Senators on Direct Votes, Regular vs. Population-Weighted Roll Calls



Thus, smaller states were much more likely to join the South’s anti-rights coalition, and the extent to which they did so was great enough that senators representing a majority of the country’s population regularly voted for civil rights but lost the roll calls. Considering the two major institutional differences between the House and the Senate—the filibuster rule and the equal representation of states in the Senate—it was the latter whose effect is most directly discernible from the roll call data (provided, of course, that one views these data through the lens of state population size, as the above analysis has done). Regardless of what might account for

this small state pattern, which is an issue that the next section will examine, the fact remains that the filibuster was not the only institutional source of minority obstruction in the Senate's treatment of civil rights. The equal representation of states played a major role in helping to perpetuate racial inequality under the law.

## MULTIVARIATE ANALYSIS

This section uses logistic regression to explore further the role of small population states in supporting the southern bloc's efforts to thwart legal racial equality, an exploration that in turn will lead eventually to a consideration of what light these Senate data can shed on the question of party realignment on racial policy in the twentieth century.

There are at least two broad possibilities regarding the small state pattern. Neither of these possibilities negates the institutional significance of equal state representation, but they each tell a different tale about why smaller states played such a key role in the anti-civil rights coalition. The first possibility is that the smallness of the states was itself causally important. Though this might sound puzzling, a small but growing literature on the Senate suggests the plausibility of this hypothesis. In seeking to build coalitions, legislators in general are sensitive to cost. While every vote in the Senate is of equal value to someone trying to build a coalition, the 'price' varies greatly because a given set of benefits has much less impact in a state with 13 million people as compared to 300,000 (Lee 2002, 2000, 1998). This is what Knight (2008) refers to as the "vote cost channel" to describe why small states receive more per capita funding relative to large states in the Senate as compared to the House of Representatives. This existing work on the small state effect focuses on distributional politics—i.e., the allocation of funds in congressional spending bills. But given the extent to which the southern bloc dominated the

Senate hierarchy (see above), it is plausible that they used these institutional positions to coalition build on non-distributional issues like civil rights.<sup>123</sup> If they did, then the significance of state population would remain even after controlling for a range of other factors.<sup>124</sup>

The second possibility is that the anti-rights record of small states had nothing to do with their population size per se. It is easy to imagine that small states differ from larger states in key ways that might have made their senators less likely to support civil rights. They might have had lower urbanization and unionization rates (Karol 2009; Chen 2007); or they might have had proportionately smaller populations of ethno-religious minorities or of the foreign-born (Karol 2009; Feinstein and Schickler 2008; Chen 2007; Young and Burstein 1995); or they might have elected ideologically more conservative senators. In this case, the over-representation of small states channels the effects of other determinants, and once these other variables are integrated into the analysis, then state population itself would not be significant.

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<sup>123</sup> Evans and Novak (1966) provide an example from the early part of 1957 when Johnson restored \$409,000 cut from a House bill for a development project on the Maine-Canadian border. Speaking of Margaret Smith, the senator from Maine, the authors observe: “It was in her vital interest to get close to a half million dollars in federal spending money ... and [she] would, of course, remember Johnson’s generosity” when it came time to vote on Part III and the jury trial amendment for the civil rights bill. Meanwhile, such a “relatively minor” amount of money seem to go unnoticed by the rest of the Senate (Evans and Novack 1966:128-129). See also Caro (2002:679ff) for an example concerning Social Security expansion and Nevada. Johnson used his ability to deliver an amount to Nevada that was quite small in a relative sense but sizeable in relation to Nevada’s small population in order to get a vote that he needed in order to secure the expansion’s passage.

<sup>124</sup> I should note that this was not just about ‘price’ in the sense of a transaction that one can simply take or leave. I am not simply piggy-backing on the “small state votes are easier to buy” thesis, which formed to understand the contemporary Senate. This is a fantastic insight and maybe it applies in a straightforward fashion to the contemporary Senate. Maybe the contemporary Senate is marked by fairly equal relations among senators as in the ideal marketplace of mainstream economists (some research suggests this, though without the invocation of a marketplace—e.g. Sinclair 1989), where a senator can take or leave a deal generally without consequence. But senator equality was not characteristic of the 1940s-early 1960s: It was not just a matter of a lower buying price, it was also that a hierarchy headed by a white supremacist coalition was entrenched and could and would dole out punishment when deemed appropriate. By virtue of their size, small states were easier to induce, but they also were easier to punish. Moreover, if the discussion of the Johnson-Church interaction regarding the 1957 Rules vote (see above) is suggestive, then senators from some states were expected to go along more than senators from other states, apparently based on what Senate leaders believed were concerns of state constituencies.

Several other factors also must be controlled to understand whether state population was itself causally significant or just a channel for other causal processes. Young and Burstein (1995) argue based on an analysis of 15 roll calls between 1938 and 1964 that the driving force behind the ability of pro-rights senators to build larger and larger coalitions in favor of legal racial equality was the growing number of states outside the South with a sizeable African American population. Thus, perhaps smaller states were less likely to support civil rights because they had proportionately smaller African American populations. Young and Burstein also find that that the party of non-southern senators did *not* affect their voting patterns, which is consistent with Carmines and Stimson's (1989:184-185) observation that as of the early 1960s "[a]dvocates of racial liberalism were to be found about equally among northern Democrats and Republicans." But this idea that party did not matter outside the South is wholly *inconsistent* with the "conservative coalition" thesis. A "conservative coalition" (CC) refers to roll calls on which a majority of Republicans voted with a majority of southern Democrats against a majority of non-southern Democrats (Shelley 1983). Its general significance for the legislative process between the 1930s and 1960s is indisputable (Shelley 1983; Manley 1973), and a range of historians have argued that the CC played a crucial, obstructionist role in the specific case of civil rights reform (Mackenzie and Weisbrot 2008; Mann 1996; Berman 1966; Woodward 1957). If this is true, then it also could be the case that the small state effect was driven by a disproportionate tendency for these smaller states to elect Republicans. At the same time, lying between these opposing views on the Republican role is a third perspective, based on analyses of state-level politics and the House of Representatives (Chen 2007; Feinstein and Schickler 2008; Karol 2009; Schickler et al. 2010). This third view holds that Republicans and non-southern Democrats diverged on civil rights some time in the 1940s and 1950s, with the non-southern Democrats becoming more



supportive compared to Republicans. Now with the Senate data all three of these possibilities regarding party alignment can be assessed in the process of ensuring that the senator party identification did not drive the small state pattern.

In Senate roll call analyses, it is also standard to control for seniority (e.g. Aldrich et al. 2008), which makes particular sense in the case of civil rights given the common observation that those who controlled the committee system—i.e. those with the most seniority—worked to protect segregation (see above).<sup>125</sup> In addition to seniority, I also collected data on senators' victory margins and "time to next election" with the expectation that, at a minimum, these might have interacted with other factors, in particular the African American proportion of the population. For example, the effects of proportionately greater African-American populations might have depended on the degree of competition that a senator faced and the temporal proximity of the next election.<sup>126</sup> Some (e.g. Klarmen 2004) also argue that public opinion shifted decisively toward civil rights by the time of the Supreme Court's *Brown* decision in 1954, which would help explain the House/Senate difference describe above (because House members

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<sup>125</sup> At the same time, Kousser (1992) suggests the possibility of a contrary effect for seniority. Based on a comparison of congressional delegations from several Midwestern states during the two reconstructions, Kousser argues that stability of membership from the greater success of incumbents in elections in the mid-twentieth century (and therefore greater seniority for members) provided the stability and protection from electoral dangers that made possible the political cooperation that gave birth to the Civil Rights Act of 1964.

<sup>126</sup> Tabular analysis gives some credence to the hypothesis that victory margin and proportion African American interacted to affect civil rights voting. Only about one-fourth (726/2981) of votes were cast by senators who had won by less than 5 in the previous election. 44 percent of these (321) came from senators in states with a black pop in the upper tercile, 20 percent in the middle tercile, and 35 percent in the lower one. Within this subset, there is evidence that percent Black mattered: Pro-CR voting increased from 42 to 70 to 88 as one moves from the lowest to the highest tercile. And consistent with the notion that percent Black interacted with margin of victory is the fact that when this margin was greater, between 5 and 9.999, the impact of percent Black was less (from 55 to 57 to 70—total votes = 585, with 311 in upper tercile and about equal number in the other two).

Integrating victory margins (or perhaps time-to-next-election) also seems to be the best way of testing the logic of this argument. If political competition in electoral districts was the key to shifting non-southern politicians toward de-racialization, as many authors suggest (Young and Burstein 1995; McAdam 1982; Sitkoff 1978), then it would be better to demonstrate that the elections were close. After all, in 1950, African Americans were more than 4 percent of the population in less than half the states outside the South, and only about 25 percent of them if one does not count the Border States, which Young and Burstein (1995:42) classify differently in terms of the effect of the Black population.

are more subject to public opinion by virtue of facing election every two years). With data on victory margins and time to next elections, it is possible to probe whether electoral pressures affected Senate voting on civil rights.

Table 4.3 identifies each of these variables, their expected relationship to civil rights voting, and the way in which they were measured. Table 4.4 provides descriptive statistics on each of these variables, which show that for the most part the tabular relationships are consistent with the expectations. These descriptive statistics also suggest that several variables—e.g. senator ideology, party, and seniority, as well as state union density and urbanization—very well may have driven the tendency of small state populations to support southern Democrats in their quest to protect Jim Crow from federal intervention.

Table 4.3: Independent Variables and Their Measurement

VARIABLE [expected sign of the coefficient]	DATA SOURCES AND MEASUREMENT
<i>State Variables</i>	
State Population [+]. . . . .	state population, rounded to the nearer hundred thousand (U.S. Census 1940, 1950, 1960)
Percentage Union [+]. . . . .	union membership as percentage of non-agricultural workforce from Troy and Sheflin (1985:Table 7.2), adjusted for size of agricultural workforce by state using <i>Historical, Demographic, Economic, And Social Data: The United States, 1790-2000</i> (ICPSR #2896), thereby yielding union membership as a percentage of total civilian workforce
Percentage Urban [+]. . . . .	U.S. Census (1940, 1950, 1960) <a href="http://www.census.gov/population/www/censusdata/files/urpop0090.txt">http://www.census.gov/population/www/censusdata/files/urpop0090.txt</a> (accessed June 2012)
Percent African American [+]. . . . .	U.S. Census (1940, 1950, 1960)
Percent Ethno-Religious Minority [+]. . . . .	sum of percentage Catholic and percentage Jewish; Catholic figures are from "Percentage of Catholics in the 50 States and D.C." In <i>CQ Almanac 1960</i> , 16th ed., 11-813. Washington, DC: Congressional Quarterly, 1960. <a href="http://library.cqpress.com/cqalmanac/cqal60-880-28174-1331428">http://library.cqpress.com/cqalmanac/cqal60-880-28174-1331428</a> (accessed September 2010), and Jewish figures are from the <i>American Jewish Yearbook</i> 1937:656 and 1960:62. The 1937 figures for the Jewish population were applied to 1938-1950, and the 1960 figures were applied to 1951 to 1964.
Percent Foreign Born [+]	U.S. Census (1940, 1950, 1960) <a href="http://www.census.gov/population/www/documentation/twps0029/tab13.html">http://www.census.gov/population/www/documentation/twps0029/tab13.html</a> (accessed June 2012)
<i>Senator Variables</i>	
Party[+] . . . . .	1 = non-southern Democrat and 0 = Republican <a href="http://bioguide.congress.gov/biosearch/biosearch.asp">http://bioguide.congress.gov/biosearch/biosearch.asp</a> (accessed August-September 2010)
Ideology [+]. . . . .	DW-NOMINATE1 scores (lower scores are normally more liberal, but sign reversed so increase is move from more conservative to more liberal) <a href="http://voteview.com/dwnominate.asp">http://voteview.com/dwnominate.asp</a> (accessed 10 July 2012; this is 3 Feb 2011 version)
Seniority [-] . . . . .	roll call year minus first year in Senate; first year in Senate taken from <a href="http://bioguide.congress.gov/biosearch/biosearch.asp">http://bioguide.congress.gov/biosearch/biosearch.asp</a> (accessed June 2012)
Time to next election [-]	year of next election minus roll call year; year of next election determined from <a href="http://bioguide.congress.gov/biosearch/biosearch.asp">http://bioguide.congress.gov/biosearch/biosearch.asp</a> (accessed June 2012)
Victory margin [-] . . . . .	senator's margin of victory in most recent election; gathered from Congressional Quarterly (2003) <i>CQ voting and elections collection (Web site)</i> . Washington, DC: CQ Press. Retrieved from <a href="http://library.cqpress.com/elections/avg19xx-2us1">http://library.cqpress.com/elections/avg19xx-2us1</a> where "xx" equals year for biennial elections between 1932 and 1964 (accessed June 2012)
<i>Other Variables</i>	
Vote Type [+]. . . . .	1 = "Direct" and 0 = "Rules" See data description above for more information.

Table 4.4: Percent Pro-Civil Rights by Explanatory Variables

	For Binary Variables	
	1	0
Party (1 = Democratic) .....	69.2	46.8
Vote Type (1 = Direct) .....	62.7	48.3
	For Continuous Variables	
	≤ median	> median
<b>state variables</b>		
State population .....	43.9	72.5
Union (percent) .....	45.4	70.5
Urban ( percent) .....	47.4	68.5
African American (percent) .....	53.2	63.1
Religious minority (percent) .....	48.6	67.9
Foreign born (percent) .....	51.6	65.8
<b>senator variables</b>		
Ideology .....	43.4	72.9
Seniority .....	68.1	46.4
Time to next election .....	58.3	58.1
Victory margin in previous election .....	63.0	53.2
<b>other variables</b>		
Roll call .....	55.6	61.0

## Modeling

In order to discern which relationships were more important, I conducted a logistic regression analysis of every vote cast for or against civil rights in the data set described in an earlier section of this paper. In order to adjust for the autocorrelation of errors that arise from the fact that most senators voted multiple times, I clustered the analysis on the senator with robust standard errors (Long and Freese 2001). The proportion of ethno-religious minorities in a state population was highly correlated with the percentage foreign born ( $r = 0.79$ ; see Table 4.5 below), so I used the ethno-religious minority variable, which is a more encompassing category (and which has the stronger bivariate relationship with civil rights voting), as the control. Senator ideology and senator party were also highly correlated ( $r = 0.81$ ), so I analyzed them in separate models. If one had to choose between the two strictly for the purposes of control, then the

ideology variable is clearly the best choice, particularly because it is continuous rather than dichotomous and therefore is better able to track variation; however, because of the three-way debate regarding the timing of party re-alignment on civil rights in the twentieth century (see above), and because of the emphasis on party alignments in chapters two and three of this dissertation, it is preferable to keep the party variable in the analysis. As will become clear, there is a real payoff to doing so, as these data from the Senate offer a clear intervention into debates about the timing of party realignment on racial policy.

Table 4.5: Correlation Matrix for Independent Variables

	v1	v2	v3	v4	v5	v6	v7	v8	v9	v10	v11	v12	v13
v1	1.00												
v2	.04	1.00											
v3	-.05	.02	1.00										
v4	.26	-.06	.46	1.00									
v5	.08	-.01	.57	.41	1.00								
v6	.02	.02	.43	.28	.40	1.00							
v7	-.06	-.01	.32	.04	.54	.03	1.00						
v8	-.05	-.02	.39	.16	.51	-.06	.79	1.00					
v9	.81	-.03	-.13	-.41	-.13	.01	-.06	-.08	1.00				
v10	-.06	.07	-.17	-.14	-.04	-.13	.03	-.02	.12	1.00			
v11	.01	-.20	.01	.01	.00	.01	-.02	-.01	-.04	-.20	1.00		
v12	.05	-.02	-.23	-.07	-.25	-.27	.02	.04	.01	.20	.02	1.00	
v13	-.01	.00	.07	.19	.21	.10	-.02	-.30	-.12	.00	-.01	-.06	1.00

Note: Variables match the order of presentation in Table 4.4 above (e.g. v1 = party and v13 = roll call). Correlations > 0.6 are shaded.

Table 4.6 presents a selection of models (specifically 2, 3, 5, and 6) that have two characteristics in common: they address the theoretical concerns that inform this analysis, and they fare reasonably well in tests of model specification and model fit (see bottom rows of the table). Models that do not meet criterion two are included because they are related to other models that are presented. For example, Model 1 is included because by comparing it to Model 2

one can see the effect of adding the interaction between party and vote type to the model .

Substituting ideology for party, Model 4 serves the same function in relation to Model 5.

Table 4.6: Selected Logistic Regression Models of Civil Rights Voting among non-Southern Senators (outcome: pro-civil rights vs. anti-civil rights)

	MODEL 1 Party	MODEL 2 Party	MODEL 3 Party	MODEL 4 Ideology	MODEL 5 Ideology	MODEL 6 Ideology
1. State Pop	1.312*** (.092)	1.335*** (.093)	1.325*** (.092)	1.335*** (.083)	1.364*** (.085)	1.341*** (.080)
<i>Other State Variables</i>						
2. Afr-Am	.972 (.041)	1.029 (.062)	.980 (.088)	.993 (.038)	1.062 (.062)	1.040 (.093)
3. Religious minority	1.030** (.011)	1.026* (.011)	1.006 (.017)	1.023~ (.012)	1.019~ (.012)	.995 (.017)
4. Union	1.029~ (.016)	1.030~ (.016)	1.030 (.023)	1.004 (.019)	1.004 (.018)	1.017 (.023)
5. Urban	.987 (.012)	.990 (.013)	1.000 (.014)	.994 (.013)	.997 (.012)	1.008 (.015)
<i>Senator Variables</i>						
6. Seniority	.938*** (.016)	.939*** (.016)	.944*** (.015)	.940*** (.016)	.942*** (.015)	.947** (.015)
7. Party	3.060*** (.799)	7.471*** (2.671)	8.313*** (3.280)	-----	-----	-----
8. Ideology	-----	-----	-----	19.434*** (7.269)	168.058*** (116.144)	188.352*** (136.494)
9. Time to next election	.977 (.042)	.951 (.065)	.949 (.065)	.953 (.041)	.932 (.069)	.939 (.067)
10. Victory margin	.992 (.007)	.980~ (.010)	.975* (.011)	.993 (.008)	.982~ (.009)	.981~ (.010)
<i>Other Variables</i>						
11. Vote type	2.261*** (.301)	4.067*** (1.057)	4.167*** (1.079)	2.428*** (.351)	2.761*** (.509)	2.768*** (.502)
<i>Interactions</i>						
7 x 11	-----	.326*** (.097)	.324*** (.097)	-----	-----	-----
8 x 11	-----	-----	-----	-----	.067*** (.042)	.072*** (.046)
2 x 9	-----	.999 (.014)	1.000 (.014)	-----	.997 (.015)	.999 (.015)
2 x 10	-----	.992* (.004)	.992* (.004)	-----	.992* (.003)	.992* (.003)
9 x 10	-----	1.002 (.004)	1.002 (.004)	-----	1.002 (.004)	1.001 (.004)
2 x 9 x 10	-----	1.001 (.001)	1.001 (.001)	-----	1.001 (.001)	1.001 (.001)
<i>Fixed Effects</i>						
Congressional Session	YES	YES	YES	YES	YES	YES
Region	NO	NO	YES	NO	NO	YES
CONSTANT	.085*** (.052)	.060*** (.042)	.107* (.108)	.219* (.129)	.211* (.131)	.398 (.369)
<i>Model Statistics</i>						
Specification ("link test")	.722	.392	.421	.609	.994	.457
Hosmer-Lemeshow	.043	.576	.255	.001	.583	.436
Pseudo R-squared	.249	.263	.280	.304	.325	.335
Deviance	2918.194	2861.581	2795.551	2702.507	2623.066	2582.525
Adjusted Count R2	.408	.404	.409	.425	.459	.461
ROC Curve	.818	.826	.835	.847	.857	.862
Wald chi-square	167.150	169.800	221.050	305.770	321.950	310.540
LR	966.853	1023.467	1089.497	1182.540	1261.982	1302.522
BIC	-815.650	-832.480	-850.760	-1031.507	-1070.992	-1063.786

Note: Entries are odds ratios with robust standard errors in parentheses, adjusted for 224 clusters on senator.  $N = 2858$  ~  $p < .10$  \* $p < .05$  \*\* $p < .01$  \*\*\* $p < .001$

Every model includes a fixed effect for the congressional session.<sup>127</sup> This fixed effect is essential in terms of the main hypothesis: if one wants to test the substantive significance of smaller versus larger states in coalition building, then it is important to constrain the estimation of coefficients by temporal context (in this case, the different congressional sessions).<sup>128</sup> If one did not do this, then variation in state population *within* a state over time could play a non-trivial role in the estimation. This would be fine if the argument concerned the size of state populations in an isolated, non-relational sense (on the hypothesis, for example, that there is something about large states per se, i.e. independent of the institutional context of the Senate, that make them more amenable to civil rights, and smaller states less so—there is probably, but this has to do with other variables in the model such as urbanization and unionization). But the argument

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<sup>127</sup> In order to include fixed effects, I used group dummy variables for congressional session and region. Using dummy variables for fixed effects means using unconditional maximum likelihood rather than conditional maximum likelihood estimation. This technique (i.e. using group dummies for fixed effects) produces biased estimates when the “incidental parameters problem” exists—i.e. when “the number of parameters (in particular, the coefficients of the dummy variables ...) increases directly with the sample size, thus violating one of the conditions that underlie the asymptotic theory of maximum likelihood estimation” (Allison 2009:32). This problem does not exist with region dummies, because the number of regions is fixed (increasing the sample size would not have increased the number of regions). As explained to me by Professor Robert Mare in personal communication, the number of congressional sessions is actually an “intermediate” case with respect to the incidental parameters problem, because increasing congressional sessions could have increased the number of roll calls and thereby the sample size (thus the potential problem). At the same time, there also could have been many more roll calls within the existing set of congressional sessions—and thus the sample size in principle could have increased greatly without increasing the number of congressional sessions. In order to be sure that this was not a problem, I ran a conditional logistic regression model that conditioned the estimates on each roll call (i.e. the most stringent fixed effect with respect to time, more stringent than congressional session, but not used in regular models for reasons explained below in another footnote) and the size and statistical significance of odds ratios were roughly the same (the estimation failed with congressional session, probably because of the imbalance in the number of roll calls per session). All variables had a higher statistical significance than in the models that used group dummies, most likely because it is not possible to cluster the standard errors by senator when estimating conditional logistic regression models. I am indebted to Professor Robert Mare of UCLA for generously lending his time in order to help me think through these issues.

<sup>128</sup> This does not mean that the effects of state population, controlling for other factors, were exactly the same in all congressional sessions. Rather, by including a fixed effect for congressional sessions, coefficients (including state population) are constrained by (i.e. estimated on the basis of) variation within each congressional session.

instead concerns coalition building and the relative size of states at the time of coalition building—i.e. *at the same time*.<sup>129</sup>

Models 3 and 6 address the possibility that unobserved heterogeneity between states is what drives the results. While a number of state-level variables such as union density are included in the analysis, it is possible that other features of the individual states that I have not measured (and perhaps could not measure) are driving the results. This could be addressed by including a fixed effect for states. However, given the theoretical expectations that inform this analysis, that strategy makes little sense. By introducing a fixed effect at the level of the state, the estimation would be based on variation *within* states over time. As just explained, this is the wrong strategy for testing the importance of state population size in the context of coalition building, where the size of all state populations matter at a given moment of time (a roll call), not over time. Nevertheless, in order to address the basic concern, Models 3 and 6 do introduce a fixed effect for region. With one exception, these are the regions from the General Social Survey. Because these regions have been constructed with the idea of grouping together states that are similar in many observable as well as unobservable ways, including ways not easily amenable to measurement (e.g. ‘history’ and ‘culture’), they permit some control for unobserved heterogeneity. Moreover, though some re-shuffling of states in the GSS regional scheme were necessary because southern states are not included in the present analysis, my modification grouped together ‘Border States’, which facilitates fine-grained testing of Young and Burstein’s

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<sup>129</sup> The most stringent fixed effect with regarding to timing is a fixed effect for each roll call. I did estimate models on this basis, using conditional logistic regression instead of a group dummy variable in line with discussion in footnote 128 above, and the results are practically identical. However, this option is not desirable, because every roll call is either a “Rules” vote or a “Direct” vote, and therefore a fixed effect on roll call precludes the inclusion of vote type in the analysis—which, as will be seen, is a very important variable for understanding voting dynamics.



(1995) argument that their variable of choice, “percent African American”, had different effects in the Border states as compared to the rest of the non-South.<sup>130</sup>

## Results

Examining Table 4.6 above, Models 1-3 are identical to Models 4-6 (1 corresponds to 4, 2 to 5, and 3 to 6) except that Models 1-3 include a party variable while Models 4-6 use an ideology variable (recall that ‘party’ and ‘ideology’ are highly correlated). Models 1 and 4 present the result of estimations without any interactions; Models 2 and 5 are more complex versions of Models 1 and 4, and they represent the best fitting models among a range of others estimated but not shown (all with similar results for the statistically and substantively significant odds ratios in the models shown in Table 4.5); and Models 3 and 6 represent a more stringent test of Models 2 and 5 by virtue of the inclusion of region fixed effects. Thus, Models 2 and 5 are the main models of interest, and they will be the focus of discussion unless otherwise noted.

Examining the party (rather than ideology) models first (i.e. Models 1-3), seniority, party, vote type, and to a lesser degree the ethno-religious composition of state populations had statistically and substantively significant relationships with civil rights voting. The fact that the seniority odds ratio is less than one across all models indicates that an increase in seniority

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<sup>130</sup> The General Social Survey regions that I use unmodified are as follows: **New England** (Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island); **Middle Atlantic** (New York, New Jersey, Pennsylvania); **East North Central** (Wisconsin, Illinois, Indiana, Michigan, Ohio); **Mountain** (Montana, Idaho, Wyoming, Nevada, Utah, Colorado, Arizona, New Mexico); and **Pacific** (Washington, Oregon, California, Alaska, Hawaii). West **North Central** (Minnesota, Iowa, North Dakota, South Dakota, Nebraska, Kansas) remains the same, except for Missouri, which I move into a seventh regional grouping, **Border** states (i.e. those that had slavery on the eve of the Civil War and that maintained political rights for African Americans between the 1890s and 1950s but experienced *de jure* segregation in schools and other domains). These other Border states are Kentucky (which is in the GSS region of East South Central with three southern states), Oklahoma (which is in the GSS region of West South Central with three southern states), and Delaware, West Virginia, and Maryland (which together are in the GSS region of South Atlantic with five southern states).

decreased the chances of pro-civil rights voting, consistent with expectations. Holding other variables at their means and using Model 5, the predicted probability of a senator with median seniority (i.e. 7 years) voting in favor of civil rights was 65 percent, while a senator at the 90<sup>th</sup> percentile had a less than 50 percent chance of doing the same.<sup>131</sup> In contrast to other research (e.g. Young and Burstein 1995), senators from states with larger African American populations were not more likely to support civil rights. The relationship is not statistically significant, but if it were, then the opposite relationship might even be supported (e.g. Model 1)—i.e. the larger the proportion of African Americans, the lower the chances of civil rights voting.<sup>132</sup> Also in contrast to other research (Carmines and Stimson 1989; Young and Burstein 1995), partisan differences were linked to different patterns of civil rights voting, with the odds of a (non-southern) Democrat casting a pro-rights vote being more than three times greater than the odds of a Republican casting such a vote (Model 1). This relationship holds when an interaction with vote type is introduced (Models 2 and 3); this partisan difference will be examined below in more detail.

Despite the inclusion of these state-level and individual-level variables, several of which are significant in both a statistical and substantive sense, the importance of state population is consistent across Models 1-3 (including all versions not presented in Table 4.5). Focusing on

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<sup>131</sup> All predicted probabilities were calculated using the margins- command after regression estimation in Stata 12 (see Mitchell 2012 for a useful guide).

<sup>132</sup> Various transformations of the percent African American variable to capture curvilinear effects produced similarly non-significant results. Young and Burstein (1995) identify a four percent threshold as crucial, so I created a dummy variable based on this proportion. Substituting this dummy variable into Models 1-6 yielded no statistically significant results. Young and Burstein (1995) do argue that the relative size of the African American population did have different effects in Border states as compared to non-southern states, with the effect in Border states much more ambiguous (as opposed to what they argue was a positive relationship in other non-southern states). Excluding Border states from the analysis, however, did not generally yield a different result. One exception is Model 1 without the Border states. But instead of an odds ratio greater than 1 (indicating that odds of voting pro-civil rights increases with size of African American population), the odds ratio is just 0.42. As discussed in a later note, a coefficient sensitivity probe did not indicate that a relatively small number of influential observations canceled the effect of percent African American.

Model 2, for every unit increase in state population (i.e. one million people), the odds of voting pro-civil rights increase multiplicatively by a factor of 1.3. State populations ranged from less than 200,000 to as much as 16 million, but 50 percent of the votes were cast by senators from states with populations of 1.9 million or less, and 40 additional percent came from states with populations between 1.9 and 10.1 million. Holding all other variables at their mean, senators from states at the 10<sup>th</sup> percentile in terms of population (i.e. 400,000) had less than a 40 percent predicted probability of supporting civil rights. This predicted probability increased to 50 percent for senators from states at the median (1.9 million), to 70 percent for those at the 75<sup>th</sup> percentile, and to 94 percent for those senators with state populations in the 90<sup>th</sup> percentile.<sup>133</sup>

A reasonable hypothesis is that smaller states were more likely to elect conservative senators, regardless of party, who in turn were less likely to support civil rights. Perhaps it is the case that the other variables that might proxy for this conservative inclination in small state senators —e.g. lower unionization and urbanization rates—do not adequately capture this dynamic. In order to address this concern, I estimated models that included senator ideology (Models 4-6 in Table 4.6). There are many such measures available, and they are highly correlated (Burden et al. 2000). I used the DW-NOMINATE1 scores (Poole and Rosenthal 2007), which have two distinct advantages. First, DW-NOM is the only ideology measure that reach backs in time to the 1930s (indeed, to the 1780s). Second, unlike the other measures that are available, the DW-NOM scores exist in two forms, one that concerns voting on civil rights and

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<sup>133</sup> Several tests for linearity in the logit of the dependent variable (e.g. dividing continuous independent variables into quartiles; or interacting continuous variables with their log transformation)—the only kind of linearity that matters in logistic regression—indicate that state population did not need to be log transformed, despite being considerably skewed. However, I did run the model with the state population variable log transformed, and the results are the same in terms of statistical significance. Using the margins command, the predicted probability of voting pro-civil rights ranged from 18 percent at the low end of the log distribution to 82 percent at the high end. This result holds when all variables are transformed to meet the stringent logit linearity demands of the Box-Tidwell test.

civil liberties (DW-NOM2) and one that does not (DW-NOM1) (Poole and Rosenthal 2007). By using DW-NOM1, therefore, there is no danger of measuring ideology on the basis of civil rights roll calls and thereby creating an endogeneity problem (as would happen with any other measures from the time period).

As Models 4-6 demonstrate, integrating senator ideology into the analysis has non-trivial consequences for the unionization and ethno-religious minority variables (compare Model 5 to Model 2), but the other significant variables remain unchanged, including state population. In fact, the odds ratio for state population increases slightly (and the z-statistic increases from 4.13 to 5.00—not shown). Moreover, the predicted probabilities for senators from different state populations are basically identical to those just described for Model 2.

What is one to make of the very large odds ratios for senator ideology? Does this mean that all the other variables in the model, including state population, are effectively irrelevant, a footnote to a much grander story about the power of ideology? A closer look shows that ideology is substantively important, but not nearly as important as the odds ratios might suggest.

First, it is important to keep in mind that while the measure for ideology (DW-NOM1) is continuous, the bounds of the scale are -1 and 1. Thus, when interpreting an increase in odds of voting civil rights of 19.4 linked to a one unit increase in senator ideology (Model 4), one should keep in mind that the maximum number of unit increases is just two. Moreover, in the case of the senators in this data set, the minimum is -0.713 and the maximum is 0.992 (i.e., less than two units), while 85 percent of all votes came from senators that ranged from -.474 (5<sup>th</sup> percentile) to 0.500 (90<sup>th</sup> percentile) on the ideology scale—i.e. just a little more than a one unit increase. Also, the rate of increase in predicted probabilities is lower at the upper end of the ideology score as compared to the lower ends. For example, with other variables at their means, the predicted

probability of a pro-rights vote increases from about 18 percent for a senator with an ideology of -0.7 to 81 percent for a senator with an ideology score of 0.3 (with a 49 percent predicted probability for senators with an ideology of -0.2—i.e. the mid-point)—but then the senator with an ideology score one-half unit higher than that (i.e. 0.8) has a predicted probability of 94 percent, only a 13 point increase (as compared to the 31 and 32 point jumps for every half unit between -0.7 and 0.3). The one-unit range from -0.7 to 0.3 encompasses almost 75 percent of all observations, and the predicted probability increase from 18 percent to 81 percent in fact represents the odds ratio of 19.4 that appears in Table 4.5 (i.e.  $18:82 * 19.4 \approx 81:19$ ).

Before turning to a direct comparison between the state population and ideology odds ratios, it is important to address the odds ratios for ideology in Model 5 (and by extension, Model 6), which are dramatically higher than the already high figure in Model 4. In Model 5 (and 6), there is an interaction between ideology and vote type, and therefore each of the three relevant odds ratios (ideology; vote type; and “8x11”—i.e. the ideology/vote type interaction) can be interpreted correctly only in relation to one another. The ideology and vote type odds ratios represent “simple effects”—i.e. “the effect of one variable while holding another variable constant” (Mitchell 2012:215). In the case of the ideology odds ratio, vote type is held constant at zero, which means a Rules vote instead of a Direct vote. Thus, in the case of Rules votes, the multiplicative odds of voting pro-civil rights increase by 168 for a one-unit increase in ideology. This might seem preposterous, but it is not. Using Stata 12’s margins commands to unpack the meaning of the odds ratios (and again holding other variables at the mean), one finds that a senator with an ideology score of -0.5 (which is between 1<sup>st</sup> and the 5<sup>th</sup> percentile—i.e. very conservative) had just a 6 percent predicted probability of voting pro-rights on Rules votes, while the predicted probability for a senator with an ideology score of 0.5 (which is in the 90<sup>th</sup>

percentile—i.e. very liberal) was 91 percent. This jump from 6 percent to 91 percent represents an odds ratios increase of 168 (i.e.  $6:94 * 168 \approx 91:9$ ).

In the case of the vote type odds ratio (i.e. 2.76), which is also a ‘simple effect’, the ideology of a senator is held constant at zero (which happens to be the median senator) to assess the effect of moving from a Rules vote (i.e. vote type = 0) to a Direct vote (vote type = 1). Thus, for a senator situated in the middle of the ideological spectrum, the odds of voting pro-civil rights were 2.76 times greater on Direct votes as compared to Rules votes. Although this represents the median senator, this ratio was not constant across the ideological spectrum. As I am about to show, the most conservative senators voted very differently on these two types of roll calls, while the most liberal ones did not.

This non-constancy across the ideological spectrum can be discerned by investigating the interaction odds ratio (i.e. 0.067). We have already seen that a one-unit increase in ideology score—that is, a move leftward one unit on the ideological spectrum—greatly increases the odds of voting pro-civil rights when the vote type is a Rules vote (the odds ratio increases multiplicatively by 168). When this figure is multiplied by the interaction term (i.e.  $168.058 * 0.067$ ), one learns how much the odds of voting civil rights *on Direct votes* increases multiplicatively with a leftward shift (i.e., increase) of one unit on the ideology scale. Thus, for every one unit increase in the ideology scale of a senator, the multiplicative odds of voting pro-rights on Direct votes increased by about 11.26. This is a substantial increase, but just a fraction of the odds ratio increase for Rules votes. This is because conservative senators were much more likely to vote pro-civil rights on Direct votes as compared to Rules votes, while senators at the more liberal end of the spectrum were pro-rights regardless of whether they were voting on Rules to make it easier to pass civil rights legislation in the Senate or Direct measures designed

to directly address legal racial inequality.<sup>134</sup> Looking across the ideological spectrum, there is a large gap in the predicted probabilities of voting pro-rights on Rules votes as compared to Direct votes for those in the most conservative third of the distribution, while there is no statistically significant difference in predicted probabilities for those in the most liberal third of the distribution.

So much for the substantive meaning of the odds ratios for ideology. How do the estimated effects of ideology compare to state population? While the odds ratios are dramatically different, this does not tell us anything about the estimated effects of each variable relative to other variables in the model. Because these two variables are measured on different scales, and because they have different ranges, the odds ratios do not convey information about the effect size of one variable compared to another (see Menard 2011:1419-1421). In order to directly compare two variables, it is necessary to standardize the coefficients.<sup>135</sup> Standardization converts from the natural metric of variables (e.g. millions of people) to an interpretation based on standard deviation changes. At a minimum for direct comparison, it is necessary to standardize the coefficients such that each standardized coefficient represents the change in dependent variable for a one standard deviation change in the independent variable.<sup>136</sup>

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<sup>134</sup> This difference liberals and conservatives almost certainly stemmed from the fact that liberalizing the Senate Rules would make it easier to pass liberal legislation in a range of areas, not just civil rights.

<sup>135</sup> The language here sometimes shifts from “odds ratios” to “coefficients,” because it is the logit coefficients that are initially standardized. Moreover, it is easier to compare logit coefficients to one another than it is to compare odds ratios, and such comparison is the whole point of standardizing. As many others do, I generally report and discuss odds ratios, which are estimated using Stata’s “logistic” command, because they are easier to understand. The “logit” command produces coefficients, which one interprets as changes in *log* odds of the dependent variable with a unit change in the independent variable. What is important to note is that the logit coefficients and odds ratios are as mathematically equivalent as the fraction one-half and 50 percent. To convert from logit coefficients to odds ratios, one exponentiates the coefficients, and to convert back to coefficients one takes the natural log of the odds ratios.

<sup>136</sup> One could also standardize the dependent variable, and report the standardized effect of X on a standardized version of Y—i.e. full standardization. However, this is not necessary for the purposes of comparing the relative effects of the independent variables (Menard 2011), and so these results (which are identical to those reported and discussed) are not shown.

This partial standardization ('partial' because the independent variables are standardized while the dependent variable is not) is made possible by the *spost* commands developed by Long and Freese (2001) for use in Stata. This standardization procedure cannot handle interactions, and so I refer now to Model 4 to directly compare ideology, state population, and other independent variables.

Due to standardization, the interpretation of the coefficients within the columns of Table 4.7 is straightforward: if the absolute value of the coefficient is larger (sign indicates direction of effect), then that indicates a larger effect for a one standard deviation increase of the independent variable. Thus, although the unstandardized odds ratio for ideology in Model 4 of Table 4.6 is about 15 times larger than the odds ratio for state population, it is evident from Table 4.7 that the relative effects of the two variables are actually very similar (and that the relative effects of state population and ideology are much larger than the effects of other variables). In fact, keeping in mind two caveats that I will confine to a footnote, the relative effect of state population is actually greater than ideology in terms of this best-available measure.<sup>137</sup>

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<sup>137</sup> The first caveat concerns the relationship between the standard deviation and the actual range of the variable. Moving from the lowest to the highest state populations, one standard deviation embraces about 70 percent of the distribution, while in the case of ideology two standard deviations embrace the same amount of the distribution (though in both cases, three standard deviations account for more than 95 percent of the distribution). Second, as this would suggest, the state population distribution is more skewed. In fact, when the log of the population is used (a common way to reduce skew for state populations in linear regression, when such a reduction is necessary) and then the coefficients are standardized, state population and ideology continue to be in a class of their own with respect to size of effect, but in this case the size of the ideology coefficient is somewhat larger than that of state population (1.06 vs. 0.97). As mentioned, tests for the linearity of the logit do not indicate that a log transformation of state population is necessary.



Table 4.7 Relative Effects of Independent Variables on Civil Rights Voting: Standardized Coefficients and Odds Ratios for Models 1 and 4 from Table 4.6

	Model 1B		Model 4B		<i>Standard Deviation</i>
	Standardized Coefficient	Standardized Odds Ratio	Standardized Coefficient	Standardized Odds Ratio	
State Pop	1.097***	2.995	1.151***	3.161	3.986
Ideology	-----	-----	1.034***	2.812	0.389
Party	0.559***	1.749	-----	-----	0.500
Seniority	- 0.4364***	0.646	- 0.422***	0.656	6.816
Vote Type	0.378***	1.459	0.411***	1.927	0.464
Ethno-Religious Minority	0.407**	1.502	0.314~	1.369	13.831
African American	0.116	0.890	-0.027	0.998	4.035
Urbanization	- 0.206	0.814	-0.096	0.908	15.770
Unionization	0.299~	1.349	0.038	1.039	10.445
Victory Margin	- 0.101	0.904	-0.081	0.922	12.204
Time to Next Election	- 0.040	0.961	-0.081	0.922	1.706

Note: ~  $p < .10$  \*  $p < .05$  \*\*  $p < .01$  \*\*\*  $p < .001$

Up to this point, the analysis has endeavored to show that minority obstruction of racial minority rights in the Senate went well beyond the institution of the filibuster. Beyond the rules that guide the Senate, basing the membership of the Senate on the equal representation of states with vastly different populations provided the proponents of American racial ethnocracy with a crucial resource for inequality's defense. Again and again starting in the late 1930s, senators representing a majority of the population were badly defeated in roll calls due to the disproportionate power that the Senate provides to small population states. Just 37 senators, for example, voted for federal intervention to stop lynching in 1938 as compared to the 51 senators who opposed this measure—a rout by any reasonable interpretation—and yet these 37 senators represented a greater share of the national population. That the House of Representatives—apportioned as it is on the basis of population rather than the legal fictions we call states—passed this anti-lynching measure and many others that could not get through the Senate, suggests the

significance of the Senate's representation of states on an equal basis. With this pattern established, the analysis then turned to the question of why small states disproportionately aided southern Democrats in their defense of Jim Crow. The regression results support the hypothesis that the small state effect, rather than being driven by other factors associated with small population, derived from processes of coalition building in the Senate that matched the high-resource southern bloc with the less expensive smaller states. As a final step in this small state story, the next section discusses post-regression diagnostics in order to address most fundamentally whether these results are driven by the data set as a whole, as should be the case, or whether a few influential observations could be driving the results—in which case the conclusions just drawn would need a fundamental rethinking. Following this discussion of post-regression diagnostics, and informed partly by the results of these diagnostic tests, I then will turn to a close examination of the significance of partisan differences for civil rights voting.

### Post-Regression Diagnostics

Although the danger is less in logistic regression as compared to linear regression, there is always the possibility that regression results might be driven by a select number of observations that do not represent the universe of such observations. In order to check for this possibility, I conducted a number of post-regression diagnostics. Unless otherwise stated, the discussion relates to both Models 2 and 5.

### *Influential Observations*

Logistic regression is less subject to influence from outliers in the estimation of coefficients and model fit. Moreover, “influence statistics such as leverage values ... should be

evaluated in terms of relative size given values for other cases in the sample” rather than in terms of an absolute metric such as the normal distribution curve (O’Connell and Amico 2010:234; see also Hosmer and Lemeshow 2000:176). Two influence statistics, Pregibon leverage and Pregibon dbeta, measure the influence of each individual observation (leverage) or each covariate pattern (dbeta) on the general estimation of variables in the model. To probe the importance of each observation on the model estimates, I removed all observations with a leverage statistic three times greater than the mean and then re-estimated the model.<sup>138</sup> I also did the same thing with those observations having leverage values more than twice the mean, and then with those simply more than mean. For Model 2, the basic story stayed the same, except for the third assessment (i.e., removing all those with leverage values greater than the mean), in which case the odds ratios for state population and party became *larger* in magnitude. For Model 5, any restrictions to eliminate high leverage values only increased the size and statistical significance (z-value) of state population and ideology, while estimates for other variables basically stayed the same. The upshot is this: to the extent that high leverage observations exerted an influence, their effect was to deflate, not inflate, the estimates for state population and party/ideology.

Pregibon’s dbeta differs from Pregibon’s leverage in that dbeta measures the influence of covariate patterns rather than observations (there were 1089 covariate patterns for 2858 observations). Removing extreme values (i.e., relatively influential covariate patterns) did not appreciably alter any of the variable estimates, with one exception (percent African American)

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<sup>138</sup> This follows the recommendations of UCLA statistical consulting service (see <http://www.ats.ucla.edu/stat/stata/webbooks/logistic/chapter3/statalog3.htm>), and it is consistent with logistic regression guides, which recommend a relative approach to assessing diagnostic values (O’Connell and Amico 2010; Hosmer and Lemeshow 2000).

that requires the context of the next paragraph for understanding and therefore will be addressed below (in a footnote).

An assessment of coefficient sensitivity is the best, and also the most computationally intensive, way to check whether estimates for a particular variable are driven by a select number of observations. The user-written `ldfbeta` program for Stata offers this gold standard diagnostic, as it calculates the influence of *each observation* (i.e. individual vote) on any coefficient (or odds ratio) of choice, in this case state population. A scatter plot of these values suggested that the observations with the most influence (i.e. most distant from the main cluster of values) actually exerted a *downward* pressure on the size and statistical significance of the state population odds ratio (consistent with the findings from the Pregibon leverage diagnostic, as discussed above). Further investigation revealed that although most observations clustered evenly around zero between  $-.01$  and  $.01$  (and therefore cancelled out one another's influence), beyond this narrow band there were more than twice as many negative values as positive ones, and these negative values were also generally more distant from zero (e.g. there were 29 values less than  $-0.013$  but none greater than  $0.013$ ). Thus, using Model 5 to illustrate, when the regression is restricted such that all values greater than  $0.01$  are removed, the state population coefficient is virtually identical ( $1.335$ ;  $p < .001$ ;  $N = 2843$ ). On the other hand, when the opposite is done (restricted so that all values below  $-0.01$  are removed), the state population odds ratio increases considerably, to  $1.601$  ( $p < .001$ ;  $N = 2823$ ).<sup>139</sup> Thus, on balance, the influence of influential values in the data set is not to exaggerate the effect of state population, but rather to deflate it.<sup>140</sup>

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<sup>139</sup> There were actually more observations above  $0.0075$  than below  $-0.0075$  (four to be exact), which might lead one to expect an upward bias on the coefficient. Yet, when the regression is restricted such that all values greater than  $0.0075$  are removed (and all negative values are preserved), the state population coefficient drops only to  $1.26$  ( $p < .001$ ). On the other hand, when the opposite is done (restricted so that all values below  $-0.0075$  are removed), the state population odds ratio increases considerably more, to  $1.68$  ( $p < .001$ ). Thus, on balance, the observations that lie

## *Outliers*

As just discussed, those observations and covariate patterns that are poorly accounted for by the model do *not* exert undue influence over the state population variable or the model variables more generally. Moreover, as reported in Table 4.5, the model fit and model specification statistics for Models 2 and 5 are well within the range of what is acceptable. The fact remains, however, that there are observations which deviate considerably from what one would expect based on the models.<sup>141</sup> The model fits are acceptable, but they could (of course) be better. Thus, it is worthwhile to examine these outliers in the hope that doing so will shed more light on the processes that drove civil rights voting.

Here I focus on Model 2. Even though Model 5 is the superior one in terms of a range of fit statistics, Model 2 is the one that permits an assessment of partisan difference in civil rights voting: To what extent did Republicans replace non-southern Democrats as allies of the South in its defense of white supremacy? As mentioned earlier, this question is of obvious interest in the context of the dissertation, and it also directly concerns an ongoing debate about party re-alignment on racial policy in the twentieth century, a debate that thus far has largely ignored data

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beyond  $|0.0075|$  have a downward influence on the state population odds ratio even though there are more positive values than negative ones beyond this absolute value.

<sup>140</sup> Because of one result from the Pregibon dbeta analysis discussed above, I also calculated ldfbeta for the percent Black variable. When Model 5 was restricted to dbeta values less than four, which eliminates about 200 observations, the simple effect of 'percent Black' in the context of the three-way interaction became significant (though doing the same for Model 4, where percent Black is assessed as a main effect, did not produce a similar result). To examine this anomaly further, I calculated ldfbeta for percent Black for both Models 2 and 5. An examination of the scatter plot suggested that the overall influence of these observations, if any, was inflationary with respect to the effect of percent Black. Removing these observations from the analysis did not make percent Black statistically significant, but it did affect the state population and ideology variables: they became larger and more significant.

<sup>141</sup> As with measures of leverage, standardized residuals in logistic regression do not behave as they do in ordinary linear regression, and it is appropriate to identify outliers in logistic regression in relation to overall patterns rather than the normal distribution (O'Connell and Amico 2010:234; see also Hosmer and Lemeshow 2000:176).

from the Senate. Thus, in this discussion of outliers I will focus on Model 2, which in turn will lead to additional analyses that address this debate on party realignment.

Standardized Pearson residuals provide the most straightforward representation of outliers, as they offer a measure of the difference between fitted and observed values (i.e., the model's predictions for a given vote and the actual result for that vote). Negative residuals indicate that senators voted against civil rights *and* against the predictions of the model. Positive residuals mean that senators voted in favor of civil rights but against the predictions of the model. Following common practice, I determined extreme residuals—in this case, those values greater than the absolute value of four—through visual inspection of scatter plots. In total, 103 observations lay beyond this band running from 4 to -4, 68 at the negative end and 35 at the positive one.

Most of the really extreme negative residuals, those less than -6, are linked to Republicans (on this, more below). But two Democrats appear for their votes during debate and passage of the Civil Rights Act of 1957, John F. Kennedy from Massachusetts and Frank Lausche from Ohio. Besides being Democrats with seniority less than the median, both senators were from the large population states with high union density and significant proportions of ethno-religious minorities. Yet in 1957, Kennedy cast just one of his four votes in favor of civil rights, and Lausche just two of five. The Kennedy votes are not a mystery. He was gearing up to run for president and knew that support of the South, or at least not its adamant opposition, would greatly ease his ability to gain the nomination (Caro 2002; Evans and Novak 1966).

The Lausche votes are more puzzling, though not indecipherable. Lausche had come up through Ohio city and state politics and was known as a pragmatic compromiser willing to cut deals. But representing a state as large as Ohio, his 'price' in terms of fund allocations probably

was too high to be attractive to southern Democrats in light of the range of much less expensive options in smaller population states. Yet, when one examines data on committee assignments, then a very plausible hypothesis emerges. The year 1957 was Lausche's first in the Senate, and the votes he delivered during to the anti-rights side went above and beyond any reasonable expectation for the state he represented (The southern Democrats, Johnson included, frequently claimed, and seemed to believe, that northern Democrats from states like Ohio were forced to vote for civil rights because of their large African-American populations). The very next session of Congress Lausche successfully transferred to the Foreign Relations Committee, one of the Senate's most prestigious—a transfer that, as we have seen, depended on Johnson and a southern-dominated Steering Committee willing to use its assignment power to reward and punish. Further suggesting that the 1957 votes and the 1959 committee assignment were linked is how Lausche voted after gaining the assignment: after voting just 5 of 9 in favor of civil rights through 1959 (including a critical vote against adopting new Senate Rules in 1959 that occurred at the beginning of the session and before committee assignments), Lausche cast 20 of his next 22 votes in favor of civil rights.

The votes of three other Democrats lay beyond (i.e. were less than) a standardized Pearson value of -4, though not as far as those just discussed. One of these was directly linked to an alliance with southern Democrats: a series of votes by Robert Byrd from West Virginia. Byrd, who cast just 2 of his 25 votes in favor of civil rights across the period and filibustered with the southern Democrats in 1964, did not need to be persuaded or coerced to join the southern defense of white supremacy. He was, however, rewarded, earning a seat on the most powerful committee of them all, Appropriations, in his first session in Congress (1959-1960). Byrd was truly an outlier in 1960 roll calls, the votes that produce the largest residuals. In that year, he cast

just 2 of 11 votes in favor of civil rights. In contrast, five senators similar to him in many other ways (Democrat; less than median seniority; represented a state population in the middle two quartiles) cast just 2 of their 55 votes *against* civil rights.

Another major Democratic outlier in the negative direction is Senator Mike Mansfield from Montana, specifically his votes during the debate and passage of the civil rights acts of 1957 and 1960. To put his voting pattern in perspective—just 2 of Mansfield’s 14 votes favored civil rights in 1957 and 1960—other Democrats with less than eight years of seniority cast 234 of their 285 votes (82 percent) in favor of civil rights during these two years. Mansfield even stood out among those Democrats who met these criteria and were also from a state with a population less than one million (Montana had a population of 700,000 in 1960): these Democrats cast 54 of 85 of their votes (64 percent) in favor of civil rights during these two years. Mansfield’s voting pattern is easily explicable in terms of the Senate hierarchy describe above: he was a key member of it. As Minority Leader in 1953, Johnson made the newly-elected Mansfield his assistant, the same year that Mansfield gained a position on the prestigious Foreign Relations committee. Mansfield continued to serve as Johnson’s assistant when the latter became Majority Leader, and Mansfield himself ascended to this position after Johnson’s departure. Mansfield also occupied a position on the southern-dominated Policy and Steering Committees.

There was just one Democratic outlier in the positive direction (i.e. more favorable to civil rights than the model would predict), Bartlett from Alaska for his 10 of 11 votes in favor of civil rights in 1960. In that year, Alaska had a population of just 200,000. Other Democrats from states with less than one million people cast just 51 percent of their 113 votes in favor of civil rights. Even restricting this set to those below the median in seniority, Bartlett is still distinct (91 percent for Bartlett versus 63 percent on 59 votes for all others). Yet, despite the low population



of his state, Bartlett's voting in 1960 is consistent with the general analysis of this chapter. Alaska was new to the 86<sup>th</sup> Congress (1959-1960), having finally become a state in January 1959. The politics behind the protracted move to statehood meant that Alaskan senators probably would not have been available as allies for the southern Democrats, at least not at first, for it was the southern Democratic bloc that fought Alaska and Hawaii's transition to statehood—in large part out of a desire to limit the number of senators in play for the struggle over civil rights.<sup>142</sup>

### THE REEMERGENCE OF PARTISAN SIGNIFICANCE IN THE NON-SOUTH

The above concludes the analysis of small population states' role in obstructing civil rights. Before turning to the Republican outliers and then to Republican voting patterns more generally, it is first necessary to set the scene by reviewing the debate about partisan realignment with respect to racial policy in the twentieth century. As discussed above, there are three views about partisan realignment. The first is that partisan differences emerged *after* passage of major civil rights legislation in the mid-1960s (Young and Burstein 1995; Carmines and the Stimson). The second, quite opposite, view is that Republicans outside the South formed a 'Conservative Coalition' with southern Democrats to thwart civil rights throughout the generation leading up to the mid-1960s breakthrough, or at least until the Civil Rights Act of 1957 (e.g. Mackenzie and Weisbrot 2008; Mann 1996; Berman 1966). And the third, middle-of-the-road, view is that partisan differences between Republicans and Democrats outside the South emerged over time in the period leading up to the Civil Rights Act of 1964. This third view is based on developments at the state level, including party platforms (Feinstein and Schickler 2008) and state FEPC

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<sup>142</sup> During the 1960-1964 period, Alaska and Hawaii senators, both Republicans and Democrats, voted like other senators from small states (less than one million people) on Rules votes, but the new states' voting on Direct civil rights measures was decidedly out of step: more than 75 percent pro-rights (n = 40) compared to 38 percent (n = 358) for all other senators from small states during this time.

legislation (Chen 2007), as well as patterns of civil rights support in the House of the Representatives (Karol 2009; Schickler et al. 2010).

The Senate data lend support to both the second and third views. While this at first blush seems contradictory, it turns out the Conservative Coalition thesis is compelling *but only with respect to* the Rules votes. This is evident from the extreme positive residual values—the outliers—that were linked to Republicans. Of the six sets of Republican votes that were positive outliers (i.e. support for civil rights was much stronger than the model would predict), all but one of them concerned Rules votes rather than Direct votes. This is because Model 2 estimated very low Republican support for Rules changes, which can be seen by interpreting the vote type and party “simple effects” as well as their interaction (i.e. “7 x 11” row) in Model 2 (see Table 4.6 above). The simple effect of “party” is about 7.5, and this is conditioned on a zero value for vote type—i.e., a Rules vote. In other words, on Rules votes, the odds of a Democrat supporting civil rights were 7.5 times greater than the odds of a Republican supporting civil rights (cf. Model 1, which has no interaction and therefore does not pick up this difference in party voting on Rules and Direct votes). The “vote type” simple effect provides a different angle on Republicans’ reluctance to support civil rights on Rules votes. The entry indicates that the odds of Republicans supporting civil rights was almost 4.1 times greater on Direct votes as compared to Rules votes. Finally, the interaction term (“7 x 11” row of Table 4.6) reveals that on Direct votes the odds of Democrats supporting civil rights was still greater than the odds of Republicans doing so—about 2.44 times greater (i.e.  $7.471 * 0.326$ )—but that the partisan difference was much less than on Rules votes.

These large partisan differences exist after controlling for many other factors such as state population, union density, state seniority, and so on. Though not having the advantage of

introducing controls for other factors, a simple tabular analysis also reveals this consistent Republican support for the South on Rules votes. As Table 4.8 shows, among the 13 Rules votes (all of which occurred between 1949 and 1963), a majority of Republicans voted with southern Democrats all but one time. In contrast, a majority of non-southern Democrats voted against their southern wing 11 of 13 times.

Table 4.8: Republican and Non-Southern Democratic Voting on 44 Roll Calls, 1938-1964

percent pro-rights	REPUBLICANS		NON-S DEMOCRATS	
	Rules	Direct	Rules	Direct
< 20	3	4	0	0
20-39	5	10	0	1
40-49	4	2	2	1
50-64	1	4	4	9
65-84	0	6	7	17
85-100	0	5	0	3
Total Roll Calls	13	31	13	31

To be sure, as just indicated, Democrats also were considerably more likely (2.44 times greater odds) to support civil rights on Direct votes. Does this mean that the “conservative coalition” story also applies to Direct votes, and therefore all civil rights voting across the period? The simple tabular analysis in Table 4.8 suggests a more ambiguous story. While a majority of non-southern Democrats almost never voted with the South on Direct votes (just 2 times out of 31), the Republicans also did not do so on a consistent basis—only about half of the time. Moreover, Republicans actually showed the strongest level of support (i.e. 85-100 percent) on more roll calls than did non-southern Democrats. A closer look reveals that Republican support for civil rights did not fluctuate from roll to roll call (which might suggest that roll calls are not a reliable measure of Republican support for civil rights) but rather had a definite temporal pattern.

Because civil rights legislation finally passed in 1964, one might expect that this pattern was characterized by increasing Republican support for civil rights over time (cf. Young and Burstein 1995, who posit a gradualist view, though dispute that partisan significance was ever part of the story).<sup>143</sup> Instead, just the opposite was the case, with 1964 as an anomaly of partisan convergence on civil rights support. Consistent with the third view outlined above, there was a partisan *divergence* over time, with the Republicans becoming increasingly *less* likely to support civil rights.

#### From Partisan Similarity to Divergence on Direct Votes in the Non-South

As mentioned in the data description section above, there was not a temporally even distribution of roll calls. Twelve of the 31 Direct roll calls occurred between 1938 and 1957, then 19 more between 1958 and 1964 (but analyzing the earlier roll calls is essential, because these generally corresponded to legislation that already had passed the House—i.e. they took place in a context when civil rights legislation very well could have passed). On the 12 roll calls between 1938 and 1957, a majority of Republicans voted with the South on just two occasions—both in 1938 when Republican membership in the Senate was at an all-time low and thus may not have been representative of the party. In fact, on about an equal number of votes through 1957 (380 for Republicans and 368 for non-southern Democrats), Republicans were *more* supportive of civil rights on Direct measures than were Democrats: 72 versus 63 percent. After 1957, however, a majority of Republicans voted with the South on 14 of the 19 Direct roll calls, and the difference between the two non-southern groups was dramatic: 75 percent of non-southern Democratic votes ( $n = 718$ ) supported civil rights on Direct measures, but just 43 percent of

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<sup>143</sup> This is also what is implied by those who adhere to the Conservative Coalition thesis but say that it was finally broken in 1957 (e.g. Mann 1996).

Republican votes ( $n = 603$ ). In light of the above, it is not surprising that when the regression analysis is restricted to Direct votes before 1960, the odds ratio for ‘party’ is less than one (indicating that Democrats were less likely to support civil rights), though also not significant ( $0.80, p = 0.575$ ).<sup>144</sup> In contrast, whether the analysis of Direct votes is restricted to the 1960-1964 period, or to the 1938-1964 period as a whole, the ‘party’ odds ratio is substantively and statistically significant ( $5.42, p < .001$  for 1960-1964;  $2.31, p < .01$  for 1938-1964).<sup>145</sup>

Thus, while Republicans formed an enduring ‘conservative coalition’ with southern Democrats on the issue of whether Senate Rules should be revised to make it easier to pass *any* legislation, including civil rights, such a coalition on Direct civil rights measures did not appear until after 1957—after the year, in fact, that a Republican president signed into law the first civil rights legislation since 1875, legislation that was passed with the strong support of Republicans in both the House and the Senate. In the Senate’s consideration of what became the Civil Rights Act of 1957, there were five roll calls that divided the non-South, and on these roll calls four out of every five Republican votes went in favor of civil rights (79.5 percent  $n = 205$ ).

The difference in 1960 was stark. While nearly 3 in 5 Republicans supported the broad Part III powers in 1957 (25 of 43), less than one in three (10 of 31) did so in 1960. Republicans had rallied together to pass a bill to protect voting rights in the South in 1957. But in 1960, when it was plainly evident that the 1957 legislation was not up to the task, Republicans cast less than 25 percent of their votes (35 of 158) in favor of civil rights on five roll calls involving measures

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<sup>144</sup> The state population and seniority odds ratios, meanwhile, are greater in magnitude and still significant at the  $p < .01$  level, despite the restricted nature of the estimation sample.

<sup>145</sup> A variable for “year” is not significant in either case.

to strengthen voting rights protection, and on none of these did Republican support reach even 33 percent (see roll calls 24, 25, 30-32 in Appendix 4.1).<sup>146</sup>

What accounts for this dramatic shift? First, it should be noted that this temporal pattern is consistent with what Carmines and Stimson (1989) imply in passing, though without providing any specific figures.<sup>147</sup> But the magnitude of the divergence is much greater than one might gather from the authors' claim that as late as 1960 racial liberalism was about equally distributed among Republicans and non-southern Democrats (Carmines and Stimson 1989:184-185). Nevertheless, Carmines and Stimson do offer an explanation for Republican change after 1958. They argue that a change in the *composition* of the Republican membership in the Senate is what pushed Senate Republicans toward a more conservative position on racial policy. In their view, Republican voting changed, because the party lost many seats formerly held by pro-civil rights Republicans. Consistent with their view, the 1958 elections were a landslide of historic proportions: Democrats ousted 12 Republican incumbents. Carmines and Stimson argue that major losses in this election, which most agree had nothing to do with civil rights (e.g. the Soviet launching of Sputnik occurred in 1957, and the economy was sagging in the lead up to the election) eviscerated the liberal wing of the Republican Party, producing a decisive realignment by the mid-1960s: "Very large turnovers in a very small body may produce substantial policy change between parties ..." (Carmines and Stimson 1989:65). This "party composition" effect indicates that the shift in Republican voting was part of the overall story of the decline of liberal

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<sup>146</sup> Non-southern Democratic support for civil rights was 71 percent (123 of 174) on these five roll calls. Whereas just 13 of 25 Democrats supported Part III powers in 1957, 70 percent (28 of 40) did so in 1960. As for voting on the fair employment measure, which more than 80 percent of non-southern Democrats and Republicans had supported in 1950, the last time there had been a vote on this measure, Democrats voted in 1960 in a similar fashion as in 1950 (Democrats voted 27/33, or 82 percent, in favor of fair employment in 1960), but GOP support plummeted (just 11/32, 34 percent, in 1960).

<sup>147</sup> This also suggests that Carmines and Stimson did not include Rules votes in their analysis.

Republicans (Rae 1989). Republicans became less supportive of civil rights after 1957, because the Republicans who were most strongly supportive of civil rights lost their seats to Democrats.

Notably absent from the “party composition” story is a development that was emerging in the 1950s, if tentatively and ambiguously: the Republican effort to gain a long-denied foothold in the South (Lowndes 2008). This southern strategy was evident as early as 1950 when the Republican National Committee chair proposed a “unity ticket” for the next presidential election during a tour through the South (Feinstein and Schickler 2008:21-22). Already in the early 1950s Democratic strategists were aware that an enduring GOP-Dixiecrat alliance was in the making. In the lead up to the 1952 convention, for example, UAW president Walter Reuther wrote to the platform committee in support of a strong civil rights plank and argued: “We do not believe the South will bolt, but if it so chooses, let this happen. Let the realignment of the parties proceed” (quoted in Sindler 1962:233). Thus, the Republican Party was simultaneously trying to court the South and to reassert itself, through the Civil Rights Act of 1957, as the party of Lincoln. The elections of 1956 and 1958 suggested that only one of these strategies was bearing fruit: After being in 1952 the first Republican candidate since 1928 to win *any* southern states, Eisenhower won five of eleven southern states in 1956 and lost North Carolina by less than one percent—while in the 1958 Senate elections, as discussed, the electorate’s reward to liberal Republicans for the first civil rights legislation in 75 years was defeat at the hands of liberal Democrats.<sup>148</sup>

This push South combined with the failed efforts to court liberal/Black voters outside the South, suggests an alternative to the “party composition” effect: perhaps the change in Republican voting after 1957 reflected many Republicans’ decision to push their party into a

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<sup>148</sup> Eisenhower also seems to have done what he could to increase his chances in the southern states. “[T]he President [successfully] resisted all efforts to strengthen the party’s desegregation plank at the 1956 national convention,” (Burk 1984:165) even threatening not to go to the convention if the platform committee members didn’t come around (Ibid:166)..

closer relationship with the more racially conservative South. Call this the “party strategy” effect. A decision to harmonize a contradictory dual agenda by focusing on the effective half certainly would be reasonable. While direct evidence that there was a change in party strategy and that the election results of 1956 and 1958 are what drove it is difficult to come by, there is an observable implication that can be tested against the 1957 and 1960 roll calls: the “party strategy” effect would reveal itself in vote-switching by those who participated in both sets of roll calls. Notably, the two Republican senators who had votes that registered as the most extreme negative outliers for Model 2—Dirksen from Illinois and Butler from Maryland—voted in 1960 (the votes that produced extreme negative residuals) in a manner widely divergent from 1957: Dirksen moved from 5/5 in 1957 to 1/11 in 1960, while Butler moved from 3/5 to 0/11. If other Republican senators also supported civil rights in 1957 and then switched to support the South in 1960, then this would be direct evidence against the “party composition” effect and strong indirect evidence for the “party strategy” effect.

We can test these two expectations by comparing the 1957 and 1960 roll calls to see: (1) to what extent vote-switching by the same senators affected each party’s overall level of civil rights support (the party strategy effect); and (2) to what extent new seats in 1960 (for the Democrats) or lost ones (for the Republicans) affected the shift in support between the 1957 and 1960 roll calls (the party composition effect).

### *Republican Voting, 1957 vs. 1960*

In 1957, Republicans cast about 80 percent of their votes in favor of civil rights, but in 1960 this figure was just 34 percent. Between these two years, 12 Republican senators lost their seats to Democrats in the 1958 elections. These 12 Republicans had voted strongly in favor of



civil rights in 1957 (83.3 percent of 54 votes), which suggests a role for the composition effect in accounting for Republican change. But how much did the loss of these senators affect overall voting in 1960? Republicans cast just 120 of their 355 votes in favor of civil rights in 1960. If these 12 senators had been present, then Republicans' overall vote total would have increased by 132 (12 senators x 11 votes each) to 487. If one assumes that these senators would have favored civil rights to the same degree, then 83.3 percent of these 132 additional votes would have been pro-civil rights (i.e. 110), lifting the total pro-rights votes from 120 to 230 out of 487 total votes. Thus, even if these 12 senators had voted in 1960, Republicans would have voted less than half the time in favor of civil rights ( $230/487 = 47$  percent)—which is still a dramatic drop from the nearly 80 percent support the party gave to civil rights in 1957. The party composition effect mattered, but not very much.

What about the party strategy effect? There were 30 Republican senators who voted in both 1957 and 1960. Like the 12 GOP senators who lost in 1958, these 30 Republicans as a group strongly supported civil rights in 1957, casting 76.4 percent of their votes in favor of a strong civil rights law. But in 1960 they collectively voted in a very different fashion: just 30 percent of their 303 votes were pro-rights. If they had voted in 1960 as they did in 1957, then instead of casting just 91 pro-rights votes, they would have cast 231 pro-rights votes (i.e. 76.4 percent of 303). In this case, instead of just 120 of 355 votes in favor of civil rights in 1960, Republicans would have cast 260 pro-rights votes, lifting the party total to 73.2 percent (260 of 355)—nearly the 79.5 percent total from 1957. Indicative of the party strategy effect, vote-

switching is the main reason that Republican voting as a whole took a sharp anti-rights turn in 1960.<sup>149</sup>

By taking a closer look at these 30 senators, one sees that the degree of vote-switching among them was highly variable. Seven of these 30 Republican senators each cast less than 50 percent of their votes in favor of civil rights during both years, though the overall anti-rights bent to their voting behavior did increase, from 35 percent pro-civil rights in 1957 (out of 20 votes) to just 14 percent in 1960 (out of 58 votes). Six other Republican senators among this group of 30 each cast more than 50 percent of their votes for civil rights in both years, though their overall level of support did drop from 96.6 percent percent in 1957 (out of 29 votes) to 78.5 percent in 1960 (out of 65 votes). This leaves 17 Republican senators, and it was they who showed the most extensive change. All 17 of these senators had each cast more than half of their votes for civil rights in 1957, and collectively this sub-group's pro-rights support was 78.4 percent in 1957 (out of 88 votes). But 1960 was a very different story. None of these 17 Republican senators cast more than half their votes for civil rights, and collectively a meager 22.9 percent (out of 140) of their votes went in favor of civil rights in 1960. Not the loss of 12 senators between 1957 and 1960 but vote-switching by 17 who remained is what really mattered in shifting the Republican Party in an anti-rights direction.<sup>150</sup>

### *Non-Southern Democratic Voting, 1957 vs. 1960*

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<sup>149</sup> Besides these 30 Republican senators in 1960, there were five others. One was from a Hawaii, which did not have any seats in 1957, and four filled Republican seats from 1957 that were vacated because of either retirement or death. These five senators cast 55.8 percent of their 52 votes in favor of civil rights in 1960.

<sup>150</sup> It is worth noting that none of this vote switching makes sense in terms of the electoral constraints that Republican senators faced *as individuals*, because “[t]he political survival of no Republican member of Congress depended upon racist appeals to white constituents” (Topping 2008:209) (though perhaps there were intra-Senate constraints of the nature already discussed). More generally, then, Republicans’ rightward shift on racial policy in the late 1950s and early 1960s is very difficult to understand in terms of the party’s *existing* coalition.

An examination of non-southern Democrats underscores the dramatic nature of Republican vote-switching. In 1957, 27 non-southern Democrats cast 47.9 percent of their 119 votes in favor of civil rights. In 1960, there were 43 non-southern Democrats, and they cast 72.8 percent of their 394 votes in favor of civil rights. As will be seen, this uptick in support derived from both party composition and party strategy effects, though alone neither one's effects were dramatic.

There were 18 non-southern Democrats new to the Senate in 1960.<sup>151</sup> They cast 84.2 percent of their 159 votes in favor of civil rights. What would have happened if they had not voted? Instead of casting 287 of 394 votes (72.8 percent) in favor of civil rights, Democrats' pro-rights voting would have been 153 out of 235, or 65.1 percent. In other words, there was a small party composition effect.

What about vote-switching, which suggests a shift in party strategy? There was some, but it was nothing like the case of Republicans. There were 25 Democratic senators who voted in both 1957 and 1960. In 1957, 45.6 percent of their 114 votes went in favor of civil rights, while in 1960 this proportion increased to 65.1 percent on 235 votes. This 19.5 point difference compares to the 46.4 point difference for Republicans who voted in both years (see above). If these 25 senators had voted in 1960 as they had in 1957, then non-southern Democrats' overall support for civil rights would have dropped to 61.1 percent. This roughly 12-point drop is non-trivial but much smaller than the nearly 40-point effect that vote-switching had on Republicans' overall level of civil rights support.

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<sup>151</sup> Twelve had defeated Republicans, two had won special elections after fellow Democrats either retired or died, one filled a seat that had been vacant in 1957, and three were from Alaska and Hawaii, which did not have Senate representation in 1957.

A closer look at the 25 non-southern Democratic senators who voted in 1957 and 1960 further reveals the limited extent of vote switching. Among these 25 senators, there were 12 who already were staunchly pro-rights in 1957. Each of the 12 cast more than half their votes in favor of civil rights, and collectively 86 percent of their 57 votes went in favor of civil rights in 1957. This support level did increase in 1960 (96.5 percent of 114 votes), but it already was strong. Among the other 13 senators, each of whom cast less than half their votes in favor of civil rights in 1957, 10 continued this pattern in 1960. In both years, support from this sub-group was low, though it was indeed much lower in 1957 (5.3 percent pro-rights on 57 votes) than in 1960 (35.5 percent pro-rights on 121 votes). That only three senators shifted from a general anti-rights stance (< 50 percent pro-rights votes) to a general pro-rights one contrasts starkly with the Republican senators, 17 of whom switched from a general pro-rights stance in 1957 to a general anti-rights one in 1960.<sup>152</sup>

### *Beyond 1960*

Six more Direct votes occurred after the 1960 votes just analyzed and before the 1964 breakthrough roll calls. The Republicans' trend of supporting the South more than they supported civil rights continued: only 48 percent of Republicans' 189 votes went in favor of civil rights on these six Direct votes (as compared to 72 percent for non-southern Democrats). After casting more than 70 percent of their votes between 1938 and 1957 *against* the South, a majority of Senate Republicans by the early 1960s had become an *ally* of the South in its efforts to defend white supremacy at the federal level. On the eve of the crucial 1964 cloture vote that allowed the

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<sup>152</sup> John F. Kennedy was one of the Democratic senators who shifted from anti-rights to pro-rights. An asterisk, however, is required next to his pro-rights categorization: though in 1960 100 percent of Kennedy's votes went in favor of civil rights (as compared to 25 percent on four votes in 1957), he voted on only 3 of the 11 relevant roll calls (probably due to campaigning). As discussed, his anti-rights stance in 1957 almost certainly stemmed from a desire to build support in the South for his 1960 presidential bid.

United States finally to strike at racial segregation with meaningful federal legislation, the 33 Republicans in the Senate collectively had cast a majority of their prior votes in support of the South (just 48.3 percent pro-civil rights votes vs. 73.3 percent for 46 non-southern Democrats then in the Senate). Thus, the civil rights transformation of the mid-1960s did have to overcome a “conservative coalition” between Republicans and southern Democrats, but when it came to “Direct” voting on civil rights, this coalition had only very recently emerged.

#### CONCLUSION: THE SENATE IN THE CONTEXT OF CIVIL RIGHTS TRANSFORMATION

This concluding discussion relates the foregoing analysis of the Senate to existing understandings of the causal processes that led to civil rights transformation. Before confronting the comparative explanatory questions directly, I first will summarize the main arguments and findings of the chapter, beginning with the partisan realignment question.

Evidence from Senate voting indicates that the rightward shift of the Republican Party on racial policy clearly started before 1964, and not primarily because the composition of the Republican membership in the Senate changed. Though contrary to established views that situate the change in the post-1964 period (Young and Burstein 1995; Carmines and Stimson 1989), this finding is consistent with the recent work of others on state-level fair employment legislation (Chen 2007), state party platforms (Feinstein and Schickler 2008), and the House of Representatives (Schickler et al. 2010; Karol 2009). Some scholars suggest that any pre-1964 conservative drift on racial policy from Republicans stemmed from their resistance to support legislation that could harm their constituencies and therefore that this drift was limited—e.g. Republicans came to oppose fair employment legislation that would infringe on the liberty of the

business community, while they were glad to support South-centric legislation because Republicans had no constituencies in that region and, by supporting such legislation, they could further drive a wedge in the Democratic Party (Rodriguez and Weingast 2003; Valelly 2004; and, more ambiguously, Karol 2009). This argument is perfectly consistent with the Civil Rights Act of 1957, which the Republicans pushed, but perfectly *inconsistent* with the subsequent period. As discussed above, a majority of Republicans after 1957 supported the southern bloc in its effort to protect the white supremacist regimes in the South from effective voting rights intervention. This shows that Republicans' rightward shift before 1964 was *not* limited to the protection of their current constituencies, and it also shows that a changing policy environment after 1964 (e.g. the rise of affirmative action, forced busing for school de-segregation) did not drive Republicans' rightward shift (i.e. party realignment on racial policy), as some key works have argued (Carmines and Stimson 1989; and especially Edsall and Edsall 1991), because the realignment started well before the emergence of this new policy environment.

The full implications of this finding in terms of the long-term relationship between the party system and racial policy will be discussed in this dissertation's concluding chapter. For the purposes of this chapter, it should be noted that Republicans' rightward shift directly contradicts the vision of gradualist pro-rights coalition building in the Senate, which Young and Burstein (1995) argue was driven by a proportionately-increasing African American population outside the South. During the last several years of civil rights consideration in the Senate, until the 1964 breakthrough, the southern bloc enjoyed *more* support from Republicans than at any time in the past. More generally, in relation to the processes that led to civil rights transformation in the mid-1960s, this means that the Senate was not simply a laggard institution, adjusting to change like other institutions albeit at a slower pace (cf. Orren and Skowronek 1994). With regard to the

achievement of meaningful civil rights legislation, the ‘Walls of Jericho’ metaphor (Mann 1996) seems an apt one, and the walls were breached not little by little but in one fell swoop.

Two sources of minority obstruction particular to the Senate were key elements of the Senate’s fortified walls against legal racial equality, particularly when coupled with the southern bloc’s extensive control over the committee system.<sup>153</sup> The significance of the filibuster rule’s requirement of two-thirds support for the passage of meaningful legislation was not always directly manifest—pro-rights supporters did not regularly gain a simple majority while falling short of the two-thirds requirement—but it was a constant force in the field of relations that shaped the fate of civil rights legislation. Needing ultimately to build a coalition of just one-third plus one made it easier for the powerfully-positioned southern bloc to gain a simple majority for the following reason: for those senators not strongly committed to civil rights due to ideal and/or political interests, it made little sense to join the civil rights side and thereby risk alienating the powerful southern bloc when the pro-rights side had so little chance—given the two-thirds requirement—of ultimately prevailing.

At the same time, there was a clear pattern regarding who did *not* join the pro-rights side, one that was rooted in the institutional feature that provided the second source of minority obstruction in the Senate: the equal representation of states. Senators from small population states were much less likely to support civil rights. This can be understood in terms of the southern bloc’s control of the Senate hierarchy: to put it crudely but plausibly, dollars are worth

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<sup>153</sup> Southerners also dominated the committee system in the House, and for the same reason (less electoral competition in the South meant higher rates of incumbency and therefore more seniority), but in the majoritarian House this committee control was far less useful for obstructing legislation. The Rules Committee was the closest parallel in the House to the Senate’s institutions of minority obstruction, and it was far from irrelevant. Led by a southerner and stacked with conservatives from both parties for most of the period, the Rules Committee always bottled up civil rights legislation. But the House’s discharge procedure provided civil rights advocates an avenue for getting majority-supported legislation out of the Rules Committee and on to the House floor, an avenue that these advocates traveled (indeed, had to travel) every time civil rights legislation went forward in the House (Anderson 1964:62-63).

much more in a population of 200,000 as compared to two million, which means that those who control the purse strings have a greater ability, through both incentives and disincentives, to shape the voting behavior of those from smaller population states. As the *New Republic* noted with resignation when discussing the new liberal senators' votes against changing the Senate rules in 1959, "they want regional legislation" (see above). Notably, as the logistic regression analysis showed, this small state pattern is not explained away by a range of state-level and senator-specific variables, including ideology—which lends further support to the argument that this pattern derived to a significant degree from the internal workings of the Senate, specifically the southern bloc's control of the body's hierarchy.

Focused on both continuity and change across the generation before civil rights transformation—the consistent role of the filibuster rule and small states in thwarting civil rights legislation, coupled with the Republican shift against civil rights near the end of the period—this chapter's analysis of the Senate and civil rights has been concerned not with the analysis of civil rights transformation, not with the eventual outcome of this period, but rather with the sources of obstruction and delay that preceded this transformation. In closing, I want to relate the arguments and findings above to approaches whose principal aim is to explain civil rights transformation. What light, if any, can the Senate's obstructionist role shed on explanations for the transformation that ultimately overcame this obstruction? I will argue that integration of the Senate into the analysis complements approaches based on the Cold War and the power of the Civil Rights Movement (CRM), while calling into question the persuasiveness of the public opinion perspective.



## Implications for Explaining Civil Rights Transformation

Why in 1964 President Johnson and pro-civil rights senators would decide to make such a commitment to the adoption of civil rights reform—ceasing all other legislative business for several months in order to gather the votes necessary to break a southern-led filibuster—has been linked primarily to the impact of the civil rights movement (CRM), but also to Cold War pressures and shifts in public opinion. Whichever explanation one emphasizes, however, an integration of the Senate’s obstructionist role into the analysis has notable implications for understanding civil rights transformation.

*The Civil Rights Movement:* One implication of integrating Senate obstructionism concerns the proper conceptualization of political opportunities for the CRM at the federal level. This can be seen through an examination of McAdam’s (1982) classic work on the CRM. McAdam (1982:86) says that Congress was unique among federal institutions: “only Congress seemed immune from the pressures that prompted major (if only symbolic) policy shifts in the other two branches. Due primarily to the Senate’s system of equal representation for states and certain procedures characteristic of the whole Congress (e.g., two-thirds support needed for cloture), the legislative branch failed to pass a single civil rights bill between 1930 and 1954.” In making this statement, McAdam starts down but does not follow the path taken by this chapter. First, though he touches on Senate-House differences, McAdam glosses over them, even suggesting that the cloture rule was “characteristic of the whole Congress”—rather than only the Senate. Second, McAdam does not develop the implications of Congress’s—really, the Senate’s—unique ‘immunity’ from reform for how political opportunities at the federal level should be conceptualized. He instead interprets the federal level as a source of political opportunity for the CRM, concluding his

discussion in this way: “Taken together, then, the evidence presented in this section provides consistent support for the contention that the evolving politico-economic realities of the postdepression era prompted the federal government to support changes in the racial status quo. . . . Still it remained for forces within the black community to exploit the expanding opportunities for political action this shift afforded them” (McAdam 1982:86). Leaving matters here, despite what McAdam says about Congress, suggests a metaphor of the federal government as a single entity leaning in the direction of de-racialization but needing to be shoved (perhaps because of a lack of will). A more precise statement can be made: Most, not all, major federal institutions represented political opportunity. Like the southern states, the Senate was a political obstacle for civil rights advocates, not an opportunity.

Putting the Senate in its proper place in the political opportunities framework has three implications for how we theorize the process that led to racial equality under the law in the 1960s. First, it offers a more structural view of the general ineffectiveness of CRM allies at the federal level prior to 1964. Instead of positing federal allies that were supportive but weak-willed and therefore required large-scale social action to stimulate action on their part (as suggested, e.g., in the McAdam quote above), this Senate-centered view emphasizes a structural impediment to reform at the federal level that could not be overcome except under extraordinary circumstances—in this case, dramatic and consistent CRM mobilization. This interpretation squares better with the many actions, previously discussed, that federal allies *did* take to promote civil rights reform.

Two additional implications follow from this. First, seeing the Senate as a formidable structural obstacle to civil rights reform between the 1930s and 1960s entails a causal link between this institution and *how* reform happened: the Senate made a gradualist approach to

legislative change impossible. Consider the 1940s. The House of Representatives passed legislation to provide a federal role in deterring lynching, abolishing the poll tax, and promoting anti-discrimination in employment. Though these proposals were less ambitious than those eventually passed in 1964-65, they did have the potential to drive an initial wedge in the South's racial system. The anti-poll tax bill (first passed by the House in the early 1940s), for example, represented the federal government's first attempt to increase regulation of voting since the Elections Bill of 1890 (which itself passed the House but failed in the Senate). If Congress had passed measures such as these and thereby established itself as a feasible avenue for seeking change, then it is possible that legislative reform of civil rights would have been a piecemeal process that unfolded over the 1940s-1960s period. This does not mean, to be sure, that the outcome of reform would have been better from the perspective of civil rights advocates; under a gradualist approach the legal basis of segregation in the South might actually have taken longer to dismantle. But it does mean that the process would have been different—which suggests the important causal role of Senate obstruction in shaping how civil rights reform happened.

The Senate's fundamental role in shaping the process of reform entails a final implication, which concerns how we theorize the CRM. A close look at the route traveled by the landmark civil rights act, from its original proposal by Kennedy in 1963 to its passage under Johnson a year later, reveals that it was the Senate that the CRM and its allies had to overcome; the Civil Rights Act of 1964 lay beyond these Walls of Jericho (Mann 1996). But what would have been the scale and impact of the CRM in the absence of those walls? If the Senate's obstructionist role did preclude gradualist reform, as I have just argued, then it would also seem that the Senate played an important causal role in the development of the CRM. Insofar as gradual reform can signal to segments of an aggrieved population that 'normal' political processes are working, it

has the potential to erode the scale of movements (just as the CRM declined *after* 1964). By precluding gradual reform, the Senate arguably fostered the growth of the CRM as well as its immediate and long-term impact. In these terms, the Senate was not just an obstacle for the CRM to overcome but also, somewhat ironically, a key source of the movement's strength.

An examination of CRM data in relation to the development of civil rights legislation lends some support to this position. In the first period, from 1938 to 1950, the Senate blocked every civil rights bill passed by the House, thereby precluding gradualist reform. As scholars increasingly recognize, the CRM has a 'long' history that reaches back well before 1954 (Eagles 2000). In the first decade after World War II, as legislation was repeatedly blocked by the Senate (between 1946 and 1950) and then as legislative proposals were put aside on the theory that only a reform of Senate rules could make civil rights a reality (between 1951 and 1955), movement activity started to pick up, though there were no more than 20 events per year during this time (Jenkins and Eckert 1986:820). Movement events surpassed 100 for the first time in 1956, not long after the crucial *Brown* decision (1954) and the same year that the House passed the civil rights bill that eventually would become the Civil Rights Act of 1957 (the Senate did not consider the House legislation in 1956). The next year, as the Civil Rights Act of 1957 moved through both the House and the Senate, movement events dropped below 100 again, to about 75. With the passage of the 1957 legislation, Martin Luther King, Jr. "issued his personal approval of the final version of the bill" while stressing the need for continued movement activity (Burk 1984:226). But movement events in 1958 and 1959 were lower than in 1957, though still higher than in the pre-1955 period. Many supporters of the 1957 legislation portrayed it as a gradualist approach to the problem of racial inequality, and it well might have been had the legislation not been substantially weakened in the Senate (see above).

But it soon became clear that it amounted to no approach at all. Movement activity exploded in 1960, surpassing 300 events, about five times the number in 1959. In that same year, Congress passed the Civil Rights Act of 1960. It was not a response to the 1960 movement explosion, most of which was accounted for by the sit-ins of early 1960. Lyndon Johnson announced in late 1959 that he would be introducing legislation in February 1960, exactly when he did (Mann 1996:249). The 1960 legislation also did not amount to a gradualist approach, as it was widely perceived as ineffectual upon passage (there had been more hope for the 1957 legislation, as mentioned). There were 250 movement events in 1961 and about 150 in 1962. The Senate continued during these years to be an obstacle to any meaningful legislation; not even a ban on literacy tests could get through. It was then in 1963 that movement events really exploded again, this time more so, reaching about 475 in 1963 and then about 500 the following year (Jenkins and Eckert 1986:820). It was this increase in activity, and particularly the violence in response to it, that pushed Kennedy finally to propose meaningful legislation and, one year later, the Senate to pass it (see Santoro 2002, 2008 for quantitative evidence of CRM impact on policy adoption). The southern bloc's use of the Senate to block the meaningful advancement of civil rights reform meant that those who sought that advance grew in numbers and strength, until finally they were able to overcome that which had obstructed them.

*Other Explanations:* In explaining mid-20<sup>th</sup> century transformation, scholars generally and quite appropriately accord causal primacy to the CRM, but at least two other explanatory factors have received a level of attention that merits consideration. The first, the Cold War, complements the CRM framework by identifying a major source of political opening at the federal level. In the US's ideological struggle with the Soviet Union for the hearts and minds of the Third World, the

Jim Crow South was a major weakness for the US—a point emphasized in the government’s pro-desegregation brief for *Brown v. Board of Education* (Layton 2000). Desegregation, then, was a “Cold War imperative” that pushed the federal government in a more favorable direction with regard to civil rights (Dudziak 2000). Integrating the Senate’s obstructionist role into the analysis does not lead one to dispute that the Cold War expanded political opportunities, but it does suggest a major reason why the Cold War did not have a greater impact on federal racial policy between the late 1940s and early 1960s. The Cold War advantages that the US would have gained from earlier desegregation were denied by Senate obstructionism.<sup>154</sup> Moreover, integrating the Senate into the analysis entails a disaggregation of Congress’s role, which in turn questions the idea that the Cold War was the key to placing civil rights on the national agenda. Though Congress was the last among federal institutions to approve policies to deal with legal racial inequality, the House of Representatives was actually ahead of the curve in relation to the presidency and the Supreme Court; indeed the House acted *before* the onset of the Cold War.

The second explanation, which posits the crucial role of public opinion in leading to the landmark legislation, represents a greater revision of the CRM-centered story (Burstein 1998). In this alternative, the CRM did not directly influence federal action but instead contributed to a change in public opinion, which in turn prompted political elites to act. Focusing on equal employment opportunity (EEO) legislation, which was first proposed in the 1940s and later became Title VII of the Civil Rights Act of 1964, Burstein argues this: “The major reason Congress acted was, of course, public opinion. Congress passed EEO legislation in 1964 ... primarily because it had become convinced that the public wanted it to” (Burstein 1998:180).

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<sup>154</sup> But see Skrentny (2002:21-84) for the opportunities *as well as obstacles* that Cold War dynamics presented the effort to advance civil rights.

Burstein (1998:119-121) also explicitly rejects the notion that obstruction in the Senate played an important role in the process (see also Koger 2010).

Pushing the Senate to the center of the analysis raises significant questions for the public opinion framework (see Santoro 2002, 2008 for a CRM-centered critique). First, if supportive public opinion explains why civil rights legislation passed in the 1960s, then why did anti-poll tax legislation not become law in the 1940s, when opinion polls consistently showed that between 65 and 75 percent of the public supported it (Page and Shapiro 1992:77)—including 53 percent *of southerners* by 1949 (which was an increase from 41 percent at the beginning of the decade) (Lawson 1999:84)? Recall that this legislation did pass in the House several times, but failed in the Senate. This probably explains Mann’s (1996) judgment with respect to the state of affairs circa 1950: “In many ways, public opinion had already moved in their [i.e. civil rights advocates] direction. The liberals needed more allies *in the Senate*” (90—Mann’s emphasis). As previously discussed, this divergent outcome was part of a more general pattern, which raises a second question: How can a public opinion framework explain that the House was generally open to civil rights reform in the generation before 1964, but not the Senate? To be consistent, one would have to assume that the Senate blocked major policy change until the public wanted it. But the failure of anti-poll tax legislation contradicts this expectation. This expectation also makes little sense in theoretical terms, because the Senate is the *least* subject to pressures from the public: senators serve six-year terms; only one-third of the body is up for grabs during biennial elections; and there is equal representation of states regardless of population, which means that a minority of the national population—less than 20 percent between the 1930s and 1960s (Lee and Oppenheimer 1999:11)—regularly elects a majority of the senators. That the Senate squelched popular anti-poll tax legislation is therefore not surprising.

Another look at EEO legislation, Burstein's case, shows that its career also was consistent with the Senate's extensive autonomy from public sentiment. The Senate nearly passed EEO legislation in 1950 when public opinion on the issue was at best mixed (see Chen 2009:58); the vote to overcome the filibuster, 55-33, was strongly supportive but shy of the two-thirds cloture requirement (see Appendix 4.1). When Kennedy officials put together the civil rights bill that became the basis of the 1964 legislation, they kept out the EEO provision for fear that its inclusion would prevent the bill from passing—despite the fact that in 1963, as Burstein (1998:53) reports, more than 80 percent of the non-southern public supported it. The EEO provision was later added to the bill during House consideration, and the motion in the Senate to remove it was rejected 64-33 (Ibid.). Notably, this support level in the Senate was *not* much higher than in the 1950 roll call, which came a year after a major opinion poll indicated that just a third of the public supported the proposal (Chen 2009:58). Moreover, this support level in 1964 was less than would have been necessary to overcome a filibuster had the EEO provision remained stand-alone legislation as the Kennedy Administration originally proposed. Even if public opinion did in the end matter, which the above discussion suggests was not the case, the conclusion consistent with the 1963 polling data is that only *overwhelming* levels of public support were able to budge the Senate. Given the tremendous over-representation of small population states in the Senate, coupled with the filibuster rule and the powerful placement of anti-rights forces in the leadership and committee system, majority opinion's irrelevance to the Senate during this time should not be surprising.



## **CONCLUSION**

### **BEYOND RACIAL ETHNOCRACY**

Based on a long-run, comparative, and political mode of analysis, this dissertation has endeavored to show that political institutions must be at the center of any adequate understanding of the origins, endurance, and demise of racial ethnocracy in the United States. Chapter one argued that the kinds of political institutions introduced into the context of European settlement colonialism determined whether these colonies became racial ethnocracies in the era of independence. Chapters two through four focused specifically on the United States. In an examination of changing patterns of legal racial exclusion at the state, regional, and national level across the nineteenth century, chapter two showed the analytical payoff of focusing on the shifting power of relatively autonomous political parties in order to explain these patterns. From a long-term perspective, chapter two argued that the elimination of legal racial exclusion across the United States was virtually impossible so long as the Democratic Party's inter-regional alliance for white supremacy remained intact. Chapter three then examined the unraveling of this alliance in the early decades of the twentieth century, and argued that developments at the state and local level, though not uniform, eroded the viability of this alliance considerably before its disintegration was consolidated at the national level in the 1930s and 1940s. With this century-long alliance gone from the scene, efforts to eliminate legal racial exclusion returned to the national agenda in the 1930s. It was from this point forward that the Senate played a uniquely obstructionist role in the defense of racial ethnocracy at the federal level. Chapter four showed that between two major institutional differences between the House and Senate, the one rooted in the Constitution (i.e., equal representation of states by virtue of Article V) had a more direct and

consistent impact than the one rooted in the Senate's own institutional rules (i.e. the filibuster power by virtue of Senate Rule 22). Throughout the generation preceding the 1960s civil rights breakthrough, senators who represented states comprising a tiny proportion of the population were reliable allies of southern Democrats in their efforts to defend and perpetuate racial ethnocracy.

This concluding discussion relates this dissertation to two research areas "beyond" racial ethnocracy. The first concerns contemporary ethnocracies and possible ethnocracies. The second relates to the study of 'race' in the United States in the period following the 1960s demise of racial ethnocracy.

#### RACIAL ETHNOCRACY IN COMPARATIVE PERSPECTIVE

This dissertation has interpreted the pre-1960s United States and similar cases in chapter one as members of a broader set of cases known as ethnocracies. Building on the existing comparative literature on ethnicity and on ethnocracy in particular, the Introduction provided a two-dimensional conceptualization of ethnocracy based on boundary permeability and boundary consequences. Chapter one then developed a colonial legacy argument to account for the emergence of racial ethnocracy in some (not all) former European settlement colonies, while chapters two through four examined how political institutions affected what would be the consequences of the racial boundary in the United States, shaping patterns of legal racial exclusion over time, and eventually, ethnocracy's demise.

Future research could pursue colonial legacy arguments for more contemporary ethnocracies.<sup>155</sup> To be sure, these contemporary cases differ in important ways from the racial ethnocracies examined in this dissertation. In addition to time period, there are at least two major differences. First, almost none of the contemporary ethnocracies are/were based on a “racial” boundary in the sense specified in the Introduction (i.e., a boundary that cannot be crossed except through surreptitious means).<sup>156</sup> Second, in none of them is the dominant ethnos comprised of the descendants of the country that ruled the territory during the colonial period.<sup>157</sup> Nevertheless, an admittedly limited review of literature on cases that at least some scholars identify as ethnocratic regimes during at least some of the independence era—e.g. Estonia, Iraq, Israel, Latvia, Myanmar (Burma), Rwanda, Sri Lanka, Uganda—reveals the potential significance of a colonial legacy approach to contemporary ethnocracy (e.g., Brown 1994; Prunier 1995; Melvin 2000; Mamdani 2001; Wimmer 2002; Yiftachel and Ghanem 2004; Yiftachel 2006; Brubaker 2011). In some cases, the group favored by the colonial power has gone on to be the dominant ethnos, as in Sri Lanka and more ambiguously Myanmar. In other cases, this group has experienced a reversal during the independence era to the point of becoming the subordinate ethnos in the context of an ethnocratic regime, as in Estonia, Latvia, and (pre-1995) Rwanda. Comparative-historical research could explore the possible colonial roots of these ethnocracies more systematically by examining a comparable set of ethnocracies and non-ethnocracies (as chapter one of this

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<sup>155</sup> Before saying more about such research, let me first offer the caveat that I do not possess detailed case knowledge about any of these contemporary ethnocracies. For this reason, and for the reason that classifying cases as ethnocracies requires detailed case knowledge, the comments that follow are necessarily tentative with respect to specific cases.

<sup>156</sup> Rwanda apparently used identity cards issued at birth to distinguish Hutus and Tutsis in the first 35 years of the post-colonial era (Prunier 1995), which amounts to establishing a racial boundary in the above-specified sense. To the extent that Rwanda was an ethnocracy during this period (as Yiftachel 2006 suggests), then, it was a *racial* ethnocracy.

<sup>157</sup> Some scholars identify Latvia and Estonia as ethnocracies (e.g. Melvin 2000), but in these cases the descendants of the former imperial power, Russia, comprise the *subordinate* ethnos.

dissertation did with respect to racial ethnocracies in the context of former European settlement colonies). Such research should aim to explain, for example, why Estonia and Latvia defined those Russians who came during the era of Soviet rule outside the boundaries of citizenship, albeit with a path to citizenship, while other post-Soviet successor states did not (see Brubaker 2011).<sup>158</sup>

To be sure, the social world does not generally provide a ready-made set of cases, easily classified as “ethnocracies” and “non-ethnocracies” that can then be objects of purely explanatory efforts. Indeed, while conceptualizing the US and the other cases of legal racial exclusion from chapter one as racial ethnocracies moves these cases out of analytical isolation and into connection with the broader set of ethnocracies, doing so also arguably reinforces how exceptionally exclusionary were these racial ethnocracies. With respect to the two-dimensional conceptualization, the racial ethnocracies in this dissertation (with the partial exception of Canada) constitute unambiguous cases of ethnocracy, because the boundary was basically impermeable and the consequences, being enshrined in law, were not only systematic but also abundantly evident.<sup>159</sup>

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<sup>158</sup> One effort to explain a contemporary ethnocracy explicitly identifies colonial roots. Yiftachel (2006) conceptualizes Israel as an ethnocratic regime, and he puts settlement colonialism at the center of his explanation. Chapter one of this dissertation, however, argues that at least among historical cases settlement colonialism was not sufficient to produce ethnocracy. Indeed, Yiftachel (2006:28) provides a brief discussion of pre-1960s Australia and concludes that “parallel process of violent occupation, white-only immigration policies, economic marginalization, and land seizure were the basis of a white ethnocratic settler society.” All of these processes occurred in the Latin American cases as well, but without the development of a racial ethnocracy during the independence period.

<sup>159</sup> As discussed in chapter one, western provinces in Canada unambiguously excluded “Indians” from voting. The ambiguity to which I refer in the text above is that which derived from Canada’s citizenship law, which did provide aboriginals a pathway to citizenship and equality, but which required them to meet a wide array of criteria in order to gain that citizenship, criteria that those of European descent did not have to meet regardless of whether they were born in Canada. This is similar to the pre-1870 suffrage law in New York state (discussed in chapter two), which allowed African Americans who owned a certain amount of property to vote, but observed no such property requirement for white males. These examples bear similarity to more contemporary cases like Estonia and Latvia, which effectively defined the Russian settler population out of citizenship by recognizing “as citizens at the moment of independence only those who had been citizens of interwar Estonia and Latvia and their descendants” (Brubaker 2011:1802). Russians who came during Soviet rule, and their descendants, must learn the national language to cross

In contrast, and as noted in the Introduction, most contemporary cases that are classified by (some) scholars as ethnocracies divide the population based on what strictly speaking is a *behavioral* boundary (e.g. religion, language), and therefore in principle are characterized by some non-zero degree of permeability with respect to the boundary that divides putatively dominant and subordinate ethnos. Moreover, the *consequences* of boundaries in these cases are/were not usually as explicit with respect to law as was true of the racial ethnocracies, which also can and does create scholarly disagreement.<sup>160</sup>

This is not the context for settling debates regarding specific cases. This dissertation's approach, building on the literature discussed in the Introduction, does suggest that such debates should take seriously the role of consequences and permeability in constituting ethnocracy. In a sense, the racial ethnocracies in this dissertation might serve as something similar to a Weberian ideal type—based on major boundary consequences and boundary impermeability—against which other cases can be 'measured' in terms of whether and in how far they are ethnocratic. The complexities attendant to this task, moreover, likely would produce an additional and probably more beneficial outcome: a broader conceptualization of what Aktürk (2011) calls "regimes of ethnicity." Despite the attention given to race and ethnicity across the social sciences, and despite some perceptive typological work (e.g. Schermerhorn 1970; Rothschild 1981; Peleg

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the boundary into citizenship. These tests have been "fairly strict" and according to recent figures "nearly half of the Russophone population in both countries remain without Estonian or Latvian citizenship ..." (Ibid:1802-1803). Like the historical cases of Canada and New York just discussed, this is an example of making a boundary highly consequential (citizenship or not) based on a descent category (or more precisely, a migration history or a descent category linked to migration history), but in these more recent cases the criterion for crossing the boundary is one that presumably all of those in the dominant ethnos also can meet (unlike the white Canadians in relation to the strict citizenship criteria for aborigines; and unlike white males in New York in relation to the property criterion for African American voting). Whether Estonia and Latvia should be conceptualized as ethnocracies by virtue of these facts, or whether these cases bear more similarity to Germany's pre-1990 regime with respect to Turks regardless of their place of birth, is something that work dedicated to the identification of contemporary ethnocratic regimes could establish.

<sup>160</sup> See, e.g., the debates on Israel's classification cited in the Introduction on page 4, footnote 6.

2007; Aktürk 2011), comparative-contemporary and comparative-historical research does not have available to it the product of a concerted effort to map on a global scale the myriad relations between states and ethnos over time.<sup>161</sup> Approaching more contemporary cases in light of this dissertation's historical cases of racial ethnocracy not only could advance such an effort, but this effort itself would aid further in understanding what is general and particular about racial ethnocracy.

## BEYOND RACIAL ETHNOCRACY IN THE UNITED STATES

With the elimination of legal racial exclusion in the 1960s and the marginalization of claims-making based on 'white' ownership of the polity, the United States moved beyond racial ethnocracy. Does this dissertation's historical analysis of political institutions during the era of ethnocracy offer any insights into racial dynamics in the post-ethnocratic period? Continuing the focus on the Senate in chapter four and the party system in chapters two through four, this section aims to show that this question merits an affirmative answer.

U.S.-focused sociologists of race have interpreted the post-ethnocratic period as a period of "color-blind racism" (e.g. Bonilla-Silva 2001) or "laissez-faire racism" (Bobo et al. 1997; Bobo 2011). These conceptualizations draw on a model of (racial) group conflict that, when it does take the formal political arena seriously, tacitly relies upon an electorate model to understand political dynamics (see e.g. Omi and Winant 1994:ch.6): at the heart of racial inequality, according to these views, are racial ideologies and practices that continue to buttress white dominance, despite the 1960s move away from legal exclusion. What follows is not of

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<sup>161</sup> The Ethnic Power Relations (EPR) data set does provide information on the degree of politically relevant ethnic groups' access to executive power since 1945 for nearly all countries in the world. The coding scheme obviously focuses on one very important consequence of ethnic boundaries, but this scheme does not take into account boundary permeability (see Wimmer et al. 2009).

course a comprehensive assessment of the validity of these arguments. Instead, I suggest that attention to the Senate as a continuing source in the post-ethnocratic era of what a number of scholars conceptualize as “institutional racism”—i.e. the production of racial inequality by institutions independent of racial intent either by individuals acting in those institutions or in relation to institutional design (Carmichael and Hamilton 1967; Knowles and Prewitt 1993; Hall 1993; Haney-Lopez 2001; Frymer 2008)—indicates one major source of inequality that bears no apparent relationship to group conflict and the implicit electorate model. Then, turning to the party system and racial policy in the post-ethnocratic period, I suggest that to the extent the sociology of race in the post-ethnocratic period continues to pursue an (implicit) electorate model to understand political dynamics, it would be worthwhile to disaggregate the electorate based on party and region.

#### The Senate and Race-Based Political Inequality

In the quarter century prior to racial ethnocracy’s demise, chapter four showed the key role that the Senate played in blocking legislative reform for two decades, and then weakening reform efforts for several more years. Chapter four also showed the key role that senators from small population states played in supporting southern Democrats’ obstructionist efforts. Small population state senators gain representation and thereby power by virtue of Article V of the Constitution, which guarantees each of the states an equal number of senators. For reasons examined in chapter four, southern Democrats were able to exploit two institutions that *prima facie* were race-neutral—the seniority system of the Senate, which gave southern Democrats control of the most important committees thanks to the much less competitive electoral

environment of southern states, and Article V of the Constitution, which empowered small states in vast disproportion to their population—in order to defend and perpetuate legal racial exclusion.

Though the ethnocratic era has passed, equal state representation continues to generate racial inequality. The Senate's small state bias produces the under-representation of not just voters from large population states in general, but also African Americans in particular (and even more so, Latinos) (Malhotra and Raso 2007; see also Frances and Lee 1999; Dahl 2002). In addition to African Americans' current under-representation as voters in the institution most responsible for perpetuating legal racial exclusion in the twentieth century, the descriptive representation gap in the Senate is also dramatic. In the period between 1967 and 2012, there have been 4,600 "senator years" (46 years \* 100 senators). African Americans have served in the Senate for only 24 of these—just 0.5 percent of the total (my calculation based on Manning and Shogan 2012). During this period, there has never been more than one African American in the Senate at one time, and for about half of this post-ethnocratic period there have been no African American senators. In contrast, African Americans have gained an increasing share of seats in the House over time, thanks in part to the establishment of "majority minority" districts. Since the 1990s, the African American proportion of House membership has been more than 10 percent—nearly the proportion of African Americans in the overall population (Manning and Shogan 2012). This difference between the House and the Senate has many causes (e.g. one needs more wealth to run for the Senate; African Americans have found it more difficult to run and get elected even in states where they are a substantial proportion of the population), but it is also driven by the over-representation of more racially homogenous, small population states: African Americans are not very likely to get elected where they do not live.



Whether this Senate under-representation affects the formation and adoption of racial policies has not been a focus of sustained research. But there is some limited evidence. One study of the 107<sup>th</sup> Congress showed that after controlling for a range of other factors, senators from small population states were much less likely to vote in ways recommended by the Leadership Council on Civil Rights than were senators from large population states (Griffin 2006). Another recent study of committee hearings indicates that the greater descriptive representation of African Americans in the House, in contrast to their almost non-existent representation in the Senate, has quantifiable agenda effects in relation to the consideration of policies that African Americans consider important (Minta and Sinclair-Chapman 2012).<sup>162</sup> These studies are by political scientists, but there is no reason why inquiries into how institutions at the center of national power exclude or under-represent racial minorities, and with what consequences, should be confined to that discipline.

### Party System and Racial Policy Polarization over the *Longue Durée*

In studies of the U.S. party system during the post-ethnocratic era, a range of sociologists (e.g. Manza and Brooks 1999:33-57, 155-162; Jacob and Torpe 2007) and political scientists (Carmines and Stimson 1989; Young and Burstein 1995; King and Smith 2008b) highlight the polarization of the two major parties on issues of racial policy. This realignment of the parties

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<sup>162</sup> This difference in representation between the House and Senate also should be contextualized in relation to the power differential between the two chambers. The Senate alone holds power over treaty ratification and the approval of executive and judicial appointments, which provides leverage to individual senators beyond these areas. That the Senate membership is much smaller than the House alone makes any given senator more powerful than any given House member. Yet, on top of that inter-institutional difference, Senate-specific institutions, particularly since the 1970s, also augment the power of individual senators (Sinclair 1989, 2002). As Speaker of the House in 1995, Newt Gingrich himself affirmed this considerable power differential in remarks to the National Association of Manufacturers, telling the powerful lobbying body that it would have to devote considerably more of its resources to the Senate: “They are very different institutions ... and, frankly, what that means, in part, is you need to allocate your time and effort about 3-1 towards the Senate” (quoted in Maltzman 1997:129). It is not just that African Americans are under-represented as voters with respect to one of the chambers, and tend not to be elected members of this chamber; this legislative chamber is the most powerful one.

toward divergent positions on racial policy in the post-1960s period contrasts with the decades immediately before the 1960s when, at least for most of the period, there were no clear partisan differences on civil rights outside the South.<sup>163</sup>

Until recently, the conventional wisdom has been that this party re-alignment took place in the period *after* the civil rights transformation. In this post-1964 realignment story, the questions that animated the struggle for civil rights—e.g., the elimination of legal forms of segregation and effective voting rights—played no part in the realignment, because they were settled on the basis of broad agreement outside the South among both elites and the public. Instead, the Republican Party’s shift to the right stemmed from policy over-reach on the part of civil rights advocates inside and outside the government—affirmative action and busing for school de-segregation, in particular—that produced a ‘white backlash’ (see esp. Edsall and Edsall 1991); in a sense, then, the Republican Party did not move to the right so much as the Democrats’ policy agenda shifted to the left. In this account (described also by Chen 2007), political actors and their decisions—to engage in policy overreach; to take advantage of the backlash it produced—are at the center of the realignment process.

But the evidence that I presented from Senate roll calls in chapter four indicates that realignment clearly started before 1964, and not primarily because the composition of the Republican membership in the Senate changed. This finding is consistent with the work of others on state-level fair employment legislation (Chen 2007), state party platforms (Feinstein and Schickler 2008), and the House of Representatives (Schickler et al. 2010; Karol 2009).<sup>164</sup> Thus,

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<sup>163</sup> This was not true for votes on the Senate Rules, which Republicans generally opposed throughout the period (see chapter four).

<sup>164</sup> In the House, anti-rights actions by Republicans before 1965 usually did not directly manifest themselves to any significant degree in roll calls, except on fair employment legislation, but rather took more subtle forms like reluctance to sign discharge petitions to free bills from the House Rules Committee (the closest thing the House had

even if party realignment was not consolidated until after the 1960s, it began *during* the ethnocratic era. This beginning point matters. At a minimum, it means that the Republican Party's rightward shift on racial policy was *not* initiated by a new, post-ethnocratic, issue environment (e.g. affirmative action). When situated within the long-run analysis of this dissertation, there arguably are also more general implications concerning a recurrent historical pattern.

Except for the period between the 1930s and 1960s, the two major parties have regularly aligned around opposing poles in a field of racial policy possibilities (cf. Frymer 1999; Malone 2008). To be sure, this field has shifted over time, with the civil rights transformation of the 1960s following on other major changes such as the abolition of slavery and, shortly after that, the regionalization of significant racial policy differences (legal racial equality outside the South but not in it). But the near constant has been two parties, with one stridently and uniformly to the right on racial policy, and the other (usually) less stridently and less uniformly to the left. As examined in chapter two, Democrats played this exclusionary role for a century of two-party competition. Then non-southern Democrats' exit from the inter-regional alliance for white supremacy by the 1930s left a competitive void that Republicans, competing for national power across a heterogeneous political terrain, eventually stepped in to fill. As discussed in chapter three, Republicans started leaning in this direction in the 1920s, most visibly in Hoover's push for the southern white vote in the presidential election of 1928. When a growing African-American population outside the South became up for grabs in presidential politics in the 1930s and 1940s, rather than continuing to be a reliable component of the Republican coalition, this

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to a filibuster power)—a procedure that was required for almost every civil rights bill that ever made it through the House. Schickler et al. (2010) take advantage of the recent discovery of all discharge petitions at the National Archives, and show a clear trend of growing (non-southern) Democrat-Republican difference over time prior to 1964, regardless of the issue (fair employment, voting, etc.).

nudged the GOP back toward its historical pro-rights orientation. But unable to bring African Americans back into their coalition, including after passing the first civil rights legislation since 1875, Republicans eventually returned to the Hoover plan of 1928.

To be sure, Republicans did not fully align along the conservative pole in the field of racial policy until the socio-political order based on legal racial exclusion had crumbled. But the party clearly started to do so before that order's demise. With regard to the implications for racial equality of a cherished system of political competition, this is a sobering finding. When situated in a long-run context, it suggests that across the entirety of U.S. history thus far the system of two-party competition has tended toward polarization on racial policy *regardless of the specific race-related issues that are on the agenda*.

The 'white South' is at the core of this recurrent pattern. To be sure, within a field of policy possibilities the 'equilibrium' has shifted. But the basic cleavage and polarization have shifted as well, rather than disappearing. And when these shifts have concluded, as in the 15 years or so after 1965, or when the national party system has been reinstated after a period of interruption, as after the Civil War, the party at the racially conservative end of the pole is the party that has the South firmly in its national coalition. Even before the civil rights movement overcame legal racial exclusion in the mid-1960s, it was already becoming evident that the imperative of building national coalitions in a two-party system would ensure that the South's racial conservatism would continue to be a powerful force in the post-ethnocratic era. This does not mean that every white southerner came to vote Republican—though close to that in states like Mississippi, Louisiana, and Alabama in recent presidential elections; and this does not mean

that every white southerner who votes Republican does so for racially conservative reasons.<sup>165</sup> But this does suggest that this long-term party system dynamic cannot be understood independent of the South's incorporation into national parties. It is not incidental that the only period in US history in which the parties were not clearly polarized on racial policy is also the period during which, for all intents and purposes, the South in a fundamental sense was not incorporated into either national party (i.e., in the sense that it was not yet incorporated into the Republican Party, and it was undergoing a process of separating from the Democratic Party with regard to national/presidential politics).<sup>166</sup>

To be sure, it is too easy and therefore generally inadvisable to say that what happened was bound to happen. But when what happened fits a pattern of occurrences over a long period of time, then one moves away from randomness and closer, if only a little, to the rising and setting of the sun. When Lyndon Johnson famously predicted that by signing the Civil Rights Act of 1964 he was signing the South over to the Republican Party for the next 35 years, he was less the oracle than the empiricist. Given the growing evidence of the Republican Party's pre-1964 shift to the right on racial policy—to the point of opposing the achievements of 1964-65

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<sup>165</sup> In the 2008 presidential election, all but 10-14 percent of whites in Alabama, Mississippi, and Louisiana voted Republican in the presidential election. The next three states were Texas and two other Deep South states (Georgia and South Carolina), where all but 23-26 percent voted Republican. [www.cnn.com/ELECTION/2008/results/polls/](http://www.cnn.com/ELECTION/2008/results/polls/) (accessed September 2011).

<sup>166</sup> Focusing squarely on the South, which this dissertation has *not* done, qualifies the argument about the relative autonomy of parties. The autonomy seems not to be symmetrical, and this asymmetry itself is linked to the regional bases of the parties. While the party to the left on racial policy has had room for maneuver, the party to the right tends regularly toward homogenization and inter-temporal consistency on matters of racial policy—suggesting perhaps a lack of autonomy with respect to societal forces. If this greater gravitational pull toward the rightward pole is indeed linked to the South's inclusion in the national party's coalition, then "society-centered" (Skocpol 1985) models—electorate, class, and elite—would work well *within* that region, which is what a range of literature analyzing different time periods suggests (Kousser 1974; Black 1978; Hochschild 1984; James 1988; Tomaskovic-Devey and Roscigno 1996). Chapter two's concluding discussion implied this qualification, but here I make it explicit and generalize it to a longer span of time.

between 1960 and 1963, as chapter four showed—Johnson in fact had the advantage of predicting that the sun would set as the day was fast approaching dusk.

## POLITICAL INSTITUTIONS AND THE SOCIOLOGY OF POWER

In the closing paragraphs, I will offer a brief comment regarding what broader concerns for a political sociology of power animated this dissertation's approach, particularly in chapter four, which is the focus of this comment.

There are at least two ways to examine the civil rights transformation of the 1960s. One is to focus on the origins and development of the movement that was the primary cause of this transformation. This is what most political sociology of this period has done. A second way is to examine what levers of federal power southern white supremacists were able to use to block change for a generation. This second approach is what chapter four pursued. The first approach is obviously better at answering the question of why the United States experienced large-scale racial change in the middle decades of the twentieth century. The second approach does entail implications for this outcome, which were discussed at the end of chapter four. But mainly the second approach directs attention to how actors using the ordinary powers available through specific political institutions were able to defend racial ethnocracy, despite the existence of major forces in other political institutions and in the larger society that were pressing to overcome it.

Taking the second approach follows the lead of Lieberman (1998:11), who observes that “the status of racial groups in society results not necessarily from the mobilization of racist [or anti-racist] ideology but from the normal workings of social and political arrangements.” In the end, of course, the Senate obstructionists did not prevail. In the end, the “normal workings” of the Senate failed the obstructionists in their quest to delay legal racial equality—for “ten years”

if they were “not lucky” and “200 years” if they were, as Richard Russell, leader of the southern bloc, put it in 1957 (quoted in Mann 1996:195). They failed, because the civil rights movement (CRM) overcame this ordinary obstruction through extraordinary action.

But extraordinary action is exactly that. And though it is indisputably worthwhile to try to understand extraordinary action, such action provides but a partial answer to political sociology’s basic question of who gets what, when, how, and why. A good portion of the remainder of the answer can be found by pursuing the banal workings of power, at the heart of which are actors acting in and through political institutions.

## APPENDICES

### Appendix 2.1

#### Racial Closure and Party Dominance in Tables 2.1-2.2

*How 'racial closure' dimensions were determined:*

All racial closure laws except voting were compiled by state using the following sources: Malone (2008), Kousser (2002), Smith (1997), Johnson (1979 [1918]), Reams and Wilson (1975), Foner (1970), Voegeli (1970), Wood (1968), Berwanger (1967), and Litwack (1961). Information on the franchise is based on Keyssar (2000). Diagonal shading indicates a dimension of closure once instituted but later repealed.

“Settlement” refers to whether states barred or restricted the in-migration of people of African descent. In all the relevant states this initially took the form of a restriction: African Americans were uniquely required to present a certificate of freedom and a large sum of money (typically \$250 to \$500 but sometimes \$1000) as a bond. Some states eventually moved toward an outright ban on African American in-migration. “Testimony” refers to laws barring African Americans from testifying against a ‘white’ person. “Franchise” signals whether states had a racialized suffrage, which in all cases but New York took the form of a total exclusion of African Americans; New York required African Americans to meet a property minimum for voting that did not apply to Whites. “Education” refers to state-sanctioned racial closure in public school systems, which took one of three forms during the antebellum period: state-mandate exclusion of African Americans from the public education system (“a” in Table 2.1); state-mandated segregation of African Americans (“b” in Table 2.1); and state-authorized segregation of schools



if localities wanted this option (“c” in Table 2.1). Among the states that did not fall into either category “a” or “b” direct evidence of state authorization was found in many cases (e.g. in 1850 the New Jersey General Assembly gave a township “the authority to establish separate schools for black and white children” Douglass 2005:38-39), though in some cases (Rhode Island, Connecticut, Maine, New Hampshire, Vermont, and Wisconsin), the author assumed that localities had the authority to segregate schools if they desired. In two of those cases (Rhode Island and Connecticut) this assumption was based on historians’ documentation of extensive school segregation at the local level during the antebellum period.

*How ‘party dominance’ in Table 2.2 was derived:*

Party influence was determined in the following manner. The year 1828 marks the first year that the modern Democratic Party can be identified on a broad geographical basis, while 1856 marks the first presidential election in which the Republican Party competed. Thus, I collected data on the party of both US Senators and the governor from each state from 1828 to 1856. The count started after 1828 if states were formed after that time--e.g. Michigan in 1837. Because state legislatures chose US Senators, the party of the latter is a reliable indicator of which party controlled the legislature. I then created fractions for Democrats, Whigs, and “other,” with the latter category encompassing parties that lingered after 1828 (e.g. Democratic Republicans and National Republicans) or new ones that emerged before 1856 (e.g. Republicans in 1855). If a state was in existence in 1828, then the denominator totaled 87 (58 for two senators for 29 years plus 29 for one governor for the same period of time). If a single party’s fraction was equal to or greater than  $\frac{2}{3}$  then I classified that party as dominant. As it turned out, all states except Rhode Island designated as Democrat or Whig had a fraction for that party of at

least 70 percent. If neither party returned a fraction of 2/3 or more, then the state was classified as “competitive” (comp). The only exception is Rhode Island: the Whigs registered 62 percent, but I classified it as ‘Whig’ rather than competitive. The two-thirds criterion is inadequate in this case because of the number of years that local parties controlled the governor. Overall, the Whig-Democrat ratio was 2.7:1 (almost 73%) and, examining only the two Senate seats across this period, the Whig fraction is 47/58 or 79 percent. All states classified as ‘competitive’ except New Jersey favored the Democrats. The data on US Senators come from Martis (1989). The data on governors come from: [http://en.wikipedia.org/wiki/List\\_of\\_Governors\\_of\\_XXXXX](http://en.wikipedia.org/wiki/List_of_Governors_of_XXXXX), where ‘XXXXX’ represents the name of the state (with proper capitalization). This was accessed February 15, 2006.

## Appendix 4.1

**Table A4.1: Civil Rights Roll Calls in the Senate That Did Not Yield Non-South Unanimity, 1938-1964**

TYPE	DESCRIPTION (see note 1)	OUTCOME (see note 2)
1. Direct	motion to impose cloture, anti-lynching, 1/27/38 (yes)	Total: 37-51 (0-22; 1-12; 35-15; 1-2)
2. Direct	motion to impose cloture, anti-lynching, 2/16/38 (yes)	Total: 42-46 (0-22; 3-11; 38-12; 1-1)
3. Direct	motion to impose cloture, anti-poll tax, 11/23/42 (yes)	Total: 37-41 (1-19; 14-10; 20-12; 2-0)
4. Direct	motion to impose cloture, anti-poll tax, 5/15/44 (yes)	Total: 36-44 (1-18; 18-13; 16-13; 1-0)
5. Direct	motion to impose cloture, EEO, 2/9/46 (yes)	Total: 48-36 (0-19; 24-8; 23-9; 1-0)
6. Direct	motion to impose cloture, anti-poll tax, 7/31/46 (yes)	Total: 39-33 (1-19; 14-7; 23-7; 1-0)
7. Rules	motion to affirm VP's ruling that cloture could be imposed on motions to consider, 3/11/49 (yes)	Total: 41-46 (2-18; 15-23; 24-5)
8. Rules	amend Rule 22 to provide cloture with 2/3 of those voting on anything except Senate rule changes, 3/17/49 (yes)	Total: 29-57 (2-17; 11-30; 16-10)
9. Rules	amend Rule 22 to provide cloture with a majority of Senate membership, 3/17/49 (yes)	Total: 17-69 (1-18; 3-38; 13-13)
10. Rules	amend Rule 22 to allow cloture on all Senate business except changes in the Senate Rules, but on the basis of 2/3 of the membership rather than those voting, 3/17/49 (no)	Total: 63-23 (18-1; 34-7; 11-15)
11. Direct	motion to impose cloture, EEO, 7/12/50 (yes)	Total: 55-33 (0-21; 32-6; 23-6)

12. Rules	table motion to consider adoption of new Senate Rules with aim of making it easier to impose cloture, 1/7/53 (no)	Total: 70-21 (21-0; 41-5; 8-16)
13. Rules	table motion to consider adoption of new Senate Rules with aim of making it easier to impose cloture, 1/4/57 (no)	Total: 55-38 (21-1; 27-17; 7-20)
14. Direct	affirm Russell point of order against effort to bypass Judiciary Committee, 6/20/57 (no)	Total: 39-45 (22-0; 5-34; 12-11)
15. Direct	table motion to reconsider Russell's point of order, 6/20/57 (yes)	Total: 49-36 (0-22; 37-3; 12-11)
16. Direct	motion to strike broad enforcement powers in Part III of the civil rights bill, 7/24/57 (no)	Total: 52-38 (22-0; 18-25; 12-13)
17. Direct	amendment to provide jury trial right in all criminal contempt cases, 8/2/57 (no)	Total: 51-42 (22-0; 12-33; 17-9)
18. Direct	amendment to require exhaustion of all administrative remedies before district court jurisdiction is mandatory rather than permissive, 8/25/57 (no)	Total: 34-47 (20-1; 4-34; 10-12)
19. Rules	table motion to consider new Senate Rules, 1/9/59 (no)	Total: 60-36 (22-0; 20-14; 18-22)
20. Rules	amend cloture rule to allow majority to close debate 15 days after filing cloture petition, 1/12/59 (yes)	Total: 28-67 (0-22; 8-24; 20-21)
21. Rules	change cloture requirement from two-thirds to three-fifths, 1/12/59 (yes)	Total: 36-58 (0-22; 12-20; 24-16)
22. Direct	motion to impose cloture, civil rights bill, 3/10/60 (yes)	Total: 42-53 (0-22; 12-20; 30-11)
23. Direct	motion to table amendment to add Part III enforcement powers to the bill, 3/10/60 (no)	Total: 55-38 (22-0; 21-10; 12-28)
24. Direct	motion to table amendment to provide federal registrar after 50 complaints regarding voting rights, 3/10/60 (no)	Total: 53-24 (19-0; 24-5; 10-19)

25. Direct	motion to table amendment to provide for court-appointed referees or Presidentially appointed enrollment officers to register African Americans after court has found pattern or practice of discrimination, 3/18/60 (no)	Total: 51-43 (20-2; 24-8; 7-33)
26. Direct	amendment to restore language that court hearings be ex parte, 4/1/60 (yes)	Total: 69-22 (2-18; 31-3; 36-1)
27. Direct	motion to table amendment to provide for permanent EEO commission, 4/1/60 (no)	Total: 48-38 (21-0; 21-11; 6-27)
28. Direct	motion to table amendment providing technical assistance to desegregating schools, 4/4/60 (no)	Total: 61-30 (22-0; 24-10; 15-20)
29. Direct	motion to table an amendment to allow AG to enter into private suits to enforce school desegregation, and an amendment to add Part III enforcement powers, 4/4/60 (no)	Total: 56-34 (22-0; 23-11; 11-23)
30. Direct	motion to table amendment to make it easier for African Americans to gain access to voting referees, 4/4/60 (no)	Total: 52-38 (21-1; 23-11; 8-26)
31. Direct	motion to table amendment to provide enrollment officers to register African Americans, 4/4/60 (no)	Total: 58-26 (22-0; 24-5; 12-21)
32. Direct	motion to table amendment that would allow courts, once pattern or practice of disc found, to waive requirement that African American seeking a court certificate must prove that s/he first tried to register with state authorities and was rejected, 4/4/60 (no)	Total: 62-32 (20-2; 28-6; 14-24)
33. Rules	motion to refer proposed amendment to Rule 22 to committee, 1/10/61 (no)	Total: 50-46 (21-0; 18-15; 11-31)
34. Direct	table motion to attach Part III enforcement powers to legislation that renews the Civil Rights Commission, 8/30/61 (no)	Total: 47-42 (20-0; 14-16; 13-26)
35. Direct	table motion to amend CR Commission legislation by providing federal financial assistance to desegregating schools, 8/30/61 (no)	Total: 50-40 (20-0; 16-15; 14-25)

36. Rules	motion to impose cloture, amendment to Rule 22, 9/19/61 (yes)	Total: 37-43 (0-20; 11-15; 26-8)
37. Direct	motion to impose cloture, literacy test ban, 5/9/62 (yes)	Total: 43-53 (0-21; 13-23; 30-9)
38. Direct	motion to table literacy test ban, 5/9/62 (no)	Total: 33-64 (19-2; 10-26; 4-36)
39. Direct	motion to impose cloture, literacy test ban, 5/14/62 (yes)	Total: 42-52 (0-20; 11-22; 31-10)
40. Direct	motion to proceed to other business, leaving literacy test ban, 5/14/62 (no)	Total: 49-34 (15-1; 19-12; 15-21)
41. Rules	motion to table question of whether Senate can close debate with majority when considering rules at the beginning of a session, 1/31/63 (no)	Total: 53-42 (19-0; 21-11; 13-31)
42. Rules	motion to impose cloture, amendment to Rule 22, 2/7/63 (yes)	Total: 54-42 (2-18; 18-15; 34-9)
43. Direct	motion to bypass the Judiciary Committee, civil rights bill, 2/26/64 (yes)	Total: 54-37 (0-21; 20-8; 34-8)
44. Direct	motion to impose cloture, civil rights bill, 6/10/64 (yes)	Total: 71-29 (1-20; 27-6; 43-3)

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*Notes:* (1) The parenthetical yes/no under “Description” indicates which vote response supported civil rights. (2) Figures in parentheses under “Outcome” record the votes of southern Democrats, Republicans, non-southern Democrats, and (for the first six roll calls) third party members in the following fashion: (southern Democrats; Republicans; non-southern Democrats; third party members).

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