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KEEPING AMERICA A WHITE MAN'S COUNTRY: SOUTHERN OPPOSITION TO CIVIL RIGHTS IN THE UNITED STATES SENATE

BY

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DISSERTATION

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ABSTRACT

This dissertation explores how southern senators, led by Georgia's Richard Russell, forestalled civil rights legislation using the mechanisms of the Senate. The southern caucus beat back civil rights senators through a series of arguments that appealed both to the conservative nature of the Senate and their more conservative colleagues. While earlier arguments generally emphasized constitutional interpretations from southerners like John Calhoun, over time, southerners adapted their arguments to appeal to more conservative colleagues that were either skeptical of invoking cloture, or worried about the invasive nature of civil rights legislation.

Over the course of my dissertation, I explore the 1938 Wagner-Van Nuys anti-lynching bill filibuster, the 1946 Fair Employment Practices Commission filibuster, the 1960 Civil Rights Act of 1960 filibuster, and the failed effort to filibuster the 1964 Civil Rights Act. This dissertation examines how four types of southern arguments operated over time and in different contexts. First, southerners used claims based in decorum, procedural objections to civil rights forces. Second, southerners used locus of the irreparable claims, drawing from a long tradition of states' rights scholarship. Third, southerners scapegoated civil rights groups. Fourth, southerners used reciprocity, tied to home rule and public memory of Reconstruction.

While initially these arguments worked, over time, civil rights senators began to grow weary of southern claims of oppression. Eventually, once civil rights forces marshalled efforts to develop elaborate, powerfully constructed cases in favor of civil rights legislation, opposition from the southern caucus collapsed. Decorum arguments, the last vestige of delay strategies, failed, as civil rights senators gave southerners ample time to discuss the bill, with little change in argumentative tactics. The result was total defeat in 1964.

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TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION......1

CHAPTER 2: STOPPING THE WAGNER-VAN NUYS ANTI-LYNCHING BILL......36

CHAPTER 3: THE BATTLE AGAINST THE FAIR EMPLOYMENT PRACTICE COMMISSION......75

CHAPTER 4: HOLDING OFF THE CIVIL RIGHTS ACT OF 1960......109

CHAPTER 5: RICHARD RUSSELL'S LAST STAND......152

CHAPTER 6: CONCLUSION......189

BIBLIOGRAPHY......208

CHAPTER 1: INTRODUCTION

While the Fourteenth Amendment guaranteed equal protection under the law to all Americans, African-Americans needed ninety-six more years to realize that guarantee. The Civil Rights Act of 1964, passed by the Senate on June 19, 1964, marked the first time civil rights senators garnered enough votes to achieve cloture and break a Southern filibuster for legislation to protect African Americans. The Civil Rights Act did not end discrimination against African-Americans, nor did it break Jim Crow in the South. But it was an important victory against some of the staunchest advocates for segregation in the United States.

The Civil Rights Act also signaled an end to Southern efforts to filibuster civil rights measures. Once an unstoppable force in the Senate, the Southern bloc failed to win another victory for segregation at the national level. The Civil Rights Act of 1964, which outlawed discrimination, begat the Voting Rights Act of 1965, which prohibited racial discrimination in voting. The Voting Rights Act, in turn, begat the Civil Rights Act of 1968, which required equal housing opportunities for all Americans. The impenetrable southern wall blocking civil rights measures fragmented as old-guard southerners lost battle after battle. While southerners continued to resist desegregation efforts on the state level, overlooking the significant opposition civil rights activists faced in making it this far does a great disservice to their cause. To end Jim Crow, civil rights activists faced eighteen powerful southern Senators. These men used every parliamentary and argumentative weapon at their disposal to delay, amend or defeat civil rights legislation from the early twentieth century until 1964. They were most successful under the leadership of Georgia Senator Richard Russell, a crafty politician and brilliant parliamentarian.

Russell's influence and leadership in the Southern caucus transformed southern arguments from the distasteful to the professional, de-emphasizing overt racism and highlighting

constitutional and moral appeals. Throughout the post-war period, Russell disciplined his southern colleagues, producing more moderate rhetoric designed to win over senators from northern and western states while designing a counter-persuasion campaign against civil rights groups. Relying on constitutional appeals derived from federalism, refutation of charges levied against the south by civil rights groups, and claims of overwhelming federal power, Russell and his colleagues managed to delay civil rights legislation for more than twenty years.

This dissertation focuses on their rhetorical efforts to stop the spread of civil rights. I examine the discourse found in prominent southern civil rights filibusters from 1937 to 1964, examining how their arguments worked in light of competing persuaders both within and outside the Senate. Southern efforts to delay desegregation on the federal level depended on arguments designed to appeal to their northern and western colleagues as well as southern conservatives. I argue that Russell and his colleagues chose arguments that exploited the conservative nature of the Senate, emphasized the harms that dramatic change could bring about, and idealized southern life while deemphasizing racial strife. Their strategy highlighted constitutional interpretations derived from the writings of John C. Calhoun, but emphasized the ramifications of federal intervention for all Americans.

Subsequently, I explore the three bodies of literature that will be most helpful in exploring this topic. I begin with a brief examination of the civil rights literature. Next, I explore how the Senate operates both structurally and as a rhetorical forum. Finally, I discuss the senators themselves, with Richard Russell's genteel southern persona serving as an alternative to the southern demagogue.

Justification

Volumes have been written about the civil rights movement from the perspective of the African-American activists who won their freedom against Southern oppression. However, little has been written about the segregationist forces they defeated. Only a handful of historians explore how segregationists resisted the rising tide of civil rights, and rhetoricians have dedicated virtually no attention to how segregationists justified restricting the freedoms of African-Americans. This dissertation helps fill that gap in the literature by examining segregationist discourse in the Senate. Studying how segregationists utilized the United States Senate is a logical first step because the Senate proved a critical location for southern resistance. Within the Senate, filibusters of major civil rights bills feature Southern arguments at their strongest, free of the demagogic rhetoric stereotypically found in Southern rhetoric.

As Robert Cathcart reminded rhetoricians studying social movements in the 1970s, there exists a dialectical tension between social movements and institutions.[1] Conflicts between movements and institutions produce a rhetorical interchange. To understand the conflict, and in turn the social movement, it is critical to understand institutions. Scholarly analysis of the civil rights movement has routinely favored the movement perspective at the expense of institutional opposition. Analyzing how southern senators defended segregation against protest groups allows rhetoricians to understand how rhetoric enables institutions to respond to threats to the established order and how institutional resources can enable rhetorical production and amplify arguments.

Furthermore, institutional responses were not monolithic. Southern senators were uniquely positioned by virtue of their offices. They saw civil rights legislation as a threat to

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[1] Robert Cathcart, "New Approaches to the Study of Movements: Defining Movements Rhetorically," *Western Speech* 36 (1972), 82-88.

Southern values and felt compelled to protect their way of life. In the process, their rhetoric needed to respond to three unique audiences: liberal colleagues who could rally together to force through civil rights measures, civil rights activists who agitated for change, and constituents who saw segregation as critical to Southern culture.

Balancing three very different audiences created a difficult rhetorical conundrum. Southern rhetoric needed to deflect cries of racism, while defending racist institutions. These four case studies demonstrate how Southerners negotiated that balancing act. By beginning with the last of the anti-lynching filibusters, in which Southerners occasionally deployed overt racism, and moving through debates where arguments became more respectable, I to demonstrate how senators responded to their context with general arguments adapted to fit particular debates.

Civil Rights Literature Review

The campaign for civil rights for African-Americans depended on rhetoric to achieve sustained success. Crusades by powerful orators like Ida B. Wells and Martin Luther King, Jr. raised awareness of the plight faced by African-Americans in the South and mobilized liberal and moderate Americans to push for federal intervention to ensure enforcement of the Fourteenth Amendment. Simultaneously, unified Southern resistance on the state and federal level created significant resistance to integration. Not only did state officials turn a blind eye to violations of civil liberties, but federal politicians campaigned against national intervention. In the following pages, I examine the literature on the civil rights movement and segregationist response. I proceed in three parts. First, I briefly review the literature in historical studies on the civil rights movement, focusing principally on when and how the civil rights movement unfolded. Second, I examine the historical literature on the segregationist movement, contrasting it with the civil

rights movement. Third, I turn to the rhetoric of civil rights, addressing the imbalance in dialectical enjoinment the field faces.

The years that encompass the civil rights era itself are hotly contested among historians. Some historians date the beginning of the civil rights movement to Roosevelt's New Deal, some to the Double-V campaign in World War II,[2] and some to the period between 1955 and 1964.[3] Determining when the movement began influences the segregationist discourse examined; Southerners resisted all efforts for African-American autonomy, but the tenor and intensity of their resistance changed over time.

First, some historians locate the roots of the civil rights movement in the 1930s. Robert Norrell notes the spread of organized civil rights organizations and groups before the 1950s.[4] Though Norrell "fixes the beginning of the civil rights movement in… 1941," he claims that most historians who fix the date later touch upon "foreshadowing events of earlier years."[5] Norrell states that historians who examined the 1930s and 1940s "found not just a few tantalizing moments of protest but a widespread, if not yet mature, struggle to overthrow segregation and institutionalized racism."[6] Likewise, Adam Fairclough's study of race in Louisiana contends that "black protest between the late 1930s and the mid-1950s constituted more than a mere prelude to

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[2] The Double-V movement stood for victory over fascism abroad and Jim Crow domestically. Neil A. Wynn, *The African-American Experience during World War II* (Plymouth: Rowan and Littlefield, 2010).
[3] This is the most traditional narrative of civil rights. The best example of this narrative comes from historian Taylor Branch. Taylor Branch, *Parting the Waters: America in the King Years, 1954-63* (New York: Simon and Schuster, 1988). Taylor Branch, *Pillar of Fire: America in the King Years, 1963-65* (New York: Simon and Schuster, 1998). Taylor Branch, *At Canaan's Edge: America in the King Years, 1965-1968* (New York: Simon and Schuster, 2006).
[4] Robert J. Norrell, *Reaping the Whirlwind: The Civil Rights Movement in Tuskegee* (New York: Alfred A. Knopf, 1985).
[5] Norrell, x.
[6] Norrell, x.

the drama proper; it was a two-act play."[7] John Kirby argues that the New Deal provided "a reform program to which" race liberals "might attach their concern for Negro rights."[8]

Still others locate the beginning of the Civil Rights movement with the Double-V campaign in World War II. John Blum argues that African Americans suffered under Jim Crow laws at home, and that World War II saw the beginning to protests to end that status.[9] Whereas in World War I, luminaries like W.E.B. Du Bois encouraged African-Americans to focus on the war effort, protests led by A. Phillip Randolph and Walter White increased pressure on Americans on the homefront during World War II. As White argued, "declarations of war do not lessen the obligation to preserve and extend civil liberties here while the fight is being made to restore freedom from dictatorship abroad."[10] Black agitation during the war "increased black consciousness and expectations, a condition prerequisite for wartime and post-war progress toward desegregation" while forcing the government "to the need during the war to relieve at least some black grievances."[11] Additionally, the President's Committee on Fair Employment Practice (FEPC) provided an institutional platform for African-Americans to fight for equality.[12]

Finally, some historians isolate the civil rights movement to the period between 1954 and 1968. Steven F. Lawson contends that civil rights work in the 1930s and 1940s was fundamentally different from civil rights campaigns in the classical era, and the Cold War shaped that difference. As Lawson suggests, civil rights activists faced new "political, economic, and

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[7] Adam Fairclough, *Race and Democracy: The Civil Rights Struggle in Louisiana* (Athens: University of Georgia Press, 1995.

[8] John B. Kirby, *Black Americans in the Roosevelt Era: Liberalism and Race* (Knoxville: University of Tennessee Press, 1980). 12.

[9] John Morton Blum, *V Was for Victory: Politics and American Culture During World War II* (New York: Harcourt Brace Jovanovich, 1976).

[10] Blum, 208.

[11] Blum, 208.

[12] Merl E. Reed, *Seedtime for the Modern Civil Rights Movement: The President's Committee on Fair Employment Practice, 1941-1946* (Baton Rouge: Louisiana State University Press, 1991). 8-9.

international considerations" and "adopted strategies and tactics suitable to this alternative condition."[13] During the post-war period, the tactics of civil rights activists changed; American opposition to communism allowed African-Americans to compare their treatment in the South with how the Soviets treated their citizens.[14]

The timeline for segregationist resistance is similar. Historians have examined resistance to the broader civil rights movement beginning in 1955. Known as "massive resistance," after conservative Virginia Senator Harry F. Byrd's declaration that attempts to enforce *Brown v. Board of Education* in the south would be met with "massive resistance," the narrative focuses on *Brown*. Resistance to the Supreme Court decision quickly coalesced in state governments, peaked nationally with the "Southern Manifesto" in the United States Senate and tapered off after a series of defeats in the 1960s, culminating in the passage of the 1964 Civil Rights Act over Southern opposition.

"Massive resistance" is important, but institutionally diffuse and only focused on school desegregation. The first problem with isolating Southern resistance within the "massive resistance" movement lies in the sheer scope of the campaign. While Francis Wilhoit, Numan Bartley and Clive Webb explore national resistance,[15] other historians have concentrated on state and local level resistance.[16] Institutional responses varied depending on location and politics, and

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[13] Steven F. Lawson, "Long Origins of the Short Civil Rights Movement, 1954-1968," in *Freedom Rights: New Perspectives on the Civil Rights Movement*, Danielle L. McGuire and John Dittmer, eds. (Lexington: University of Kentucky, 2011): 18.

[14] Segregationists, too, used the Cold War to their advantage. See George Lewis, *The White South and the Red Menace: Segregationists, Anticommunism and Massive Resistance, 1945-1965* (Gainesville: University Press of Florida, 2004).

[15] Francis M. Wilhoit, *The Politics of Massive Resistance* (New York: George Braziller, 1973). Numan V. Bartley, *The Rise of Massive Resistance: Race and Politics in the South During the 1950's* (Baton Rouge: Louisiana State University Press, 1969). Clive Webb, ed, *Massive Resistance: Southern Opposition to the Second Reconstruction* (New York, Oxford University Press, 2005). Webb's collection also includes individual essays that focus on state and municipality resistance to integration.

[16] James W. Ely, Jr., *The Crisis of Conservative Virginia: The Byrd Organization and the Politics of Massive Resistance* (Knoxville: University of Tennessee Press, 1976). Matthew D. Lassiter and Andrew B. Lewis, eds, *The Moderates' Dilemma: Massive Resistance to School Desegregation in Virginia* (Charlottesville: University Press of

there were few unifying features across different institutions. Second, “massive resistance” only referred to campaigns against the integration of local schools. Senators resisted calls to desegregate in all arenas but Byrd’s use of the phrase “massive resistance” referred to public schools. Desegregation campaigns were more complex than just resistance to *Brown*, with restrictions on the voting rights of African Americans central to segregation. Third, “massive resistance” refers to the specific period between 1955 and 1964. While conservative estimates trace the end to the 1969 Supreme Court *Alexander v. Holmes County Board of Education*, in which the Court ordered immediate desegregation, scholars focus on 1955 to 1964. Resistance mirrored civil rights groups, who were active well before 1955. Isolating study of segregation to “massive resistance” lends itself to a narrow range of arguments and ignores the historical context of southern resistance.

Some scholars have examined earlier segregationist discourse. Kari Fredrickson, for instance, traces the rise of the Dixiecrat Party in the South from 1938. [17] Jason Morgan Ward interprets “a consciously “segregationist” countermovement” which “emerged in tandem with the African American freedom struggle.”[18] White resistance to civil rights, argues Ward, “grew out of a longer struggle to defend the color line in the face of domestic turmoil and global war.”[19] Keith Finley, meanwhile, seeks to complicate the narrative of Southern resistance in the Senate, arguing that Southerners “assiduously courted those beyond the Mason-Dixon line,” calculating

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Virginia, 1998). Jeff Roche, *Restructured Resistance: The Sibley Commission and the Politics of Desegregation in Georgia* (Athens: University of Georgia Press, 1998).

[17] Kari Fredrickson, *The Dixiecrat Revolt and the End of the Solid South: 1932-1968* (Chapel Hill: University of North Carolina Press, 2001).

[18] Jason Morgan Ward, *Defending White Democracy: The Making of a Segregationist Movement and the Remaking of Racial Politics, 1965-1986* (Chapel Hill: University of North Carolina Press, 2011). 2.

[19] Ward, 2. Ward notes that “if there was a “long civil rights movement,” there was also a long segregationist movement, alluding to Jacqueline Dowd Hall’s thesis on the long civil rights movement.

that flexibility and the recruitment of Northern allies might extend the shelf life of Jim Crow legislation.[20]

Of these narratives, Finley's comes closest to the goals of this project. Finley's core claim is that southern senators "deliberately depicted their fight as one in which they defended state and individual autonomy against a ravenous federal government bent on centralizing power in Washington."[21] In doing so, these senators drew upon a classical republican ideology and constitutional principles, limiting overt racism.[22] Finley argues that segregationists "spoke for the silent southern majority who did not participate in violence, but who nonetheless believed in the sanctity of Jim Crow."[23] Southern senators spoke to a majority of their constituencies while seeking alliances with their northern colleagues, transforming "their defense of Jim Crow from a fight to safeguard an antiquated regional custom into a larger battle to stem the erosion of local authority and individual liberty."[24] In turn, they created an opaqueness through which Southerners could distract from Jim Crow, only failing in their objectives when local leadership slouched toward demagoguery, undercutting the rhetorical stance of southern senators.

My dissertation works with similar texts to Finley, and we cover some of the same historical events. However, I differ from him in two key ways. First, as a rhetorician, I am most interested in how the texts work. As a historian, Finley privileges the historical events that precipitate debate in the Senate, whereas I focus on the language that makes segregationist argument persuasive. That necessitates rhetorical criticism; to best understand the arguments made by Senators, it behooves us to take a thorough look at how they constructed their

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[20] Keith Finley, *Delaying the Dream: Southern Senators and the Fight against Civil Rights, 1938-1965* (Baton Rouge: Louisiana State University Press, 2008): 7.
[21] Finley, 10.
[22] Finley.
[23] Finley, 8.
[24] Finley, 10.

arguments. In short, even when we discuss similar strategies, I argue those strategies have different purposes, meeting the demands of both national and local audiences while being based in southern political tradition.

Second, Finley neglects how the Senate works within the context of broader movement politics. The civil rights movement is connected to segregation both historically and discursively. Robert Cathcart argued that social movements begin when groups demand "an immediate corrective applied to the established order," followed by "a reciprocating act from the establishment… which perceives the demands of the agitator rhetors… as direct attacks on the foundations of the established order."[25] This process is known as dialectical enjoinment. Rhetoricians have produced studies that examine how social movement groups advocated for civil rights, but, in the process, mostly neglected how establishment forces responded to them. Southern resistance to civil rights is completely absent from the literature, which inhibits our ability to understand civil rights orators. Even Finley's book, which comes close, deals little with the interplay between social movements and institutions on the level of discourse.

There are a handful of studies that influence how rhetoricians think about how establishment forces influence social movements.[26] John Murphy argues that dissent is disciplined through hegemonic cultural systems that permit the negotiation of oppositional or alternative identities in conjunction with established groups. Murphy's analysis of the Freedom Rides centers on the Kennedy Administration's attempts to "domesticate" social movement

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[25] Cathcart, 87.

[26] John Murphy, "Domesticating Dissent: The Kennedys and the Freedom Rides," *Communication Monographs* 59 (1992): 61-78. Theodore Windt, Presidents and Protesters: Political Rhetoric in the 1960's (Tuscaloosa: University of Alabama Press, 1990). Theodore Windt, "Administrative Rhetoric: An Undemocratic Repsonse to Protest," *Communication Quarterly* 30 (1982): 245-250. Sean Patrick O'Rourke, "Circulation and Noncirculation of photographic texts in the Civil Rights Movement: A case study of the rhetoric of control," *Rhetoric and Public Affairs* 15.4 (2012): 685-694. John W. Bowers, Donovan J. Ochs, Richard J. Jensen and David P. Schulz, *The Rhetoric of Agitation and Control, Third Edition* (Long Grove: Waveland Press, 2010), 53-73.

dissent. Kennedy succeeded, Murphy argues, because his administration named and characterized the actors and their actions, provided context to their actions, used legal sanction to equate protesters with violent mobs and utilized diversion to focus activist attention onto voter registration. Through this process, the Kennedy Administration placed freedom riders "in a dominant system of meaning that dismissed them as counterproductive."[27] Murphy's analysis focuses on how social movements interact with a relatively friendly institutional force, but he concludes that even allied institutions use "baiting" arguments that undermine social movement causes. Even the Kennedy Administration excused some behavior committed by violent mobs with the justification that Freedom Riders were "looking for trouble" and violent mobs were "provoked into action."[28]

Institutional forces may also utilize their power to undercut social movement action directly. Theodore Windt examines how administrators at the University of California at Berkeley responded to free speech protests in 1964 and 1965. Windt lists five topoi associated with "administrative" rhetoric. First, issues are transformed from specific complaints to general issues of credibility. Second, protesters are cast as a disruptive minority that fails to represent the majority. Third, protesters are delegitimized, their actions attributed to base motives or personal benefit.[29] Fourth, administrators reposition themselves as defenders of civil liberties and law and order. Fifth, they predict dire consequences if protest groups win. Windt's case study, statements made by Berkeley president Clark Kerr and Chancellor Edward Strong, demonstrates how these topoi appear in institutional rhetoric. Indeed, they are common to most anti-protest rhetoric.

[27] Murphy, 67.
[28] Murphy, 73.
[29] As an example, Windt actually uses the phrase "outside agitators," a common phrase used by Southern politicians to denigrate civil rights workers.

Both Murphy and Windt provide useful resources for a study of segregationist discourse. Murphy's analysis of power relations and his observations that even friendly institutional forces attempt to bring disruptive protesters to heel is relevant when examining segregationist discourse, and similar strategies were utilized by Senate segregationists. Windt's topoi are omnipresent in Senate segregationist discourse. Southern senators predicted an end to the Southern way of life if civil rights legislation was passed, and consistently argued that civil rights senators wanted to lay waste to due process rights. Both scholars provide a useful way of thinking about how institutions react to social movements, which broadly helps how I view southern reactions to the civil rights movement.

Senate Literature Review

One of the core premises of this dissertation is that segregationist rhetoric is different when performed in the United States Senate. The Senate changed the nature of how southerners defended segregation. Designed by the Founders to ensure equal representation between smaller and larger states, the Senate has long been a bastion of Southern power. The Senate, a rhetorical forum, aided Southern attempts to resist civil rights legislation, and its rules helped Southerners confound majority will. In this section, I explore the role that the Senate plays in American government before turning to an explanation of the importance of the Senate in Southern politics. Finally, I examine relevant rhetorical studies on Senate rhetoric.

The Constitution establishes the Senate in Article 1, Section 3, although the document spends little time explaining the role of the body. Each state has two senators who serve six-year terms. Originally, the Constitution required that state legislatures appoint Senators, but the Seventeenth Amendment required senators to run in a statewide election. The Constitution allows the Senate to appoint its officers and determine rules for its proceedings in Article 1,

Section 5, meaning that constitutionally, the Senate controls how it conducts business. Article 1, Section 6 also gives members of Congress significant latitude in what they can say on the floor of Congress, granting power to each house to decide how that information is published.

Historically, the Founders created the Senate to assuage concerns over direct democracy in the early days of the Republic. James Madison, one of the authors of the *Federalist*, contended the Senate mattered for several reasons. First, the upper house served as a safeguard for the republic. The Founders worried about democratic intemperance, but Madison argued that a "well-constructed Senate… may be sometimes necessary as a defense to the people against their own temporary errors and delusions."[30] The Senate could curtail the excesses of the House of Representatives, a body directly elected by the people for shorter terms. By checking bouts of democratic excess stemming from the House, the Senate safeguarded against "moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn."[31] Furthermore, a second legislative body would prevent the people from betrayal by their representatives: "[t]he people can never willfully betray their own interests; but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men."[32] Madison relied on historical example to prove that democracies with a Senate were more stable, balancing representation and experience.

[30] James Madison, "Federalist No. 63", *The Federalist Papers*, accessed September 15, 2016. http://www.gutenberg.org/files/1404/1404-h/1404-h.htm#link2H_4_0063
[31] Madison, Federalist 63.
[32] Madison, Federalist 63.

The role of republican safeguard has permeated the ethos of the Senate over the course of the past 200 years. Consequently, Senators generally view their role as that of statesmen, "taking special pride in the Senate's reputation as a great deliberative body, an institution exulting in its freedom of debate."[33] The Senate is also characterized by formality and courtesy, expressed through stylized address that helps in the "lubrication of relationships among people who have at one time interests in conflict and interests in common."[34] This speaks to decorum, a concept rooted in some of the earliest rhetorical theories. Aristotle dedicated two chapters of the *Rhetoric* to studying appropriateness, and Cicero dedicated a large section of *Orator* to propriety and decorum.[35] In the Senate, decorum falls more in line with what Robert Hariman considers the appropriate set of conventions for verbal behavior.[36] Those conventions manifest themselves through Senate debate.

The role of Senate debate has evolved since the earliest days of the body. As Neil MacNeil and Richard Baker argue, the Seventeenth Amendment and Progressive Era ushered in a new breed of senators, "less dependent on political parties and more dependent directly on voters' approval."[37] Simultaneously, the need for speeches superficially diminished, with Senators spending more time in their offices or committee hearing rooms conducting business. References to Senate debate in the scholarly literature are frequently unflattering. Bertram Gross, for instance, calls most floor speeches "buncome," designed to "build a record for the ultimate consumption of specific audiences whose support or approval is valued."[38]

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[33] Neil MacNeil and Richard A. Baker, *The American Senate: An Insider's History* (New York: Oxford University Press, 2015).
[34] Gross, 371.
[35] Aristotle. *Rhetoric* (New York: Modern Library, 1954). Cicero, *Orator* (Cambridge: Harvard University Press, 1962).
[36] Robert Hariman, *Political Style: The artistry of power* (Chicago: University of Chicago Press, 1995).
[37] MacNeil and Baker, 289.
[38] Bertram M. Gross, *The Legislative Struggle: A Study in Social Combat* (New York: McGraw Hill, 1953): 365.

This is not to say that Senate debate is unimportant. While few speeches persuade Senators, debate still matters to senators.[39] MacNeil and Baker observe that "no legislative leader dared to neglect or ignore the Senate's formal debate;" while most of the work in whipping votes occurred in committee rooms or behind closed doors, "no sponsor could afford to yield any debating points by default."[40] Furthermore, the executive and legislative branch often used the floor debate on legislation as "a significant part of… legislative history," meaning that arguments and amendments "formed a special persuasive eloquence of its own. Their speeches helped explain the legislators' intentions," especially to the Supreme Court.[41] Gross adds that floor debates "provide a medium of communication between those who are lined up on the same side of the question," in addition to helping "lay the basis for future campaigns."[42] Functionally, floor debate also allows time for negotiation and horse trading; long debates provide "the time for the extended maneuvering and sharp bargaining that leads to incredibly subtle compromises."[43]

The rules governing Senate debate are frequently used as a parliamentary weapon. The filibuster, which MacNeil and Baker describe as a technique "not to persuade colleagues of the merits or demerits of a pending matter, but to defeat it… simply by talking it to death," granted significant individual and collective power to Senators.[44] The filibuster has been debated by members of the Senate, with calls for its restriction or abolition beginning in 1837 with Henry

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[39] MacNeil and Baker note that few Senators admit to having been persuaded by an actual speech. Some cite conversations with their colleagues, pressure from outside forces or having made up their mind before the vote as potential influences.
[40] MacNeil and Baker, 291.
[41] MacNeil and Baker, 291.
[42] Gross, 366-367.
[43] George E. Reedy, *The U.S. Senate: Paralysis or a Search for Consensus?* (New York: Crown Publishers, 1986): 3.
[44] MacNeil and Baker, 290. See also Sarah Binder and Steven Smith, who argue that successful filibuster reform is unlikely because the filibuster is a source of power for individual senators. Sarah A. Binder and Steven S. Smith, *Politics or Principle: Filibustering in the United States Senate* (Washington D.C: Brookings Institution Press, 1997).

Clay.[45] Many Senators defend the filibuster, borne out of Senate desires to restrain the impulses of the lower house or the executive. Richard Russell, for instance, called it a "bulwark against oppression."[46] As Sarah Binder and Steven Smith argue, filibuster reform is difficult because proponents argue "the lack of debate limits… [reflect] the framers' original intent for the senate, is an integral part of Senate tradition, and… follows directly from senators' principled, shared interest in protecting free speech and minority rights."[47]

Either an individual or a coalition of senators may filibuster a piece of legislation. Franklin Burdette observed in 1940 that the "organized filibuster is likely to be characterized by definite floor leadership and carefully planned strategy," often used as a sectional measure.[48] The filibuster is a desperate tactic; "men filibuster when the cause at stake is desperate- or they think it is."[49] As Binder and Smith argue, the filibuster is politically costly, often provoking colleagues or enraging constituents who expect the Senate to do something.[50] However, collective filibusters are more likely to succeed, especially when "the participants are sufficiently numerous and have enough determination, endurance, and parliamentary skill to continue the tactics as long as necessary."[51]

Senate debate is also influenced by the way in which its members are chosen. The Senate equalized representation between smaller and larger states. With only a House of Representatives, smaller states expressed concern that more populous states would possess an unfair advantage, and the federal government would become a tyranny of the majority. Madison argued that, among Americans, "thoroughly incorporated into one nation, every district ought to

[45] Binder and Smith.
[46] MacNeil and Baker, 303.
[47] Binder and Smith, 2-3.
[48] Franklin Burdette, *Filibustering in the Senate* (Princeton: Princeton University Press, 1940): 211.
[49] Burdette, 213.
[50] Binder and Smith, 13.
[51] Burdette, 215.

have a proportional share in the government," but simultaneously, "among independent and sovereign States, bound together by a simple league, the parties, however unequal in size, ought to have an equal share in the common councils."[52] Equality for both large and small states meant "that the equal vote allowed to each State is… a constitutional recognition of the portion of sovereignty remaining in the individual States."[53] The Senate allowed states to retain some of their individual sovereignty while still strengthening the power of the federal government. Additionally, having the House of Representatives represent majority rule and the Senate representing the states meant that "no law or resolution can now be passed without the concurrence, first, of a majority of the people, and then, of a majority of the States."[54] The Senate served as a bulwark for smaller states, a way to defend their interest in a place that, structurally, placed them on even footing as larger states.

Senate apportionment has shaped the Senate in the years since the signing of the Constitution. Frances Lee and Bruce Oppenheimer, two political scientists, argue that the Senate has become more malapportioned over time, with less than 20% of Americans capable of electing a majority in the Senate in every session since 1900.[55] State size is one of the reasons the Senate lends itself to Southern dominance. Sarah Binder and Steven Smith note that the Senate has often been led by "minority coalitions at the expense of manifest majorities," and the southern coalition is a prime example.[56] During their struggle against integration, Southerners were regionally united and politically secure to a degree unrivaled by their northern and western colleagues. Robert Mann notes that Southern senators seldom faced political challenges, and

[52] James Madison, "Federalist No 62," *The Federalist Papers* (New York: Signet, 2005).
[53] Madison, Federalist No 62.
[54] Madison, Federalist No 62.
[55] Frances E. Lee and Bruce I. Oppenheimer, *Sizing Up the Senate: The Unequal Consequences of Equal Representation*, (Chicago: University of Chicago Press, 1999) 10-11.
[56] Binder and Smith, 6.

“formed a citadel of continuity.[57] William White observes that the Senate is “a Southern institution” that lies at the heart of the federal government.[58] This is partially because, as Madison argued, the Senate provided a voice for each individual state, a key concession to smaller states while writing the Constitution. Furthermore, “continuity of service is the special property of the One-Party-State Southerners.”[59] Segregation itself meant that southerners belonged exclusively to the Democratic Party, as the Republicans took the blame for Reconstruction. The absence of multiple parties in the post-Reconstruction South made for easier Senate races, which meant southerners in the Senate served as long as they liked. Their seniority led to key committee chairmanships and even allowed them to choose the locations of their offices, helpful for dodging quorum calls.

Keith Finley labeled the Senate as critical in articulating segregationist thought: “southern senators served as the South’s primary spokesmen as well as its principal philosophers.”[60] They “spoke for the white southern majority, and, because of the rules governing unlimited debate, had the opportunity to enunciate fully the racial policy belief that necessitated Jim Crow.”[61] In his analysis of the battle over civil rights, Robert Mann observes that, in the 1950s, the Senate was run by Richard Russell and the southerners in conjunction with Robert Taft’s bloc of conservative Republicans.[62] The Southern coalition held significant power because “they dominated the Senate’s committee system,” were personally liked by most members of the body, “their knowledge of the Senate’s rules was superb, and their skill in using

[57] Robert Mann, *The Walls of Jericho: Lyndon Johnson, Hubert Humphrey, Richard Russell, and the Struggle for Civil Rights* (New York: Harcourt Brace and Company, 1996). 78.
[58] William S. White, *Citadel: The Story of the US Senate* (New York: Harper and Brothers, 1957), 68.
[59] White, 70.
[60] Finley, 8.
[61] Finley, 8.
[62] Mann, 75.

those rules to stall civil rights… was matchless."[63] Southerners also controlled the Democratic Steering Committee, and steered Northern liberals to less desirable committees.[64]

Rhetorically, Senate debates are a confusing mess of procedure and speeches, often only loosely connected to legislation. As Theodore Sheckels writes, "much of what one discovers" in the *Congressional Record* "interferes with analysis as well as repetition."[65] Sheckels argues there are significant barriers to interpreting congressional texts rhetorically, citing the long-windedness and repetition of the speakers, false assumptions that debates have a firm affirmative and negative position and procedural barriers to entry.[66] Yet, to many Senators, nothing matters more than the debate itself. Congressional Record entries are to members of Congress what tubs of debate evidence are to college debaters: they consist of every conceivable argument on a policy issue. The critic's job is to unpack those arguments, explaining which ones are important or persuasive. In the following section, utilizing the objections that Sheckels outlines, I attempt to demonstrate why Senate rhetoric matters.

First, Senate rhetoric is valuable, despite complaints from rhetoricians to the contrary. Early studies in congressional rhetoric denigrated Senate floor debates. John Fitzpatrick argued "there is much talking" but "very little debating" on the floors of Congress.[67] Jerry Voorhis noted that, while "from time to time a great speech is made in the House or Senate," most of the rhetoric is stylistically lacking.[68] This did not stop scholars from attempting to confirm the value of debate. In an attempt to track the impact floor debate had, Earl Cain encouraged scholars to

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[63] Mann, 76.
[64] Mann, 77.
[65] Theodore F. Sheckels, *When Congress Debates: A Bakhtinian Paradigm* (Westport: Praeger, 2000). 1.
[66] Sheckels.
[67] John R. Fitzpatrick, "Congressional Debating," *Quarterly Journal of Speech* 27.2 (1941): 251.
[68] Jerry Voorhis, "Effective Speaking in Congress, *Quarterly Journal of Speech* 34 (1948): 463.

reconstruct Senate debates and track where Senators influenced their colleagues.[69] Likewise, a series of surveys from 1966 to 1979 gauged that Senate floor speeches occasionally influenced votes.[70]

Despite their best efforts, these early studies conclude that Congressional debate is tedious and meaningless. Sheckels responds, arguing that this paradigm is grounded in an insistence on "bipolarity," the idea that there are two sides of every debate and that arguments must be grafted upon a framework reminiscent of academic debate.[71] Instead, debates are diffusive, multi-day affairs, and "initial speeches on a topic are usually scripted position papers… not intended to be responsive to other speeches."[72] These debates are so long because Senators view the Congressional Record as a repository for arguments and ideas. Ernest Bormann's analysis of the 1960 Civil Rights filibuster is a good example of why this is the case. Bormann argues that southern Senators utilized four lines of argument: legal, constitutional, practical, and moral.[73] These lines, shepherded by specific senators, were the manifestation of Southern arguments up to this point; they functioned as the arsenal of Southern ideas.

By rejecting bipolar debates, Sheckels allows for a more nuanced understanding of Senate debates. What one might see as tedious position papers provides a snapshot of the positions held on a given political issue at a specific point in time. By virtue of equal representation across geographic boundaries and ideologies, most, if not all, debate positions are represented. A Senate debate is a long, disorganized slog not because Senators are incapable of

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[69] Earl R. Cain, "A Method for Rhetorical Analysis of Congressional Debate," *Western Speech* 18 (1954): 91-95. Earl R. Cain, "Is Senate Debate Significant," *Today's Speech* 3 (1955): 10-12, 26-27.
[70] Henry Z. Scheele, "Some Reactions by Congressmen to Speaking in the U.S. House of Representatives," *Today's Speech* 14 (1966): 19-21. D. Dudley Cahn, Edward J. Pappas and Ladene Schoen, "Speech in the Senate: 1978," *Communication Quarterly* 27 (1979): 50-54.
[71] Sheckels, 5-6.
[72] Sheckels, 5.
[73] Ernest Bormann, "The Southern Senators' Filibuster on Civil Rights: Speechmaking as Parliamentary Stratagem" *Southern Speech Journal* 27 (1962): 183-194.

organizing cogent thoughts, but because the ideas they debate are multifaceted, and Senators have multiple competing goals, all of which are addressed in debate, and which the critic must tease out.

Second, Sheckels rejects what he calls the "academic model" of debate in the Senate. Sheckels observes that most critics conclude that "once you get to the core of the debate, you will find a clash that can be accurately rendered in bipolar terms."[74] Most of what the public hears of the Senate is framed in terms of bipolarity: there are Democrats and Republicans, a majority and a minority, votes are cast as either ayes or nays, and even the physical chamber is split into two sides. A handful of later studies diverged from this bipolar paradigm, and both Waldo Braden and Ernest Bormann utilized multiple perspectives in analyzing Senate debates.[75] Sheckels relies on Mikhail Bakhtin to explain the polyphony of voices he sees in the Senate, arguing that Bakhtin's framework allows us to see not only multiple factions, but inter-voices and double-voiced discourse, allowing the rhetorical scholar to complicate narratives occurring in Senate debates.[76]

I am inclined to agree with Sheckels that complicating the rhetorical effects of Senate debates is a worthy goal, but the emphasis of his Bakhtinian framework is on tracking how a Senator's words operate solely in the context of the debate. Though Sheckels argues that a Bakhtinian framework asks how debate relates to events that both preceded and followed it in time, the Senate's organizational structure demands a larger look. Robert Asen's work on policy debates over social security asserts that policy debates have a range of interpretations and

[74] Sheckels, 5.
[75] Waldo W. Braden, "The Senate Debate on the League of Nations, 1918-1920: An Overview," *Southern Speech Journal* 25 (1960): 273-281. Bormann.
[76] Sheckels, 15-35.

meanings, which he calls "policy polysemy."[77] Asen argues that "policy debates resist appreciative criticism as much as they enable it through their multiple authors and audiences."[78] Asen's approach to policy debates as long-lasting, multi-faceted conflicts helps explain "how participants and audiences understand a policy," but neglects the location of the debate. Polyphony and polysemy are useful critical tools, but the Senate's emphasis on procedure, decorum, precedent, and history shape the body. Structural factors matter a great deal.

Third, Sheckels argues that procedural debates, deference, and ritual are all critical to how the Senate functions.[79] Members of Congress address multiple audiences. Janice Schuetz argues for three: fellow Senators, their constituents, and the media.[80] Procedural debates, according to Schuetz, are addressed to fellow members of Congress. Rather than being a burden, as Thomas Kaine has argued,[81] procedural debates are critical to how the body functions. Indeed, several studies on Senate rhetoric have discussed the rhetorical function of procedure, arguing that the process of Senate deliberation is intimately wed to the procedures within the body.[82]

Tediousness, bipolarity, and procedural density are the three key challenges facing scholars who wish to study the Senate. I wish to add to Sheckels' polyphonic analytic structure by analyzing the setting of these debates. Understanding how rhetorical forum operates is critical to my analysis. Thomas Farrell defines a rhetorical forum as "any encounter setting which serves

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[77] Robert Asen, *Invoking the Invisible Hand: Social Security and the Privatization Debates* (East Lansing: Michigan State University Press, 2009).
[78] Asen, 21.
[79] Sheckels, 4.
[80] Janice Schuetz, "Overlays of Argument in Legislative Process," *Journal of the American Forensic Association* 22 (1986): 223-234.
[81] Thomas Kane, "Argumentation and the U.S. Senate," *Argumentation and Advocacy* 32 (1995): 57-61.
[82] Alison Regan, "Rhetoric and Political Process in the Hill-Thomas Hearings," *Communication Studies* 49 (1998), 277-285. 279. Christopher R. Darr, "Adam Ferguson's Civil Society and the Rhetorical Functions of (In)Civility in United States Senate Debate," *Communication Quarterly* 59.5 (2011), 603-624. Richard Besel, "Prolepsis and the Environmental Rhetoric of Congressional Politics: Defeating the Climate Stewardship Act of 2003," *Environmental Communication*, 6.2 (2012),

as a gathering place for discourse," providing a "provisionally constrained context and an avenue of mediation among discourses that might otherwise be self-confirming, incommensurable, or perhaps not even heard at all."[83] Integral to how a rhetorical forum functions is the "conscious awareness" that each member has of the others within the forum; they require speakers understand "each other's placement in the symbolic landscape of prospective thought and decision."[84] Rhetorical forums "develop a life of their own," often setting "into motion certain constraints of precedent, place, ritual expectation and genre as to what may be presented and heard."[85]

When rhetoricians analyze the Senate, they need to understand that the body is a rhetorical forum. The upper house has established norms, precedents and ritual expectations. Its speeches and floor debates are a separate genre, borne out of the notion that the Senate is "the world's greatest deliberative body." Verbosity reflects the Senate's normative preferences for a full, meaningful debate. Rhetorical significance often lies not in winning the argument, but being heard, and giving due diligence to every position. Southerners often evoked the need for a thorough debate as a defense of their filibusters of civil rights bills, an argument common today.[86] Furthermore, the multiple audiences and complicated political maneuverings within the Senate flow out of Constitutional obligations to constituents and to colleagues. The Senate was designed to be collegial, a place where a small group of elites could engage in reasoned debate. These procedures, in turn, created an atmosphere in which debate was privileged over all else.

Senate Leadership: Tom Connally, Richard Russell, and the Southern Caucus

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[83] Thomas Farrell, *Norms of Rhetorical Culture* (New Haven: Yale University Press, 1993): 282.
[84] Farrell, 284.
[85] Farrell, 288.
[86] Republican leader Mitch McConnell has often defended the filibuster as critical to the Senate's function. Carl Hulse, "A Democratic Senate Might Need to Curtail Filibuster, Harry Reid Says," *The New York Times*, August 31, 2016. Accessed October 18, 2016. http://www.nytimes.com/2016/09/01/us/politics/a-democratic-senate-might-need-to-curtail-filibuster-harry-reid-says.html

Much like the civil rights movements, multiple men held leadership positions for segregationist forces. In the Senate, the most prominent southern voice belonged to Richard Russell, the long-serving Senator from Georgia and chair of the Armed Services committee who took over leadership of the southern resistance from Senator Tom Connally of Texas. Russell, who led his fellow southerners with his keen tactical skill and insight into parliamentary procedure, was the architect of southern resistance from the 1940s until southern defeat in 1964. In this section, I discuss Russell and his background, before moving to the flavor of southern discourse that infuses the rhetoric of the senate, influenced most heavily by John C. Calhoun's philosophy of republicanism.

No description of Richard Russell is complete without noting his respect for the upper chamber. Gilbert Fite, Russell's biographer, argues that the Senate "was his major interest and love."[87] Russell was widely respected by his colleagues, both Northern and Southern, liberal and conservative. Russell was a leader in the Democratic Party and defacto leader of the Southern bloc, which meant he was a powerful senator. Russell was instrumental in committee assignments and creation of the legislative agenda, often assigning liberal members of the Democratic party to unimportant committees. Russell chaired the Armed Services Committee from 1955 to 1969, when he took over the Appropriations Committee chairmanship for the two years before his death. His parliamentary skill was unmatched; Russell served as Lyndon Johnson's mentor, and Russell Long once said that "Dick Russell really came to love Lyndon Johnson as though he were a son."[88] Russell was faithful to a romantic notion of the South, and his biographer, Gilbert Fite, notes that "[h]e never let slurs or insults against his beloved South go unanswered. As far as he was concerned, Southern society might not be perfect, but it was the

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[87] Gilbert Fite, *Richard B. Russell, Jr., Senator from Georgia* (Chapel Hill: University of North Carolina, 1991).
[88] Mann, 109.

best in the nation. Anyone who thought otherwise had better be ready to do battle with Dick Russell."[89]

Russell's record demonstrated his staunch opposition to civil rights. Many of the qualities that made Russell such a powerful member of the Senate made him a formidable opponent to civil rights legislation. Fite argues that Russell "was largely responsible for delaying effective civil rights legislation for nearly twenty years."[90] Robert Mann notes that Russell's opposition to civil rights was derived from his belief "in the righteousness of the southern way of life- a manner of living that bestowed upon white citizens an undeniable social and economic superiority while imposing harsh, sometimes inhumane limits on the rights of black citizens."[91] Yet, Russell's racism lacked the brutality of senators like James Eastland and Theodore Bilbo,[92] displaying "no overt signs of animosity or hatred for blacks."[93]

Like many southerners, Russel "blamed the civil rights movement almost entirely on people he called troublemakers outside of the South."[94] However, Russell believed that "it was inappropriate for white politicians to exploit racial fears for political gain."[95] Russell harbored concerns about both civil rights activists and race-baiters. To the senator, "[b]oth groups inflamed race relations and made challenges to white supremacy more likely."[96] Nothing exemplified this more than his 1936 reelection campaign against Georgia Governor Eugene Talmadge, who attempted to brand Russell as "soft on racial issues."[97] While Russell steadfastly

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[89] Mann, 23.
[90] Fite, xi.
[91] Mann, 22.
[92] Bilbo famously supported the "Back to Africa" movement, and gave several speeches defending it during the 1937 Wagner Van-Nuys anti-lynching filibuster.
[93] Mann, 35.
[94] Fite, 229.
[95] Mann, 35.
[96] Ward, 17.
[97] Mann, 38.

denied Talmadge's claims, claiming that America was a "white man's country… and we are going to keep it that way," he also condemned the governor's racial appeals, blaming them on a candidate assuredly headed toward defeat.[98] Some northerners saw Russell's victory over the more vocal Talmadge as "the end of southern demagoguery," but it did not end white supremacy.[99]

Russell did not take up the mantle of leadership for the Southern caucus until 1945. Before him, Senator Tom Connally, a Democrat from Texas, led Southern resistance. Connally became the southern leader because "he possessed the least political baggage in so much as he was not noted for demagoguery and… remained popular with non-southerners for his apparent moderation, at least in comparison to the excesses of many of his regional cohorts."[100] Connally also supported the New Deal, which meant he was popular with the Senate's overwhelming Democratic majority.[101] But Connally also had a reputation as being easy to anger, "often abrasive and sarcastic with his colleagues in debate."[102] Russell's parliamentary skill and gentlemanly demeanor made him a natural leader for a caucus that needed both tactical and rhetorical leadership throughout the critical fights necessary to preserve segregation.

Understanding Russell's professionalism and genial southern demeanor helps inform his rhetorical impact. For a long time, the "southern demagogue" dominated national impressions of the southern politician. Indeed, rhetoricians who focus on southern discourse often label politicians demagogues.[103] Michael Hogan and Dave Tell have argued that a "double standard

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[98] Mann, 38. Ward 16-17.
[99] Mann, 39. Ward, 18.
[100] Finley, 24.
[101] Finley, 24.
[102]Mann, 40-41.
[103] For examples, see Cal M. Logue and Howard Dorgan, eds, *The Oratory of Southern Demagogues* (Baton Rouge, Louisiana State University Press, 1981).

has long been evident in the literature" that labels southern orators as demagogues,[104] and Hogan has argued elsewhere that the double standard held by rhetoricians against "demagogic" rhetoric has led to the neglect of orators like Huey Long, who is an excellent example of Southern populism.[105] Labeling southern politicians "demagogues" stereotypes men who are either more complicated (Long) or who do not fit the stereotype of the demagogue. Indeed, much of Russell's success resulted from his rejection of that persona. Instead, Russel's demeanor, as Keith Finley argues, was the key "to discern[ing] the relationship of white southerners in general to segregation."[106] Russell's genteel arguments made him the antithesis of a demagogue. Like Russell, southerners soon cultivated an ethos of statesmanship to promote an image of a new South, with racial order key to its success.

In the case of the southern bloc, exploiting performative traditions that possessed national appeal and evoked a positive image of a post-Reconstruction South enabled victory. Russell and his caucus moved away from racist appeals to seek a veneer of legitimacy for their arguments. To do so, they needed to generate discourse that distanced themselves from the Theodore Bilbo-style demagogue and tied them more closely with positive representations of the south. Two performative traditions aided southern senators in this task: the republicanism of John C. Calhoun and the Lost Cause of the Confederacy.

Every analysis of southern segregationist discourse must confront the constitutional arguments present in every debate over civil rights. Southerners loved constitutional arguments in part because they lent a veneer of credibility to segregation, and in part because they spoke to

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[104] J. Michael Hogan and Dave Tell, "Demagoguery and Democratic Deliberation: the Search for Rules of Discursive Engagement," *Rhetoric and Public Affairs* 9.3 (2006), 483.
[105] J. Michael Hogan and Glen Williams, "The Rusticity and Religiosity of Huey P. Long," *Rhetoric and Public Affairs* 7.2 (2004), 149-172.
[106] Finley, 8.

southern concerns about a powerful federal government. Many of these appeals drew from an interpretation of federalism advocated by South Carolina Senator John C. Calhoun. Calhoun, one of the most noteworthy members of the pre-Civil War Senate, demanded a "consensus" mode of government wherein states possessed "local veto" power.[107] This manifested in the theory of "single state nullification," in which each state was invested "with the power to judge the constitutionality of federal laws."[108] States, therefore, held sway over the federal government. Calhoun's political theories came up in the 1950s in both southern state governments and the Southern Manifesto, but Southerners mostly stuck with the broader "state's rights" tradition, incorporating Calhoun's republicanism more broadly.[109]

Stylistically, segregationists also emulated Calhoun. Although rhetoricians have written little about Calhoun, what we have indicates that he emphasized logical proofs and enthymematic arguments.[110] James Jasinksi and Jennifer Mercieca observe that Calhoun's arguments for nullification stem from a re-articulation of the nation's founding, constituting "the people of South Carolina as the dominion of South Carolina alone, the states as perpetually sovereign governments, the people of the United States as a fiction… and the federal government as a confederation of equal, sovereign states."[111] Calhoun's logical speaking style fit segregationist needs. The clear stylistic choices allowed constitutional arguments utilized by southern senators to appeal to their colleagues on a rational level, rather than the more

[107] James H. Read, *Majority Rule versus Consensus: The Political Thought of John C. Calhoun* (Lawrence: University Press of Kansas, 2009).
[108] Read, 16. See also James Jasinski and Jennifer R. Mercieca, "Analyzing Constitutive Rhetorics: The Virginia and Kentucky Resolutions and the Principles of '98," in The Handbook of Rhetoric and Public Address, eds. Shawn J. Parry-Giles and J. Michael Hogan (Malden: Blackwell Publishing, 2010).
[109] Zoltan Vajda, "John C. Calhoun's Republicanism Revisited," *Rhetoric and Public Affairs* 4.3 (2001): 433-457.
[110] Bert E. Bradley and Jerry L. Tarver, "John C. Calhoun's argumentation in defense of slavery," *Southern Speech Journal* 35.2 (1969): 163-175. Bert E. Bradley, "Refutative techniques of John C. Calhoun," *Southern Speech Communication Journa*l 37.4 (1972): 413-423. Michael Volpe, "The logic of Calhoun's constitutional theory," *Southern Speech Communication Journal* 39.2 (1973) 161-172.
[111] Jasinski and Mercieca, 329-330.

demagogic approach one might have expected from southerners. States' rights arguments were not only about content, but also tenor and structure.

The Civil War also shaped southern arguments. The South rationalized southern defeat in several ways after the war. These justifications, known to historians as the Lost Cause of the Confederacy, emphasizes southern difference and justifies the loss to the North as the inevitable result of being overpowered by the richer North.[112] The parts of the Lost Cause that emphasized southern exceptionalism took hold in southern mystique. As Charles Reagan Wilson observed, southerners viewed their society as God's most favored.[113] Incorporating elements of romanticism,[114] the Lost Cause asserted that the southern way of life was superior, and though it might take years to regain, one day, their views would triumph.[115]

To southerners, northerners and westerners did not face racial acrimony, and did not understand the importance of the system of white supremacy. Paternalism held the day; true southerners did not hate African-Americans, but rather understood that the south bore a burden to care for those lesser beings. This was the southern way of life, and segregationist senators defended it to their last because they saw it as essential to maintain successful race relations. Lost Cause rhetoric, in turn, drove southern claims about their persecution; neither Senators from northern or western states dealt with the burden to care for African-Americans that southerners

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[112] For more on the Lost Cause, see the following: William C. Davis, *The Cause Lost: Myths and Realities of the Confederacy* (Lawrence: University Press of Kansas, 1996). David Goldfield, *Still Fighting the Civil War: The American South and Southern History* (Baton Rouge: Louisiana State University Press, 2002). David W. Blight, *Beyond the Battlefield: Race, Memory and the American Civil War* (Amherst: University of Massachusetts Press, 2002). Thomas L. Connelly and Barbara L. Bellows, *God and General Longstreet: The Lost Cause and the Southern Mind* (Baton Rouge, Louisiana State University Press, 1982). W. Stuart Towns, *Enduring Legacy: Rhetoric and Ritual of the Lost Cause* (Tuscaloosa: University of Alabama Press, 2012). Gary W. Gallagher and Alan T. Nolan, eds, *The Myth of the Lost Cause and Civil War History* (Bloomington: Indiana University Press, 2000). Charles Reagan Wilson, *Baptized in Blood: The Religion of the Lost Cause, 1865*-1920 (Athens: University of Georgia Press, 1980).
[113] Wilson, 7.
[114] Osterweiss, 3-4.
[115] Osterweiss, 14.

did. As a result, their misguided attempts to end critical southern institutions threatened the bedrock of the South, and as a result, the bedrock of the true American way of life.

At every turn, southern senators emphasized the genteel, courtly nature of a romanticized south. Segregationists in the Senate presented a more respectable version of their arguments. These arguments, however, were still despicable and racist. Major southern rhetorical resources included a man who saw slavery as a positive good, and the belief that they were superior to African-Americans and deigned by God to control them. While not demagogues, southerners still presented morally repugnant claims. That provides a challenge to rhetoricians, who largely assume, as Quintilian did, that rhetors are "good men speaking well."[116] This dissertation finds footing instead in Kenneth Burke's more cynical approach: that we cannot assume moral clarity in our rhetors, and we often must deal with evil men speaking well.[117] It is critical, as Burke argued about Hitler, that we study how exactly southerners used these arguments, so we may guard against them.

Texts and Method

This dissertation tackles a large body of discourse. Over the course of the four chapters, I aim to analyze the Congressional Record entries on four Senate filibusters: the 1937 Wagner-Van Nuys anti-lynching bill, 1945's Fair Employment Practices Commission Act, the Civil Rights Act of 1960, and the Civil Rights Act of 1964. Available via Proquest Congressional, the Congressional Record is the closest thing we have to a perfect record of Senate floor debate.[118] The four debates I examine are filibusters, and their duration places a unique burden on the

[116] Quintilian, *Institutio Oratoria*, 12.1.1.
[117] Kenneth Burke, "The Rhetoric of Hitler's Battle," in *Philosophy and Literary Form: Studies of Symbolic Action* (New York: Vintage, 1941). 164-165.
[118] Senators are permitted to introduce arguments into the record without reading them aloud. They are also permitted to adjust the record after debate has concluded. These issues aside, the Congressional Record represents their field of arguments.

rhetorical critic. These debates are long, with the Civil Rights Act of 1964 spanning close to eighty days of floor debate. The one constant within all research on Senate discourse centers around the difficulty scholars have in exploring the Congressional Record. The sheer density of textual analysis required to navigate a Senate debate pales in comparison to analyzing even a series of presidential addresses. As Sheckels indicates, this is a tremendous burden for rhetorical scholars.

Rhetoricians have explored congressional texts before. Ernest Bormann's analysis of the 1960 Civil Rights Act filibuster consisted of isolating four different lines of argument, sorting and summarizing the arguments.[119] Here, however, the act of sorting is only so useful. Filibusters contain content, and my goal is to determine how senators used them to either win concessions or end debate. Furthermore, as policy debates, filibusters unfold over time, influencing future arguments and shaping perspectives.[120] Therefore, organization can only tell a critic so much. Furthermore, Senate rules provide no time limit for floor debate, transforming floor debate into a comprehensive record of debate on any given issue. I envisioned this process as being similar to crafting "shells," a term used by debaters for the evidence and arguments presented in a round.[121] In the dissertation, I will explore how those shells advanced the southern defense of segregation and furthered pro-Calhounian arguments.

The scope of my texts numbers in the tens of thousands of pages. That material requires collation and analysis. Using ProQuest Congressional, I looked up the four bill numbers associated with debate on each of my four debates. Some debates, like the filibuster of the Civil Rights Act of 1960, featured debate on a different piece of legislation than the listed bill. In these

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[119] Bormann argued that civil rights opponents argued from legal, constitutional, practical and moral grounds, and identifies the senators in charge of each line of argument.
[120] Asen, 21.
[121] Edwards, 345.

cases, I chose the debate that reflected the Southern filibuster. After determining bill numbers, I downloaded the text of each legislative day and separated out any floor debate not pertaining to the bill in question. To be relevant to this dissertation, floor debate had to be on the bill number noted and part of either the southern filibuster or in response to southern arguments.

Similar to Bormann, I sorted these arguments, beginning by noting the speaker, the day of the speech, and the subject material contained within. In my initial sorting, I recorded both speeches and instances of cross examination. Speeches made up the bulk of the southern case, but questions served two purposes. The first was to clash with southern claims, and featured direct questions from either civil-rights supporters or undecided senators. The second was to add to debate, and featured one southerner addressing another in the form of a leading question. After these arguments were sorted, I went through and searched for the exemplar texts of either historical or rhetorical merit. Here, my goal was to generate the argumentative frameworks that senators utilized to defend segregation and defeat civil rights. Many parts of these texts were pieces of evidence read into the Congressional Record, and I noted them as necessary, but my goal was to condense the debate down to arguments that were germane and representative of major lines of argument.

Chapters

This dissertation unfolds over four case study chapters. The first case study is an analysis of the 1937 Wagner-Van Nuys anti-lynching bill. Proposed by Senators Robert Wagner of New York and Frederick Van Nuys of Indiana, the legislation was roundly defeated in the Senate after a filibuster. The southern caucus' victory, led by Senator Tom Connally, is an example of the more chaotic nature of Southern arguments, and runs the gamut from arguments from federalism to the Back-to-Africa movement. This chapter will demonstrate what filibusters during the anti-

lynching era looked like and provides a contrast to future legislation on other civil rights objectives.

The second case study, found in Chapter 3, examines the 1945 Fair Employment Practices Commission Act. In an attempt to preserve some of the strides made in African-American equality during World War II, liberal senators led by Dennis Chavez of New Mexico attempted to make the wartime Fair Employment Practices Commission a permanent fixture. The bill was met with overwhelming Southern resistance, resulting in a filibuster. This chapter explains the first Russell-era Southern filibuster, in which Russell mustered support from western conservatives by arguing that the bill would erode states' rights and due process protections for Americans, even those outside the South.

The fourth chapter explores the filibuster of the 1960 Civil Rights Act. While the 1957 Civil Rights Act was a watered-down bill carefully negotiated by Richard Russell and then-Senate Majority Leader Lyndon Johnson, the 1960 bill was hotly contested, with the southern caucus already angered over the Supreme Court ruling in *Brown v. Board of Education*. Adding to the threat of civil rights legislation was the stewardship of Lyndon B. Johnson, who had taken the mantle of Senate Majority Leader and looked to utilize his old mentor's skills against the southern coalition. The 1960 civil rights bill featured a revolutionary use of the filibuster, with Southern senators dividing into shifts to survive a full, round-the-clock series of sessions. In the debate, southerners took arguments honed in 1938 and 1960 and brought them to bear against a well-supported civil rights bill, ultimately breaking civil rights senators and negotiating a compromise measure.

The fifth chapter examines the filibuster of the Civil Rights Act of 1964. This filibuster, which lasted sixty working days, represented the last stand for segregationists, who found

themselves beset on all sides by ideological enemies. Russell attempted to organize the southern caucus to muster another compromise, emphasizing the undemocratic nature of the bill while portraying southerners as true Americans, but he failed. Both liberal Democrats and Midwestern Republicans sought to pass the Civil Rights Act, and thanks to shrewd tactics by both Everett Dirksen and Hubert Humphrey, 1964 was the first time pro-civil rights forces broke a southern filibuster.

Finally, I conclude in the sixth chapter, analyzing how southerners marshalled four arguments to defeat civil rights legislation. They relied on claims based in decorum, reciprocity, locus of the irreparable, and scapegoating at various times and in various contexts to peel off conservative votes in the Senate. I also briefly delve into how Southern resistance in the Senate bled into other political discourse and evolved into new spheres of resistance, especially in the nascent conservative movement.

Conclusion

The arc of this project looks to examine southern segregationist rhetoric, viewing it as a foil to civil rights activists while simultaneously serving as a defense of southern exceptionalism. Russell and his pro-segregationist caucus were demonstrably different than other twentieth-century Southern orators, eschewing demagoguery for practiced, reasoned arguments aimed at diffusing the civil rights movement, winning over northern and western colleagues and establishing an image of a new South.

Much of the literature on segregationists emphasizes their reliance on federalism and states' rights claims to defend oppressing African-Americans. That language existed, in part, because it proved to be expedient in convincing Americans that the South should be left alone. Yet the literature views this language as the end-all of Southern rhetoric, as if the southern

defense of segregation began with interposition and ended with nullification. These arguments relied on Calhoun and the Tenth Amendment, to be sure, but on more than just constitutional grounds. Southern senators utilized the ethos of the constitution combined with romantic notions of southern sovereignty. Not only were they tonally effective, but they struck at the heart of southern values. Here, then, is where rhetoric can help us understand why southerners proved so effective at delaying civil rights. Their success lay not just in the content of their arguments, but the style and arena in which they were presented.

CHAPTER 2: STOPPING THE WAGNER-VAN NUYS ANTI-LYNCHING BILL

Introduction

The first substantive battles for civil rights legislation in the twentieth century concerned anti-lynching laws. Southern efforts to forestall those bills were messy, chaotic affairs that benefitted from northern and western support for white supremacy and indifference toward African-Americans. After the horrible spate of violence that followed Reconstruction, anti-lynching efforts, spurred by the work of activists like Ida B. Wells, took hold across the United States. Although the number of lynching deaths dropped precipitously, the drop was smaller in the South than in other regions, and beginning in 1920, those figures began to climb again. The National Association for the Advancement of Colored People, which grew in clout during the early twentieth century, began to organize around anti-lynching bills. They fought for federal legislation to punish local governments who ignored lynching, starting with the Dyer-Moores bill in 1918.[122]

While many in the South turned a blind eye to lynching in the late nineteenth century, public pressure forced community leaders to oppose the brutal crime. However, the economic hardship of the Great Depression led to increases in lynchings. Southerners, both proud of their success in preventing lynching and defensive about Northern attempts to erode the system of white supremacy used to justify segregation, saw federal anti-lynching legislation as a grave threat. The pivotal conflict occurred in 1937 over the Wagner-Van Nuys anti-lynching bill. Southern senators, led by Senator Tom Connally (D-TX), viewed the measure as a blow to home rule, and swore to defeat it by any means necessary. Connally and his caucus used the filibuster to shut down the Senate from January 7th to February 21st, 1938, eventually defeating the bill.

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[122] Robert L. Zangrando, *The NAACP Crusade Against Lynching, 1909-1950* (Philadelphia: Temple University Press, 1950).

However, that took time and energy, and Connally wrestled with a caucus that lacked discipline. What eventually came out of floor debates were a negotiated set of three arguments, all of which relied on Senate and southern traditions. Those arguments advanced the claim that southerners were targeted by their northern colleagues for supporting lynching despite strong opposition.

Southern senators first challenged Wagner-Van Nuys supporters by arguing that they refused to debate the bill. Southern arguments exploited perceived violations of decorum, the act of speaking appropriately in a given circumstance, on the part of northern senators to attack the integrity of the anti-lynching bill's sponsors. Second, southerners portrayed the bill as a sectional assault. Thanks to an amendment that prohibited the bill from targeting organized crime, the southern caucus argued that the bill punished the South in the same way as Reconstruction did. Here, southerners used arguments from reciprocity, claiming Wagner-Van Nuys did not treat both sections equally. The South had solved lynching, the north was more violent than the South, and African-Americans benefited from segregation. Hence, federal action only attacked southern home rule. Third, southerners used claims of states' rights to argue that the federal government lacked jurisdiction. Southerners used the Constitution to argue Wagner-Van Nuys overreached in regulating law enforcement. Grounded in Calhounian notions of governance, senators argued that the South should be able to enforce its own laws, and that the anti-lynching bill violated the Constitution because the federal government interfered with what should be a state responsibility. Constitutional arguments allowed Southerners to condemn lynching, while attacking Wagner-Van Nuys.

Lynching and White Supremacy

Lynching was perhaps the most violent part of Jim Crow. Often portrayed as a form of "frontier justice," southerners lynched some African-Americans to scare the rest into

acquiescence. W. Fitzhugh Brundage labels mob violence and lynching "a pervasive and semi-official institution in the South" that persisted even after most of the nation abandoned the barbaric practice.[123] However, lynching did not have southern roots. After the American Revolution, lynchings, mob violence and summary executions imposed social order in lawless territories.[124] During the antebellum period, lynching became more closely tied to race. Most lynchings, aimed at abolitionists, religious minorities, immigrants, and African-Americans, occurred in the north and west. Southern mob violence, meanwhile, "became intimately tied to the defense of slavery," though lynching only occurred in "exceptional circumstances."[125] During the Civil War, lynchings suppressed potential slave revolts, and enforced obedience in parts of the nation where community allegiances were split between Union and Confederacy.[126]

During Reconstruction, mob violence and lynchings struck fear into African-Americans, while the Ku Klux Klan, founded in the late 1860s, attacked newly-freed slaves and reconstructed governments. Violence in Reconstruction had two purposes: the oppression of African-Americans and the destabilization of new state governments.[127] Congress responded by taking swift military action to quell the mayhem and suppress the violence occurring in the South. But after the withdrawal of federal forces in the 1870s, Southerners began to restrict African-Americans both legally and extra-judicially.

Lynchings increased throughout the 1880s and peaked in the 1890s, with an average of 187.5 victims per year.[128] The increase varied by region because political and economic forces

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[123] W. Fitzhugh Brundage, *Lynching in the New South: Georgia and Virginia, 1880-1930* (Urbana: University of Illinois Press, 1993). W. Fitzhugh Brundage, ed, *Under Sentence of Death: Lynching in the South* (Chapel Hill: University of North Carolina Press, 1997).
[124] Brundage, *Lynching in the New South*, 3.
[125] Brundage, *Lynching in the New South*, 4-5.
[126] Brundage, *Lynching in the New South*, 6.
[127] Brundage, *Lynching in the New South*, 6.
[128] Arthur F. Raper, *The Tragedy of Lynching* (Chapel Hill: University of North Carolina Press, 1969).

led to different rates of lynching in different areas.[129] Still, as Arthur Raper reported in 1933, lynching was a southern phenomenon, and in the typical lynching, "the victim [was] a Negro and the lynchers [were] native-born whites."[130] Lynchings decreased rapidly outside the South: the percentage of lynchings in the South rose from 82% in the 1890s to a whopping 97.4% in the 1920s. That number decreased to 92.5 in the 1900s, and plummeted to 16.8 from 1925 to 1929.[131]

Brundage argues that the increase in lynching deaths resulted from increased conservative support for the crime. [132] As Christopher Waldrep observes, white moderates belonging to the "New Departure" wing of the Democratic party, which emphasized racial moderation, began losing elections to conservatives arguing for racial polarization.[133] White moderates were almost entirely defeated in the 1880s, leading to a reign of terror led by southern conservatives. Gilded Age lynchers, in turn, "acted with community approval, rarely donning the masks and robes favored by the Klan." [134] They chose to kill victims "in broad daylight," posed for photographs, and bragged about their violence. This allowed lynchers to claim to act for all whites, not just the Klan. Amy Louise Wood describes these lynchings as "sensational" performances in which the community produced spectacles that reinforced white supremacy.[135]

Instead of relying on white supremacy to justify lynching, Southerners used a narrative of victimhood. First, the lynch victim had committed an unforgivable crime. Most newspapers that

[129] Brundage, *Lynching in the New South*, 13.
[130] Raper, 25. From 1889 to 1929, only 21.3% of lynching victims were white, and if Texas, Arkansas, and Oklahoma were included, with large numbers of Mexican lynchings, the percentage of lynchings of people of color would be 95%.
[131] Raper, *The Tragedy of Lynching*, 25.
[132] Brundage, *Lynching in the New South*, 7.
[133] Christopher Waldrep, *The Many Faces of Judge Lynch: Extralegal Violence and Punishment in America* (New York: Palgrave McMillan, 2002), 82.
[134] Waldrep, *Many Faces of Judge Lynch*, 83.
[135] Amy Louise Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940* (Chapel Hill: The University of North Carolina Press, 2009).

covered lynchings did so by presenting "the victims of the original crime sentimentally, making the lynched person less sympathetic."[136] Often, lynch mobs relied on gendered notions of masculinity, excusing mob violence as a defense of white women. Such egregious crimes provoked citizens, who, unwilling to wait for the courts to act, murdered the suspect. Thus, the narrative was predicated on lynchings occurring in rural areas where there were not viable court systems.[137] Finally, lynchings required public support, especially from prominent citizens or even African-American community members. Popular opinion provided a shield for those who took the law into their own hands.

While lynching narratives justified mob violence, lynchings were often done with little provocation. Ida B. Wells, one of the earliest American investigative reporters, found only about a third of lynchings were attributed to rape, meaning the most popular southern justification for lynch law was buncombe.[138] Instead, she noted how southerners used minor crimes, including social violations, to justify murder. Her book, *A Red Record: Tabulated Statistics and Alleged Causes of Lynchings in the United States, 1892-1893-1894*, combined with her tours of England and Northern states, did much to catalog the brutal violence occurring in the South.[139] Wells' work caused prominent African-American leaders, including African Methodist Episcopal Bishop Henry M. Turner and Booker T. Washington to denounce lynching, [140]

While Wells performed the initial investigative work, the NAACP and the Tuskegee Institute both organized to put an end to lynching. Monroe Work, a sociologist at the Tuskegee Institute, began tracking lynching statistics; white southern presses took Work's numbers and

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[136] Waldrep, *Many Faces of Judge Lynch*, 88.
[137] Waldrep, *Many Faces of Judge Lynch*, 93. Waldrep reports that papers would often complain about lynchings that occurred in places where courts functioned.
[138] Waldrep, *Many Faces of Judge Lynch*, 90.
[139] Waldrep, *Many Faces of Judge Lynch*, 114.
[140] Waldrep, *Many Faces of Judge Lynch*, 124.

"presented them as a true picture of Southern lynching."[141] Meanwhile, the NAACP began the first campaigns for federal anti-lynching legislation. In 1918, Republican Congressmen Leonidas Dyer and Merril Moores sponsored the first anti-lynching bill in the United States House of Representatives. The bill "defined a lynch mob as three or more persons, promised to guard the lives of American citizens denied protection by their states, punished state officials who refused to protect citizens, and fined entire counties or cities where lynchings occurred."[142]

The NAACP led the fight for the Dyer bill, which passed the House 231-119.[143] However, many southern members of Congress argued that "lynching was the South's problem and could therefore only be solved by southern action."[144] Southern states took quick action to curtail lynching; in 1922, the South saw 52 lynchings, which dropped to 7 by 1929.[145] Meanwhile, the NAACP strengthened its political organizing and threatened reprisals against the GOP for failing to support the Dyer bill with sufficient verve. It also bolstered fundraising, endorsements, and membership through the anti-lynching campaign, strengthening the Association's work on all issues.[146] However, on anti-lynching legislation, the NAACP retreated, choosing the more costly and time-consuming task of pursuing individual cases at the local level.[147] In 1933, however, after three years of declining numbers, lynching deaths rose sharply, forcing the NAACP back into Congress to demand a federal anti-lynching law.[148]

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[141] Waldrep, *Many Faces of Judge Lynch*, 132.
[142] Waldrep, *Many Faces of Judge Lynch*, 135.
[143] Zangrando, 64.
[144] Kimberley Johnson, *Reforming Jim Crow: Southern Politics and State in the Age before Brown* (New York: Oxford University Press, 2010), 48.
[145] Monroe N. Work, ed, *Negro Year Book: An Annual Encyclopedia of the Negro, 1937-1938* (Tuskegee: Negro Yearbook, 1937), 156.
[146]Zangrando, *NAACP Crusade Against Lynching*, 80, 83.
[147] Zangrando, *NAACP Crusade Against Lynching*, 85.
[148] Zangrando, *NAACP Crusade Against Lynching*, 99.

Initially, the NAACP turned to Senator Robert Wagner of New York and Senator Edward Costigan of Colorado, who sponsored an anti-lynching bill in 1933. Walter White, president of the NAACP, thought that the bill could make it through Congress without a southern filibuster, but the Wagner-Costigan measure languished in the Senate throughout 1933 until reintroduced in 1934.[149] The 1934 Costigan-Wagner bill "involved no direct federal action against lynchers themselves," but rather "was aimed at law officers who, by indifference or collusion, permitted lynching."[150] Ultimately, a lack of effort from the Roosevelt Administration led to failure. Senate Democrats filibustered the bill in April 1935, defeating it, and leaving the NAACP to regroup. They did so in 1937, with the Wagner-Van Nuys anti-lynching bill.

The Fight for Wagner-Van Nuys

On June 22, 1937, the Senate Judiciary Committee reported two similar anti-lynching bills favorably: a measure by Joseph Gavigan, a Democratic member of Congress who represented Harlem, and a bill by Democrats Robert Wagner of New York and Frederick Van Nuys of Indiana. The committee gave preference to the Wagner-Van Nuys bill, which punished state officials who failed to protect prisoners from a mob with five years in prison and a five-thousand-dollar fine.[151] The families of lynching victims would also be eligible for up to $10,000 in benefits (roughly $170,000, adjusted for inflation) from the county government responsible for the lynching. Debate on the measure began in August.

The beginning of the debate was marked by acrimony; Senate Majority Leader Alben Barkley, a Kentucky Democrat, asked Vice President John Nance Garner to avoid recognizing Wagner when he introduced the bill to forestall a contentious debate. No other Senators came

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[149] Robert N. Zangrando, *The NAACP Crusade Against Lynching, 1909-1950* (Philadelphia: Temple University Press, 1980), 114.
[150] Zangrando, *NAACP Crusade Against Lynching*, 115.
[151] "Lynching Bill Approved," *New York Times*, June 11, 1937.

forward to introduce legislation, however, and Senate rules required Garner recognize Wagner.[152] Barkley attempted to adjourn the Senate, superseding Wagner's motion.[153] That attempt failed, though a later attempt to move the Senate into recess succeeded. After the recess motion, leadership worked out a deal with Wagner: the anti-lynching bill would be added to the calendar, debate would proceed in a special session later in the year, and priority would be given to a farm subsidy bill.[154]

The controversy allowed Senator Thomas Connally, a Democrat from Texas, the opportunity to speak before Wagner-Van Nuys hit the floor.[155] Connally, the de-facto leader of the southern caucus, was an irascible Texan known for an acerbic tongue and his performances on the floor of the Senate.[156] Still, his relative moderation on race meant that he was more qualified to lead Senate southerners than Theodore Bilbo or Allen Ellender, more noxious white supremacists. Connally's speech argued "federal anti-lynching statutes rested on unconstitutional use of the Fourteenth Amendment."[157] Connally claimed that the Fourteenth Amendment applied only when the state took an affirmative action, meaning that in cases of police negligence, guilt only extended to the negligent police officer.[158] Connally also accused the north of engaging in sectionalism, kowtowing to civil rights advocates. He pointed to an amendment offered by Illinois Senator William Dietrich, which exempted mob-related crime, and argued that the bill targeted southerners, who had worked to curtail lynching.[159]

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[152] Keith M. Finley, *Delaying the Dream: Southern Senators and the Fight against Civil Rights, 1938-1965* (Baton Rouge: Louisiana State University Press, 2008), 25.
[153] "Anti-Lynching Bill Likely to Pass in Senate," *Chicago Tribune*, August 12, 1937.
[154] "Lynching Bill Delayed Until Next Congress; Adjournment is Brought Nearer By Move," *Chicago Tribune*, August 13, 1937.
[155] Finley, 26.
[156] Finley, 23-24.
[157] Finley, 26.
[158] Finley, 27.
[159] Finley, 25, 28.

The Wagner-Van Nuys debate marked a change in tactics for southerners, who frequently excused lynching as a defense of white womanhood. In 1938, the southern bloc portrayed lynching "as a vote-grabbing scheme by northern senators with large black constituencies," while portraying the North as "simmering with social unrest."[160] The South, meanwhile, "bordered on the idyllic, with peace and good order the standard."[161] Finley observes that the debate was one of contrast, resetting the terms of federal action. The South chose to defend its values rather than defend its opposition to civil rights. The two, as subsequent arguments made clear, were inexorably intertwined, and to challenge one was to challenge the other.

The Filibuster

The filibuster of Wagner-Van Nuys started on January 7, 1938, with a speech by Senator William Borah (D-ID), arguing that the bill sought to exploit sectional differences. Debate ended on February 21st, with Senate Majority Leader Alben Barkley (D-KY) begging his caucus to move onto the pending farm bill. The Senate defeated a motion to invoke cloture 42-46.[162] Despite the bill being exceptionally popular, with a Gallup poll suggesting that 72% of Americans and 57% of southerners supported federal anti-lynching action,[163] southern senators, along with ideological allies like Borah, managed to defeat the legislation by concentrating attacks along several key areas. Rather than targeting the bill's motives, southerners challenged its supporters, the key tenets underlying the bill, and the role of the federal government in

[160] Finley, 29.
[161] Finley, 29.
[162] February 16th, pp 2007
[163] An early Gallup survey reported that 72% of Americans and 57% of Southerners favored federal action on lynching. Dr. George Gallup, "Nation Favors Anti-Lynching Law in Survey," *Washington Post*. November 15, 1937, 1.

passing the legislation. In doing so, southern senators reframed the issue as one of southern autonomy rather than lynching.

Senators utilized three major strains of argument. First, they attacked supporters of the legislation for failing to appear to debate or listen to arguments against the bill. If the bill's sponsors could not defend the bill, it was indefensible. Here, southerners exploited the traditions of the Senate, portraying themselves as statesmen engaged in lively debate and their opponents as cowards, unwilling to defend their work. Second, southerners portrayed the bill as a sectional assault. Senators pushed back against criticism, defending the South as an honorable agrarian culture that had made strides to prevent lynching. Southern senators alleged the bill allowed northern colleagues to control the south, despite rampant violence in the North and what southerners saw as a fundamental misunderstanding of the race question. Third came arguments as to the constitutionality of the bill, where southerners drew on federal case law to attack Wagner-Van Nuys.

These three strategies combined to help Southerners redefine the terms of the debate. Senators, bound by the rules and traditions of the body, defined by the parameters of the rhetorical forum, utilized arguments from decorum, which exploited the contextual rules of the Senate and the personalities forged within them. Those arguments reflected the abrasive personality of Connally, an irascible Texan who William S. White once described as "unpredictable as an undischarged Roman candle."[164] However, as southerners, they relied on traditions derived from John C. Calhoun's consensus model of government as well as cultural resources present after the Civil War and Reconstruction. In these next sections, I explore how southern arguments incorporated rhetorical resources to wear away support for the legislation.

[164] William S. White, *Citadel: The Story of the United States Senate* (New York: Harper Collins, 1956), 5.

Arguments from Decorum

The first major line of argument consisted of accusations against Northern senators as to their unwillingness to debate on the floor of the Senate. The Senate, designed to "restrain impetuous, ill-considered actions by either the House of Representatives or the president," faced a disaster of its own making.[165] Southerners alleged that the Senators defending Wagner-Van Nuys did not care about debate and instead wished to force the bill through, despite its flaws. Hence, southerners justified the use of the filibuster against Wagner-Van Nuys as the last resort for substantial debate. In the subsequent section, I explore how southerners shaped arguments around decorum. Southerners routinely pointed out the violations of Senate norms, and exploited those violations to cast doubt on the motives of their colleagues and the quality of their arguments.

Southerners took advantage of Senate norms and traditions to argue that Wagner, Van Nuys, and their allies engaged in a breach of decorum. Decorum is simply defined as speaking appropriately in a given circumstance.[166] Cicero intended decorum to focus upon matters of judgment by orators. However, modern rhetorical critics like Michael Leff categorize it as a "broad, non-technical (or even anti-technical) function" of rhetoric.[167] Jarrod Atchison observes that the main benefit to this "broader understanding" of decorum is "that it enables critics to consider the interaction between text and its context, rather than simply focusing on style."[168] As Atchison argues, "[u]nderstanding the relationship between the message and the occasion in

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[165] Neil MacNeil and Richard Baker, *The American Senate: An Insider's History* (New York: Oxford University Press, 2008) 303.
[166] Cicero, *Orator*, rev. ed. H.M. Hubbel Trans. (Cambridge: Harvard University Press, 1962), 357-359.
[167] Michael Leff, "Decorum and Rhetorical Interpretation: The Latin Humanistic Tradition and Contemporary Critical Theory," *Vichiana* 1, 3a Series (1990): 107-126.
[168] Jarrod Atchison, "The Mystic Chords of Separation: Decorum and Jefferson Davis's Resignation from the Senate," Southern Communication Journal 77.2 (2012): 115.

which it occurs... is a prerequisite to making any assessments of the decorous nature of a text."[169] That relationship changes based on location and time. In the Senate, there were unwritten rules for floor debate that, in this case, southerners alleged were violated.

Article I, Section 5 of the United States Constitution affords each chamber of Congress the power to make its own rules. In contrast with the House of Representatives, designed to be a voice of the people, the Senate was designed to reign in excesses of the majority and to serve as a check upon popular passions. Over time, debate came to be the way in which the two houses distinguished themselves. The House of Representatives consisted of rabble-rousing Congressmen who would pound the table over the issues of the day, whereas the Senate consisted of statesmen ruminating over key issues facing America.

Self-righteousness aside, the Senate's rules on floor debate are critical to understanding relationships between members and the body. Debate "legitimizes" Senate action.[170] The structure of the institution supports "extensive deliberation at the cost of expeditious action," and Senators possess substantial individual power because of "their right to engage in virtually unlimited debate." [171] Senators take this right seriously, using floor debate to communicate with each other, to advance or defeat legislation, or to lay the groundwork for future legislative campaigns.[172] Through all these actions, Senators reaffirm the importance of discourse. Debate seldom changes votes, but ignoring debate is egregious enough to "risk the final outcome" of a legislative fight.[173]

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[169] Jarrod Atchison, A War of Words: The Rhetorical Leadership of Jefferson Davis (Tuscaloosa: University of Alabama Press, 2017), 12.
[170] Reedy, 49.
[171] Richard Baker "Ritual and Ceremony in the United States Senate," in *Rituals in Parliaments*, eds. Emma Crewe and Marion G. Muller (Frankfurt: Peter Lang, 2006). 112.
[172] Bertram M. Gross, The Legislative Struggle: A Study in Social Combat (New York: McGraw Hill, 1953), 365.
[173] MacNeil and Baker, 291.

This sense of the Senate also affects the way in which other branches view the body. Senate debate builds a record "for the courts and for the executive branch of the government on legislative intent."[174] Neil MacNeil and Richard Baker elaborate, noting that members of the executive and lower courts consulted Senate debate in order to derive legislators' intentions.[175] Hence, floor debate has material consequences outside of the Senate chamber, meaning different sides "muster all the political strength they could, including having on hand their most articulate spokesmen to argue the cause on the Senate floor."[176] If one side abandoned debate completely, the other one possessed complete control over the arguments presented. In failing to address the concerns of the opposition, a bill could not be legitimated by the body, which made senators look like they are ignoring their duties and their colleagues. By exploiting the lack of counterarguments, and accusing northern senators of failing to speak, southerners maximized that damage, reinforcing their arguments about the substance of the bill.

The first instance of argument by decorum occurred on January 7th, where Connally, in a question to Kenneth McKellar (D-TN), noted that neither Wagner nor Van Nuys were in the chamber, and that "in fairness to them, at least, they ought to be invited into the chamber and remain here to hear this discussion."[177] McKellar demurred, refusing Connally's request for a quorum call while bemoaning his colleagues' reluctance to listen, saying "their minds are closed."[178] After a brief exchange, in which McKellar argued he was "challenging them for the *Record*," Connally insisted on a quorum call.[179] The senator from Texas argued that McKellar could not "challenge them when they are over in their offices writing letters when we are staying

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[174] George E. Reedy, The U.S. Senate (New York: NAL Press, 1986), 49.
[175] MacNeil and Baker, 291.
[176] MacNeil and Baker, 291.
[177] 75 Cong. Rec. 146 (1938).
[178] 75 Cong. Rec. 146 (1938).
[179] 75 Cong. Rec. 146 (1938).

here attending to the business of the Senate."[180] Connally wanted the quorum call to bring "attention to the fact that [Wagner], who is so eloquent with his mouth when he is here, is now busy in his office with other affairs."[181] McKellar yielded the floor for a quorum call. This instance, the first of many, demonstrated how southern senators used the norms and expectations of the Senate against Wagner-Van Nuys' proponents. McKellar and Connally performed the role of "Senator," while asserting Wagner did not.

Future exchanges followed a similar model. On January 8th, a frustrated Connally took the floor, noting the absence of Wagner, Van Nuys and majority leader Alben Barkley, who "seem to have absolutely abandoned the field in behalf of the proposed legislation after the destructive speech of the senior Senator from Idaho (Borah) yesterday."[182] Connally mused aloud, asking the assembled men whether "it is fair to keep the rest of us here."[183] Again, leadership looked buffoonish in the face of anti Wagner-Van Nuys arguments, and Connally and southerner Robert Rice Reynolds (D-NC), who had the floor, looked more professional.

Of note was the tone of the argument from decorum; much like Connally itself, the character of the southern broadside took an abrasive form. This abrasiveness manifested itself frequently throughout the debate. On January 10, after Connally once again observed Wagner's absence, his seatmate J. Hamilton Lewis (D-IL), pointed out that he was absent because "having come over from New York this morning… he missed his breakfast, and has gone down… to get some lunch."[184] Connally thanked Lewis for looking "after the physical demands of [Wagner]," but observing that "it is a much higher duty to look after his mental and moral appetites."[185]

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[180] 75 Cong. Rec. 146 (1938).
[181] 75 Cong. Rec. 146 (1938).
[182] 75 Cong. Rec. 223 (1938).
[183] 75 Cong. Rec. 223 (1938).
[184] 75 Cong. Rec. 264 (1938).
[185] 75 Cong. Rec. 264 (1938).

When Van Nuys attempted to defend his colleague, noting that he was present because of Wagner's absence, Connally retorted that he was "sufficiently interested that he does not eat any lunch and does not expect to eat any lunch until this bill is disposed of."[186] Connally immediately launched into a tirade, condemning Wagner for his inaction:

> The Senator from Texas is sufficiently interested that he does not eat any lunch and does not expect to eat any lunch until this bill is disposed of, if by doing so he has to remain off the floor and fail to hear the arguments. I have been waiting now for some time to hear the presentation of this bill by the Senator from New York…. He has never seen fit to advance the reasons, if there are any reasons, why he advocates the bill. While he is off, Lucullus-like, banqueting on choice viands and food, he demands that the rest of us remain here to hear this debate. If the Senator from Texas has it within his power to do so, he is going to bring the Senator from New York in on this floor so that he may hear the challenges of this bill by eminent senators, such as the Senator from Arkansas (John Miller, who had the floor), who knows what the bill is about, while, I am sorry to say, the Senator from New York does not seem to understand the bill at all.

Connally's condemnation transformed Wagner's hunger pangs into dereliction of duty. By failing to listen to the debate, Northern senators abandoned their responsibilities to the Senate and their constituents. Wagner merited a comparison to Roman general and politician Lucius Licinius Lucullus, renowned for his lavish banquets. Arguments from decorum lionized southern senators and denigrated the bill's supporters. After all, a senator's job was to listen to and engage in debate.

[186] 75 Cong. Rec. 264 (1938).

Connally's challenges appeared infrequently in subsequent debate. On January 11th, he observed Wagner and Van Nuys were absent during a speech by Georgia Senator Richard Russell (D).[187] Likewise, when Senator John Miller (D-AR) attempted a quorum call on the 14th, Connally insisted that senators were cheating on the quorum call process: "certain Senators answered and immediately departed."[188] To do so was not a true quorum call, and Connally swore to "challenge the integrity of the roll calls… if the Senate is going to order us to stay here and debate this bill I want senators to stay and hear the debate, because of they do they will not vote for this infernal measure."[189] On the 26th, McKellar interrupted a speech by Russell to observe that he had "not heard the advocates of this bill do or say anything up to date."[190] Russell responded, arguing that lack of participation in the debate made it "very difficult for those of us who are opposed to this bill… only in the clash of mind with mind does the truth scintillate, and we have been unable to generate any clashes between the minds of those who support it, because not one of its supporters has taken the floor in his own right… to explain the bill."[191] This, in turn, led Connally to ask how supporters could defend the bill, and Russell, in turn, responded that the question "had addressed itself to the able authors of this bill since the first time [it] was presented."[192] The obvious conclusion was that the bill was indefensible, and that the bill's sponsors did not care about deliberation enough to let the Senate dispose of it properly. Not only were Wagner and Van Nuys defending the indefensible, but they had committed dereliction of duty by failing to defend the legislation.

[187] 75 Cong. Rec. 312 (1938).
[188] 75 Cong. Rec. 511 (1938).
[189] 75 Cong. Rec. 511 (1938).
[190] 75 Cong. Rec. 1103 (1938).
[191] 75 Cong. Rec. 1104 (1938). As would become his trademark, Russell's response was more genteel and forgiving than Connally ever was.
[192] 75 Cong. Rec. 1104 (1938).

Wagner offered to defend his bill on January 26th. Southerners responded with derision. McKellar alleged that Wagner was only willing to speak "after he knows he has lost the battle, after he knows the bill is not going to pass."[193] Wagner objected, but McKellar argued "we are going to have a vote… tomorrow. If the Senator has a sufficient number of votes… why does he rise to defend the bill at this late date after the fight as gone on for 6 weeks?"[194] Connally also jumped in, arguing that "this is the third time within a year that the Senate has been pestered and bedeviled and annoyed with this bill…. Today is a late date for the Senator from New York… to come rushing wildly into the Chamber with a book in his hand and say "I want to speak in defense of my bill," which is in the last stages of consumption."[195] McKellar's invective here amplified the damage the bill caused, but also dismissed Wagner's efforts as both ineffective and condescending, his string of verbs dismissing the proponents of the legislation.

Connally made a similar argument on February 8th, interrupting John Bankhead (D-AL), to ask why "some of the Senators who are loudest in their claims that this measure ought to be acted upon will not remain in the Senate Chamber and attend to the public business at all?"[196] Bankhead responded that "it seems to me to be perfectly outrageous that men who proclaim all over the United States their devotion to this measure… will not stay here and give anybody an opportunity to try to convince them that the measure ought not to be passed."[197] However, the exchange quickly devolved into an attack on the previous speaker, Joseph Guffey (D-PA). Connally observed "the Senator from Pennsylvania appeared and read a nice little piece, and then left the Chamber, and will not remain even to hear the Senator from Alabama reply to his

[193] 75 Cong. Rec. 1135 (1938).
[194] 75 Cong. Rec. 1135 (1938).
[195]75 Cong. Rec. 1135 (1938).
[196] 75 Cong. Rec. 1627 (1938).
[197] 75 Cong. Rec. 1627 (1938).

speech." Bankhead, in turn, noted that Guffey had "277,355 reasons for being for this bill, and they were all colored persons in Pennsylvania over 21 years of age." Presence on the chamber floor turned into a cudgel to use against the integrity of the legislation's supporters. To be absent was to neglect one's duties as a Senator, disrespecting one's colleagues.

These assaults against the behavior of Northern and Western proponents of Wagner-Van Nuys established southern senators as genteel statesmen who favored open debate. Meanwhile, southern speeches cast pro-civil rights senators as unwilling or unable to defend the anti-lynching bill. By failing to speak in defense of their bill, the civil rights faction of the Senate failed to perform the role of Senator, endangering passage of the legislation. Refusing to debate the bill meant that Wagner and Van Nuys lost an important symbolic victory, while allowing southerners to mischaracterize the nature of the legislation. Instead of the anti-lynching bill saving African-Americans, the measure was a way for northern Senators to further exploit the South. This opened an avenue for arguments that Wagner-Van Nuys targeted southern states.

Reciprocity, or a Sectional Assault

Southerners also portrayed Wagner-Van Nuys as a sectional assault, impugning the motives of northern senators by alleging they unfairly targeted the South. Southern senators used sectional appeals to attack northern positions on three fronts, focusing on the uneven treatment of southern states. Southern arguments relied on what Chaim Perelman called the rule of justice, or reciprocity: Wagner-Van Nuys did not treat individual states as equals despite possessing equal rights, and that the anti-lynching law was therefore unjust. Southerners argued from three premises. First, the North was more violent than the South, and accordingly, the anti-lynching bill unfairly targeted southern states. Second, the South had curtailed lynchings, meaning that the true goal of Northern politicians was a second Reconstruction, more violent than the last. Third,

southern assistance provided to African-Americans proved that the South was making progress on racial harmony, albeit harmony that relied on segregation.

The rule of justice, or reciprocity, became critical to southern arguments in 1938. Chaim Perelman defines the rule of justice as "the equal treatment of beings who are essentially alike."[198] Perelman argues that, to justify different treatment under the rule of justice, one must show that the difference between beings is not arbitrary, "but rather proportionate to some measurable factor."[199] Southern political philosophy was predicated upon the notion that individual states possessed the same powers.[200] Hence, southerners fought vociferously against charges that the states were different, challenging northern claims about southern violence.

Southern senators began by noting that the North was violent. Taking advantage of the Dietrich Amendment, which precluded gang violence from the bill, they alleged the bill unfairly targeted lynching while ignoring other types of violent crime. Kenneth McKellar (D-TN) challenged the bill's supporters to "name another crime in the case of which there has been a steady decrease each year… from 1892 to 1938."[201] He concluded that "some crimes… are peculiar to one part of the country and some crimes which are peculiar to others," specifically noting the lack of gang killings in the South.[202] McKellar argued "[t]he taking of human life by gang murder is just as hurtful to the person whose life is taken as if it were taken by lynching, and generally the crime may be said to be more hurtful, because there are so many more of the gang murders."[203] The authors of the bill, asserted McKellar, were "so very careful to excuse

[198] Chaim Perelman, *Justice* (New York: Random House, 1967), 23.
[199] Perelman, 38.
[200] John G. Grove, *John C. Calhoun's Theory of Republicanism* (Lawrence, Kansas: University Press of Kansas, 2016), 8.
[201] 75 Cong. Rec. 147 (1938). McKellar was being obtuse; lynching rates had gone down progressively, but had also spiked in the past ten years. He was right in the aggregate but torturing the numbers.
[202] 75 Cong. Rec. 147 (1938).
[203] 75 Cong. Rec. 147 (1938).

lynching by gangsters."[204] This began the southern goal of equivocating between lynching deaths and gang violence: if the two were the same, it proved that the law was unjust.

Senators frequently compared lynching and gang violence. During a speech by Senator John Miller (D-AR), Senator Charles Andrews asked for "statistics showing the number of innocent people in Illinois… who were murdered by gangsters in 1937 or 1936."[205] On January 12th, after Senator Richard Russell (D-GA) argued "that there should be some specific mention in the bill of killings by gangs and some penalty imposed on communities which permit gangsters to ply their nefarious trade," McKellar rose to amend the bill's definition of lynching to include "any violence by members of a group of lawbreakers, such as are commonly designated as gangsters or racketeers, which results in the death or maiming of any person."[206] Again, senators sought to change the definition of "lynching" to include gang violence. Drawing overt comparisons between northern and southern crimes allowed senators to cry hypocrisy; there existed no reason to pass federal restriction to stop one kind of violent crime over another.

Southerners also argued African-Americans in the North committed more violent crimes, often comparing northern crime statistics compared with the number of lynching deaths in the South. McKellar argued that in the South "[t]here is but one lynching to something over 16,000,000 inhabitants" while crime rates in the District of Columbia exploded, subsequently reading five pages of editorials and news stories into the record.[207] This act of enumeration diminished the number of lynching deaths, and reinforced the injustice of the anti-lynching bill. Northern cities failed to manage gang and African-American crime, but their senators had the temerity to regulate law enforcement in the South.

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[204] 75 Cong. Rec. 147 (1938).
[205] 75 Cong. Rec. 269 (1938).
[206] 75 Cong. Rec. 363 (1938).
[207] 75 Cong. Rec. 447 (1938).

More overt claims of northern inferiority were made by Allen Ellender (D-LA). Ellender, an avowed white supremacist, alleged northern violence was caused by desegregation. Social decay "followed wherever there has been a mixture of the colored races with the whites." Ellender observed that "[f]or every 100,000 Negroes in the South, 290 were incarcerated… and in the remaining 35 states, 957 out of every 100,000 were sent to the… jails."[208] Ellender asserted that in the North, "with a little less than one-fourth of the Negro population, we find that almost three times more Negro prisoners… went to jail than in the South…. To what can we attribute such a large difference? The only answer is that we in the South know how to cope with the Negro problem. We do not let the Negro feel that he is socially equal to the white race."[209] On February 9th, Ellender argued that "in some northern cities where the Negro population is 11 percent as against 89 percent for the whites, the amount of crime among the 11 percent of Negroes is greater than that among the 89 percent of whites."[210] After comparing crime statistics from northern cities to New Orleans, Ellender concluded that "for every race riot we have had in the South there have been 10 such riots in the North, which to my mind shows that the people of the North who encourage this unwholesome intermingling of the races, soon discover that it breeds racial hatred."[211]

Ellender's argument, appalling as it was, served two purposes. First, it reinforced the southern caucus's argument by reciprocity, asserting the anti-lynching measure was designed to impede southern governance while helping northern senators win re-election. Second, Ellender named white supremacy as the solution to perceived problems with African-Americans, suggesting that, as the key difference between North and South, segregation proved that

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[208] 75 Cong. Rec. 504 (1938).
[209] 75 Cong. Rec. 504 (1938).
[210] 75 Cong. Rec. 1683 (1938).
[211] 75 Cong. Rec. 1683 (1938).

southerners could handle the race problem while northerners could not. Ellender delivered the latter argument in part because Connally felt pressured to permit more racist senators to "deliver speeches against the measure to lend credence to the arguments of the region's more vocal advocates of white supremacy."[212] Still, Ellender's broader arguments fit with the southern theme of reciprocity, alleging that northern senators sought to end southern home rule, while arguing that white supremacy could improve relations between African-Americans and whites.

Second, southerners claimed Wagner-Van Nuys was unnecessary because their states had already solved the lynching issue. Perelman observes that, in accordance with the rule of justice, inequalities are permissible amongst equals provided they "can be justified by showing that they are advantageous to all and that no one is excluded *a priori* from an advantageous function."[213] Because southerners had already addressed lynching deaths, there was no advantageous function to having federal regulation of lynching. Hence, the risk of federal control over law enforcement outweighed any potential benefits.

Southerners spent substantial time asserting lynching was no longer a problem. On January 7th, McKellar read into the record lynching statistics from the Tuskegee Institute, concluding that under state authority, the South had "blotted out lynchings entirely and practically blotted out colored lynchings."[214] The southern caucus was fond of the Tuskegee numbers; trusted by everyone, including southern whites, they lent an aura of authority to southern arguments about racial harmony. Subsequently, on January 10th, John Miller (D-AR) introduced the Tuskegee statistics into the record,[215] while Hattie Caraway (D-AR) referred to

[212] Finley, 36.
[213] Perelman, *Justice*, 41.
[214] 75 Cong. Rec. 146 (1938). This, of course, ignored the uptick in lynchings in past years.
[215] 75 Cong. Rec. 268 (1938).

them on January 13th, grousing that anti-lynching bills had been introduced "[e]ver since the Civil War… despite the fact that the records show an ever-increasing decline in lynchings."[216]

McKellar mustered other evidence to demonstrate that the South had done an ample job of stopping lynchings. On January 17th, he read into the record fourteen letters from various southern governors explaining how their states passed legislation against lynching that rendered federal laws unnecessary.[217] In a question on January 15th, Robert Rice Reynolds (D-NC) argued that "the crime of lynching has been materially reduced, and… last year there were only eight lynchings in the United States" while "the crimes of murder, rape, larceny, housebreaking, burglary, and crimes of every other classification in this country have increased."[218] By diminishing the importance of lynching, reducing its symbolic value, and treating it like a routine crime, Reynolds and other southerners minimized its importance.

Southern senators also found other causes for lynching besides racism. On January 24th, Senator Claude Pepper (D-FL) noted the decline in lynching from 1899 to 1933, but attributed it to "a correlation between the economic condition of the country and the number of lynchings."[219] Pepper asserted that "the greater the economic depression, the larger the number of crimes which provoke inflamed pubic passions, resulting in lynching."[220] Instead, the bill targeted the right of Americans to local self-government, and a real solution would be to fix the economic and legal causes of lynchings. Similarly, Senator Richard Russell argued that a lynching bill wasted the Senate's time, because "lynching is the only crime which is on the decrease in America."[221] Instead, the Senate needed to concentrate on other, more important matters.

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[216] 75 Cong. Rec. 431 (1938).
[217] 75 Cong. Rec. 625-627 (1938).
[218] 75 Cong. Rec. 583 (1938).
[219] 75 Cong. Rec. 975 (1938).
[220] 75 Cong. Rec. 975 (1938).
[221] 75 Cong. Rec. 1038 (1938).

Indeed, the root of the problem lay not with southern states, but Northerners forcing a new Reconstruction on the South. Recalling Reconstruction, Senator William Borah (R-ID), a western ally, argued that "[t]he measure now before the body embodies the same principle upon which [Reconstruction was] founded. The same arguments are made in support of the pending measure, to wit, that the southern people are to be distrusted and are incapable of local self-government."[222] Returning to those measures was harmful because Reconstruction era policy "retarded and frustrated the coming together of the people of the different States. They gave us the Solid South. They separated us politically, which separation continues until this day. They implanted a sense of bitterness in the minds of those people, not because of what had happened upon the field but because of what happened in Congress."[223] Grounding the solution in reciprocity, Borah made the stakes clear: the bill restricted southern self-government and fostered political separation and resentment.

Borah's arguments invoked the specter of Reconstruction, utilizing the myth of the "Lost Cause of the Confederacy, which framed the Civil War as an "essentially heroic melodrama, an honorable sectional duel, a time of martial glory on both sides, and triumphant nationalism."[224] Despite southern moral clarity, they lost the war, which led to the horror of Reconstruction. Here, Borah utilized the Dunning school of history, which spun a tale in which "blacks, aided by

[222] 75 Cong. Rec. 138 (1938).
[223] 75 Cong. Rec. 138 (1938).
[224] Nolan, 12. For more on the Lost Cause, see the following: William C. Davis, *The Cause Lost: Myths and Realities of the Confederacy* (Lawrence: University Press of Kansas, 1996). 180. David Goldfield, *Still Fighting the Civil War: The American South and Southern History* (Baton Rouge: Louisiana State University Press, 2002). David W. Blight, *Beyond the Battlefield: Race, Memory and the American Civil War* (Amherst: University of Massachusetts Press, 2002). Thomas L. Connelly and Barbara L. Bellows, *God and General Longstreet: The Lost Cause and the Southern Mind* (Baton Rouge, Louisiana State University Press, 1982). W. Stuart Towns, *Enduring Legacy: Rhetoric and Ritual of the Lost Cause* (Tuscaloosa: University of Alabama Press, 2012). Gary W. Gallagher and Alan T. Nolan, eds, *The Myth of the Lost Cause and Civil War History* (Bloomington: Indiana University Press, 2000). Charles Reagan Wilson, *Baptized in Blood: The Religion of the Lost Cause, 1865*-1920 (Athens: University of Georgia Press, 1980). David W. Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge: Harvard University Press, 2001).

Yankee carpetbaggers and Southern scalawags, began using freedom as a license; they soon were threatening the civilization of the South."[225] His speech transformed the anti-lynching bill into a fight over the very soul of the south, challenging the underpinning justifications for the bill and asserting that it was analogous to Reconstruction.

Southerners gleefully took up Borah's argument through the course of the debate. On January 10th, Senator Pat Harrison (D-MS) brought up sectional concerns, arguing that Wagner-Van Nuys "is a challenge to constitutional government in the South, and an insult to the people of that section."[226] Harrison blamed lynching on the failures of Reconstruction: "when groups of citizens, for their own protection and that of their wives and children, were compelled to take the law in their own hands, not only to inflict punishment upon the guilty but to put fear in the minds of others, the records of lynchings did increase."[227] On January 15th, Allen Ellender made the argument more explicitly: "[T]he great Federal Government, the authorities that cannot handle the crime situation in the city of Washington, want to go down into the South and show us how to handle the Negro problem."[228] Ellender blamed northern intervention for the increase in lynchings, and asserted that unjust treatment of states was the root cause of lynching.

On January 24th, Claude Pepper spoke of his grandfathers, who both served in the Confederate Army. They "asked only that they be permitted to work out their own destiny in a political and social way and to reconcile into practicality the very delicate problem of living in harmony and legal equality with a race which had just been a slave race and had come to a new-found liberty and an unexpected emancipation."[229] The length of Pepper's sentence belied the

[225] Wilson, 110.
[226] 75 Cong. Rec. 253 (1938).
[227] 75 Cong. Rec. 255 (1938).
[228] 75 Cong. Rec. 582 (1938).
[229] 75 Cong. Rec. 974 (1938).

challenges faced in the South. Pepper's grandparents did not find "sympathetic understanding of this problem."[230] Instead, "it was their tragic discovery" that "lust for power began to make itself disgracefully felt even upon the floors of the American Congress," and Reconstruction brought men "willing to build political fortunes upon the enslavement of what had been a proud people."[231] Pepper's argument reversed the fortunes of African-Americans and southerners, portraying southerners as repressed, and blaming the ills of African-Americans on Reconstruction. Again, the problem lay not with the South, but with federal intervention.

Third, southerners challenged claims that African-Americans were repressed. To make an argument by reciprocity, southerners had to prove that states were, in fact, equal. This meant establishing that there was law and order in the South, and that African-Americans were not mistreated. Senators chose to emphasize gains made by African-Americans while blaming the root cause of their suffering on Reconstruction. This permitted a positive defense of segregation, relying on paternalism, while allowing them to reassert their arguments from reciprocity, and blame the ills of the South on northern intervention during Reconstruction.

. Senators emphasized both personal stories and statistical evidence to demonstrate how African-Americans prospered in the South. On January 7th, McKellar told a story of an African-American he defended against an unfair tax charge to demonstrate "as long as I have lived, with knowledge of the situation, I have never failed, when colored people around me were unfairly treated."[232] McKellar argued that southerners aided African Americans, who "started with virtually nothing in 1866," and since then "acquired billions of dollars of property," and "80 percent of them can read or write."[233] Under southern control, African-Americans had

[230] 75 Cong. Rec. 974 (1938).
[231] 75 Cong. Rec. 974 (1938).
[232] 75 Cong. Rec. 144 (1938).
[233] 75 Cong. Rec. 144 (1938).

"developed in thrift, they have improved in education, they have improved in business, they have improved in agriculture, they have improved as industrial workers… they have improved in the broadest sense of the term. They have taken advantage of their opportunities."[234] McKellar asked the Senate why it made sense "to take from the local authorities legal control over the lives and property of the colored man and put it into the hands of Federal authorities?"[235] Southerners claimed superiority because they provided for African Americans. Their arguments neglected the social ills of the South, focusing on the benefits of a growing southern economy.

Subsequently, southern senators used positive gains by African-Americans to defend local governance. On January 12, Robert Rice Reynolds read newspaper clippings into the record about North Carolina's decision to honor three African-American civic leaders by naming roads after them.[236] On January 13th, Reynolds asked McKellar for a list of distinguished African-Americans that the Senator from Tennessee had read into the record, curious if it was broken down into individual states.[237] In a speech on the same day, Hattie Caraway (D-AR) noted that, on a more personal level, she had "sought to establish a mutual understanding of what each race owes to the other," especially among her kitchen staff and housekeepers.[238]

On January 26th, Richard Russell (D-GA), in the first of many occasions, talked at length about the strides made by African Americans in the South. Russell, evoking John C. Calhoun's position that slavery was a positive good, argued that "[m]erely because the whites and blacks alike in our section have learned that it is better for the races to live apart socially, we are condemned here…. I say that the South should be commended for what it has done for the

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[234] 75 Cong. Rec. 144 (1938).
[235] 75 Cong. Rec. 144 (1938).
[236] 75 Cong. Rec. 368 (1938).
[237] 75 Cong. Rec. 429 (1938).
[238] 75 Cong. Rec. 430 (1938).

Negro."[239] Russell argued African-American growth had been stifled by regional poverty, observing that, "for years, I could take you to one pathetic little white school in the South for every Negro school of that character."[240] The South, Russell claimed, had "been impoverished by war and legislation," and "[i]t took us from 1860 to 1900 to get back the taxable values that we had known."[241] To Russell, the sin lay with northern aggression during the Civil War, and the hypocrisy of Northern senators was galling: "Now we find ourselves berated by those who shackled us with that poverty because we did not have more poverty to share. It is unfair to raise any such argument as that here. It can only be done by those legitimate successors of the wavers of the bloody shirt following in the footsteps of Sumner, Stevens, and Ben Wade."[242] Russell used an argument from history to blame lynching on northerners, again tying southern treatment during Reconstruction to African-American poverty.

On February 8th, John Bankhead (D-AL) observed that Senators had not "heard anything on this subject from the colored citizens of the South…. I want to say to Senators that are ignorant on the race question, but who think they are the epitome of wisdom when dealing with it, that the intelligent colored men of the South regret having race issues stirred up and agitated. And the same colored men despise those who seek to capitalize upon them by any program which seeks to create race feeling or race prejudice."[243] On February 16th, Allen Ellender (D-LA) provided pages of statistics demonstrating that the South had eliminated illiteracy among African Americans while building them medical facilities. Ellender argued he was not trying to contend "that the Southern States have done as much for the colored people as they have done for the

[239] 75 Cong. Rec. 1101 (1938).
[240] 75 Cong. Rec. 1101 (1938).
[241] 75 Cong. Rec. 1101 (1938).
[242] 75 Cong. Rec. 1101 (1938).
[243] 75 Cong. Rec. 1626 (1938).

whites; but the point I desire to make and stress is that… the South has been spending many more thousands of dollars each year toward eradicating illiteracy among the colored people and to alleviate their economic condition."[244] This was despite poor economic conditions in the South after Reconstruction.

Arguments from reciprocity allowed southern senators a few key advantages in the debate. First, they could plead victimhood, arguing that Wagner-Van Nuys did not treat them equally. They contended that anti-lynching was unjust, and unfairly targeted their region, ignoring other crimes. To support their claims, they pointed to northern cities, cesspools of violence controlled by opponents of representative government. In contrast, the South worked hard to eliminate crime, particularly lynching, and improve the lives of African-Americans. A reciprocal system would allow southerners to govern themselves, because they were equal to northerners. Instead, senators both portrayed southerners as victims, while providing an affirmative defense against criticisms of southern racism and allowing southerners to evoke the specter of Reconstruction. Arguments from reciprocity also relied on historical argument, critical to southern identity. That, in turn, provided grounds for arguments about the rights individual states had to curtail lynching.

States' Rights

The argument most commonly associated with segregationist discourse is that of states' rights. Analyses of southern arguments center their claims on the role of the state and the federal government, often while observing warring interpretations over the Fourteenth Amendment. However, the "states' rights" argument transformed into whatever southerners needed to attack pending legislation. Throughout the debate, southerners used arguments rooted in stasis theory,

[244] 75 Cong. Rec. 2023 (1938).

derived from Cicero's early work on stasis in *De Inventione*. Cicero observes that all controversial subjects "to be resolved by speech and debate involves a question about a fact, or about a definition, or about the nature of an act (value), or about legal processes."[245] Through the debate, southern arguments fit all four stases: they challenged the existence of southern lynching, an argument of fact; they challenged the definition of violence under the bill, an argument of definition; and they attributed it to lawlessness in unruled territory, an argument of definition. However, southerners spent the most time using claims of state sovereignty to make arguments over jurisdiction, the part of stasis theory that concerns debate over legal processes.[246] Using arguments rooted in Calhounian political theory, southerners argued that lynching laws should be left up to the states, which had total jurisdiction over criminal laws, and that the Fourteenth Amendment only applied to specific state action.

To understand states' rights claims made by southerners, critics must understand Calhounian republican philosophy.[247] Calhoun's political theories, designed to resolve the thorny question of factionalism in democracy, followed three lines of reasoning. First, heterogeneity of interests provides a barrier to the harmony required for society to function. Second, to resolve issues of heterogeneous interests, each major section in a society must be given "a concurrent role in the action of government or a veto upon its action."[248] Third, constitutions "reflect the social orders and interests within the society they serve," and develop organically.[249] Calhoun's solution to factionalism was autonomy for smaller civic interests. Individual civic interests conflict with each other, "so that each is tempted to use the powers of government "to aggrandize

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[245] Cicero, *De Inventione,* I, 8, 10.
[246] Cicero, *De Inventione,* I, 8, 10.
[247] Grove, 8.
[248] Grove, 8.
[249] Grove, 9.

itself at the expense of others."[250] In the process, government erodes the equality of individuals. Geographic interests must therefore have the right to protect themselves from other interests within a society.

Generally, southern political theory has aligned itself with Calhounian principles. In the *South Carolina Exposition and Protest*, Calhoun argued that the United States had a system of majority rule, and the South had become a permanent minority, "at the mercy of the North."[251] Interposition, the legal theory that states could insert themselves between the federal government and their citizens to block laws would provide protection for southern states. When northern interests attempted to curtail southern freedoms, "the states had the right and duty to protect their citizens by interposing their authority between them and the United States."[252] Calhoun argued in the *Disquisition on Government* that states must be given "either a concurrent voice in making and executing the laws, or a veto on their execution." Southerners frequently used "interposition," or "nullification," the legal theory that states had the power to nullify federal laws, both derived from Calhoun.

In the Wagner-Van Nuys debate, however, southerners did not use interposition or nullification, instead relying on arguments that law enforcement was to be handled by states instead of the federal government. Still, these arguments rooted themselves in Calhoun's initial criticisms about the relationships between northern and southern states, and their arguments infused themselves with Calhounian philosophy. Southern politicians used Calhoun both to establish their arguments by reciprocity and to challenge the anti-lynching measure legally.

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[250] James H. Read, Majority Rule versus Consensus: The Political Thought of John C Calhoun (Lawrence, Kansas: University Press of Kansas, 2009), 53.
[251] Forrest McDonald, States' Rights and the Union: Imperium in Imperio, 1776-1876 (Lawrence, Kansas: University Press of Kansas, 2000). 105.
[252] McDonald, 105.

Southerners argued Wagner-Van Nuys violated the Fourteenth Amendment, a claim of jurisdiction. Jurisdiction allowed southerners to claim the federal government could not enforce laws in the individual states, permitting them to argue the letter of the law, and not the spirit. This meant they could denounce lynching in no uncertain terms, reinforce their arguments from reciprocity, and assert southern control over law enforcement, a tool of oppression.

Multiple southern senators attacked Wagner-Van Nuys on constitutional grounds, but one of the most thorough critiques came from Claude Pepper (D-FL). Pepper, who felt pressured into standing with the southern caucus to win re-election in November of 1938, focused on legal issues with the bill. Although Pepper came to regret his decision to participate in the filibuster, he was a capable speaker and began his critique of Wagner-Van Nuys on January 24th. "[W]ith a view to pointing out the respect in which it offends the sacred organic law of this Nation,"[253] Pepper began with the first section, which stated that Wagner-Van Nuys was enacted "in exercise of the power of Congress to enforce, by appropriate legislation, the provisions of the fourteenth amendment."[254] However, Pepper claimed the bill's exclusion of organized crime meant the bill "must have had in mind only a particular crime, the righting of a specific or relatively inconsequential wrong, not for the purpose of establishing law and order and preserving sacred humanitarianism, but indicating a particular prejudice, attempting to inflict a specific sectional domination upon particular offenders, whether with justification or not."[255] Here, Pepper exploited the amendments placed to exclude gang violence and labor difficulties, concluding that the assault could only be sectional in nature.

[253] 75 Cong. Rec. 981 (1938).
[254] 75 Cong. Rec. 981 (1938).
[255] 75 Cong. Rec. 981 (1938).

Next, Pepper alleged the legislation was vague, criticizing language in the law specifying that law enforcement officers would be punished if they "willfully neglected, refused, or failed to make all diligent efforts to protect" against lynching.[256] Pepper questioned what "diligent efforts" might have been, arguing that "[t]here have been employers who have felt that an officer was not doing his duty and was not exercising all diligence unless he took a machine gun… and shot down all the persons in a remonstrating crowd of people who wanted industrial liberty and fair industrial opportunity. What is going to be the measure of official diligence in the trial of these sheriffs who come before a Federal court for supervision of their acts?"[257]. The vagueness of the law meant that sheriffs could be punished for anything and were no longer "accountable to the Governor of his State or even to the citizens of his State acting through State agencies."[258] Instead, a sheriff's conduct "is made dependent upon the opinion and judgment of the Attorney General of the United States… who makes an investigation and determines whether or not the officer has used all diligence in conforming to the requirements of this proposed statute."[259] As a result, the bill would end sectional control over law enforcement, a violation of each state's right to supervise its own law enforcement.

Pepper also objected to provisions assessing civil liability to jurisdictions that failed to defend victims of lynching. The issue was partially one of the Eleventh Amendment, in that "the judicial power of the Federal courts should not extend to a case of that sort."[260] However, there were also issues of enforcement here as well. Even if a county could be sued, posited Pepper, it would require a hearing "[i]n a federal court, perhaps remote from the county or the district itself

[256] 75 Cong. Rec. 983 (1938).
[257] 75 Cong. Rec. 983 (1938).
[258] 75 Cong. Rec. 985 (1938).
[259] 75 Cong. Rec. 985 (1938).
[260] 75 Cong. Rec. 989 (1938).

by hundreds of miles." [261] Likewise, if a county was found responsible, "a tax may be imposed upon the real and personal property as an ad valorem tax, to enable the state to respond to the civil liability."[262] These steps eroded the powers of the sovereign states, and Pepper was quick to note that the financial remuneration went to a criminal: "if the family of the… first girl ravished and killed… [has] no claim upon the charity of the State, I see no reason why the State should compensate and remunerate the dependents and the survivors of the wrongdoer who might have bitten the same dust he put into the lips of another human being."[263] Ultimately, Pepper summarized the bill as such:

> "In substance, we have a Federal law which makes lynching a Federal crime, punishable in a Federal court, and establishes a civil liability upon the governmental subdivision in which either the lynching occurred, or the omission occurred, which is the culpable act described in the bill, or in which the abduction occurred, although the lynching may or may not have occurred in that governmental subdivision."[264]

Pepper then turned to the rights and responsibilities states possessed under the Constitution before the ratification of the Fourteenth Amendment. Here, Pepper enumerated the mandatory requirements "laid upon the state by the federal government."[265] This included appointing representatives to Congress, laws conducting fugitives, the fugitive slave law, and guarantees that all states should have a republican form of government. The last, Article IV, Section 4, "imposes a duty upon the Federal Government to preserve intact the independence and

[261] 75 Cong. Rec. 990 (1938).
[262] 75 Cong. Rec. 990 (1938).
[263] 75 Cong. Rec. 991 (1938).
[264] 75 Cong. Rec. 992 (1938).
[265] 75 Cong. Rec. 992-993 (1938).

the sovereignty of the several States."[266] Furthermore, states were also given "the vestments of a sacred sovereign immunity laid upon their backs," meaning that "the Federal Government is inhibited by the Federal Constitution itself from going into the territory of a sovereign State to suppress domestic violence without the consent of the state."[267] Incidentally, Wagner-Van Nuys suppressed domestic violence, meaning it was unconstitutional.

The only possible avenue for constitutionality, argued Pepper, was through the Fourteenth Amendment. Pepper proceeded each clause of the Amendment, establishing first that the amendment guaranteed citizenship to freed African-Americans. Next, he turned to the privileges and immunities clause, which establishes that states cannot make or enforce laws that abridge the privileges or immunities of US citizens. However, no state had passed a statute legalizing lynching, so there was no "pretense that that provision of the fourteenth amendment is in anywise affected or involved."[268] The key part of the Fourteenth Amendment was the due process clause. Pepper acknowledged that "the whole question… hinges right upon those two clauses of the fourteenth amendment, and upon them alone are the proponents of this bill, if upon any, entitled to rely for the constitutional validity of this measure."[269] Note the strategic move here in Pepper's speech; after moving through the entire Constitution, eliminating argumentative ground and sowing doubt, he comes to the one part of the Constitution that he says applies, with his description portraying the argumentative ground of the affirmative as precarious.

What followed this section was a long examination of the Due Process Clause, drawing upon Supreme Court rulings. Pepper cited three sets of Supreme Court cases: Powell v. Alabama, in which the Court held that the Due Process clause of the Fourteenth Amendment

[266] 75 Cong. Rec. 993 (1938).
[267] 75 Cong. Rec. 993 (1938). Pepper conveniently overlooked the Civil War.
[268] 75 Cong. Rec. 994 (1938).
[269] 75 Cong. Rec. 995 (1938).

extended the right to counsel to the states; the Slaughterhouse cases, which asserted that the Fourteenth Amendment only protected federal rights, as opposed to state rights; and the Civil Rights cases, five cases decided in 1883 that ruled Congress could not protect African-Americans by passing laws against private affairs. He used the three sets of cases to argue that the federal government could only take "affirmative" action to secure rights. Pepper argued: "The states must affirmatively give a man a fair trial…. Justice must be administered according to the form and the substance of the judicial process."[270] In short, all the federal government could ensure was that defendants had trials. Connally later clarified matters in a question:

> "Under the fourteenth amendment, which is purely a prohibition against affirmative State action, the action, in order to come within the prohibition, must be by a state, and in the cases which have been cited in selecting juries and matters of that kind the officers are doing what the State commands them to do as officers… and when they do those things it is the State's power, and not their individual power which is being exerted? But… the effort is to punish sheriffs and others who are not carrying out the orders of the State government, but are defying the orders of their State government, which requires that they protect rather than turn over their victim to the lynchers. So in the one case it is state power which is exerted and in the other, action is taken by individuals to whom the fourteenth amendment, under all these decisions has no applications whatsoever."[271]

Connally's statement gave a succinct characterization of the southern position. Even if the officers of a state failed to protect lynchers, because the state was not affirmatively violating

[270] 75 Cong. Rec. 995 (1938).
[271] 75 Cong. Rec. 998 (1938).

the rights of the victims, the Fourteenth was not applicable. Likewise, even if sheriffs violated the rights of lynch victims, the crime's jurisdiction lay in the state courts, not the federal courts.

Pepper's speech demonstrated how southerners used constitutional arguments in the anti-lynching debate. Derived from Calhounian political philosophy, southerners used an interpretation of the Fourteenth Amendment that emphasized affirmative action on the parts of states as key to its application. Because states did not pass legislation or act in defense of lynching, there was no affirmative action, and Wagner-Van Nuys was unconstitutional. While southerners attacked the constitutionality of the question, their solution lay in local control. The debate, therefore, was not about the moral acceptability of lynching, which they denounced, but about whom should be allowed to respond to lynching.

Conclusion

The Wagner-Van Nuys filibuster was wildly successful. Though caught off-guard in this instance, Southerners defeated the measure, and the Senate voted on February 21st to take up an appropriations measure by a vote of 58 to 22.[272] However, "future vigilance became essential for the southern forces lest additional assaults against the region prove successful."[273] The three arguments southerners used- decorum, reciprocity, and jurisdiction- all advanced a common narrative: the anti-lynching bill treated the South unfairly. Arguments from decorum portrayed northern sponsors of the legislation as unwilling to debate the measure, and just interested in forcing it through for political gains. Arguments from reciprocity established that, under Wagner-Van Nuys, the states were treated unequally, with lynching meriting a federal response,

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[272] 75 Cong. Rec. 2210 (1938).
[273] Finley, 54.

but gang crime largely ignored. Arguments from jurisdiction asserted that southerners had a legal right to control lynching laws.

While victory on the lynching bill was not a foregone conclusion, southerners did have more support in the Senate in 1938 than they did in the following years. But the Wagner-Van Nuys bill bore critical fruit for southerners going forward. Despite the earliness of the debate, southerners found the decorum argument particularly helpful; using and exploiting not only Senate rules, but normative standards, allowed them to both justify the use of the filibuster and exploit their opponent's mistakes going forward. However, those justifications became more moderate over time, as the following chapters will explore.

Likewise, pivoting to issues of justice and states' rights allowed Connally and the southern forces to avoid arguments about their own racism. As Keith Finley argues, the nature of southern arguments changed from a focus on racist appeals to a defense of southern values. Southern traditions became a well of invention, allowing senators to pick and choose which of their norms and values would sell to a national audience. Once overt racism and appeals to the defense of white womanhood failed, southerners retreated to arguments over Reconstruction and the Lost Cause. The Wagner-Van Nuys debate can help critics understand how rhetors use those inventional resources to adapt arguments that no longer work to wider, more diverse audiences.

Finally, arguments against the anti-lynching bill evolved to meet the demands of the moment, marginalizing less attractive parts of the traditions. Southern traditions echoed throughout the debate, and while Finley argues that southern senators frequently ignored segregation, the Wagner-Van Nuys demonstrates that senators were willing to defend segregation when they could. In 1938, they did so without a hint of shame or remorse. Their defenses fit the broader scope of their arguments, fitting seamlessly into arguments of

reciprocity. Over time, those arguments changed, but within the context of the traditions southerners chose to defend them.

CHAPTER 3: THE BATTLE AGAINST THE FAIR EMPLOYMENT PRACTICE COMMISSION

Introduction

Victory in 1938 marked a change in southern tactics toward more genteel rhetorical performances, and away from the marked bigotry of previous debates. Geared for further conflicts over civil rights, the southern caucus prepared to defend segregation into the 1940s. However, World War II changed national priorities, as senators focused attention on the war effort. During 1942, southerners filibustered a federal ban on poll taxes, one of two major civil rights measures pursued during the conflict. The other was the Federal Employment Practice Commission (FEPC). The FEPC filibuster marked the end of a southern campaign against the commission that began in 1944, when Senator Richard Russell (D-GA) attempted to defund the agency through parliamentary trickery.

While Russell's early efforts failed, his desire to eliminate the commission continued. By 1945, the genial Georgian had become leader of the southern caucus, who "respected his abilities, his knowledge of Senate rules, his organizational talent, and his moderate approach to race problems."[274] Georgia's junior senator had, by this point, "developed about all the arguments that he would ever use in his thirty-year resistance to civil rights legislation."[275] Hence, the FEPC debate represented segregationist arguments in the Senate at their clearest. This chapter explores how the southern bloc defeated the FEPC bill, by adapting to new demands. In the following pages, I explore how southerners adjusted their decorum argument to dissociate their actions from the filibuster, while staking out several arguments revolving around the locus

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[274] Gilbert C. Fite, *Richard B. Russell Jr., Senator from Georgia* (Chapel Hill: University of North Carolina Press, 1991). 199-200.
[275] Fite, 184.

of the irreparable, before concluding with a discussion of how arguments of reciprocity evolved from 1938.

Battle over the FEPC

The story of the FEPC begins with A. Phillip Randolph, president of the Brotherhood of Sleeping Car Porters, and his organization of the March on Washington movement, designed to pressure President Franklin D. Roosevelt into improving the working conditions for African Americans. Threatening "a massive demonstration in the nation's capital against discrimination in the defense industries and segregation in the armed forces," Randolph and NAACP president Walter White met with President Roosevelt in June 1942.[276] The civil rights leaders demanded Roosevelt sign "an executive order denying contracts to companies that discriminated against minorities," desegregation of the armed forces, and punishment for unions that practiced discrimination.[277]

While Randolph and White did not receive all their demands, Roosevelt's administration offered an executive order to prohibit discrimination in defense industries and federal agencies. The two men accepted, and on June 25th, the president signed Executive Order 8802 which established the Fair Employment Practice Committee. Though initially met with reservation among African-Americans, the committee became the first federal agency dedicated to minority issues since Reconstruction, and an entry point for federal intervention regarding discrimination in employment, which would "ultimately be established as a civil right."[278]

Resistance to the FEPC began in December 1943, when Howard Smith, a Congressman from Virginia, began investigating the committee's scope. Historian Andrew Kersten calls the

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[276] Merl E. Reed, *Seedtime for the Modern Civil Rights Movement: The President's Committee on Fair Employment Practice, 1941-1946* (Baton Rouge: Louisiana State University Press, 1991). 13.
[277] Reed, 14.
[278] Reed, 15.

Smith Committee's investigation "a political vendetta against Roosevelt and the New Deal," designed to attack the FEPC.[279] The investigations "never issued preliminary or final reports," nor did they "directly impact the FEPC's operations."[280] Instead, the hearings generated "rhetorical ammunition to shoot at the" committee, providing transcripts for congressmen and senators to use when attempting to sabotage the organization later.[281]

Those efforts began in force on February 23, 1944, when Richard Russell included an amendment to the Independent Offices Appropriation Bill designed to eliminate all offices that existed for more than twelve months without congressional appropriation.[282] While Russell's amendment passed, Roosevelt moved to protect the FEPC, and Clayton Buck (R-DE) introduced an amendment excluding the FEPC from the Russell Amendment, which also passed. However, Russell called for another vote, and mobilized a coalition of southern Democrats and western Republicans to defeat the Buck amendment.[283] Still, northern and midwestern senators did not give up. In June 1944, Russell attempted to end the FEPC by introducing an amendment to strip the FEPC appropriation from the budget. However, he was thwarted, abandoned by western Republicans.[284] The appropriation measure passed, although Russell also managed to sneak in a series of amendments weakening the FEPC's power. These amendments prevented Americans from losing their business if they failed to comply with an FEPC order, prohibited the FEPC from issuing rulings that contradicted federal statutes, and provided for an appeals process to

[279] Andrew Kersten, *Race, Jobs, and the War: The FEPC in the Midwest*, 1941-1946 (Urbana: University of Illinois Press, 2000). 127.
[280] Kersten, 127.
[281] Kersten, 127.
[282] Kersten, 128; Keith M. Finley, *Delaying the Dream: Southern Senators and the Fight against Civil Rights, 1938-1965* (Baton Rouge: Louisiana State University Press, 2008), 78.
[283] Kersten, 128.
[284] Kersten, 130.

FEPC decisions.[285] The appropriation only lasted one year, guaranteeing that liberal supporters of the committee would need to act to protect it.

In 1945, the final battle over the FEPC during the war took place thanks to Theodore Bilbo (D-MS), who threatened a 60-day filibuster of the War Agencies Appropriation Bill over FEPC funding.[286] Bilbo decried the organization's support for race-mixing and miscegenation, swearing that passage of the measure would lead to the mongrelization of the white race.[287] Keith Finley observes that Bilbo was largely posturing for the sake of his constituents in Mississippi, and worked with his southern colleagues, who wanted the appropriations measure passed, to reach a compromise.[288] The rest of the southern bloc wanted to ensure that the money for the FEPC would be used "to facilitate the liquidation of the committee," in lieu of extending it past the end of the war.[289] Combined with wavering support from new president Harry Truman, the commission looked doomed.

As the war ended, southern conservatives took advantage of a rising conservative moment. Business interests scored a series of political victories in the 79th United States Congress, including an end to price controls and passage of the Taft-Hartley Act, which restricted labor union power, in 1947. Kim Philips-Fein notes that these victories were in part because of a new attitude among liberals. The war replaced the "critical attitude held toward business" during the Depression, replacing it with "greater sympathy, as businessmen took up their places in the administration of wartime agencies."[290] Political winds changed, too; the 1946 election saw the Republican Party take control of Congress for the first time since 1928, mostly

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[285] Kersten, 130; Finley, 81.
[286] Kersten, 132.
[287] Kersten, 132; Finley, 82.
[288] Finley, 82.
[289] Kersten, 133.
[290] Kim Phillips-Fein, *Invisible Hands: The Businessmen's Crusade Against the New Deal* (W.W. Norton, 2009), 32.

thanks to a backlash to the New Deal. A conservative coalition, made up of right-leaning Democrats and Republicans, had dominated Congress since 1937, and at the end of the war, they returned to Congress uncooperative and tired of "aggressive presidential leadership."[291] When Truman brought a package of liberal domestic programs to Congress in 1945, the conservative coalition revolted, and set the tempo for "unusually antagonistic relations between the White House and Congress" throughout Truman's tenure.[292]

The most contentious battles over domestic policy occurred later in Truman's administration, but the stage was set for these battles in early 1946. A redeemed business community had already begun undermining unions and developing pro-business arguments, especially regarding hiring and firing employees. Conservatives in Congress were generally perturbed at Truman's wide-reaching domestic policy programs. The FEPC faced an uncertain future in the face of southern opposition.

Proponents of the FEPC, however, did not give up so easily. At the end of the war, civil rights senators introduced support for a permanent commission funded through congressional appropriation. Sponsored by Dennis Chavez (D-NM), Senate Bill 101 looked to establish a permanent FEPC. On January 17, 1946, Chavez moved to consider Senate Bill 101 early in the morning, forcing an immediate vote to bring the proposal to the floor. Chavez's parliamentary move took southerners off guard; Majority Leader Alben Barkley (D-KY) had "promised that no controversial measures would be taken up until after President Harry S. Truman delivered his State of the Union."[293] Keith Finley notes that Chavez forced the southern bloc into a battle with significantly higher stakes. Rather than filibustering the motion to consider, which southerners

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[291] James Patterson, *Grand Expectations: The United States, 1945-1974* (Oxford University Press, 1996), 139.
[292] Patterson, 142.
[293] Finley, 84.

knew their opponents could not stop, southerners had to fight the FEPC bill itself, with the threat of an all-or-nothing cloture vote at the end.[294]

In preparing for battle, southerners marshalled several lines of argument, with three most central to their case. First, they argued that, in introducing the bill early, Chavez had cheated, and that his subsequent labeling of southern bloc actions as a filibuster were designed to shame them into acquiescence. This argument from decorum mustered Senate norms to defend southern action against the FEPC bill and cast aspersions on pro-civil rights senators. Second, southerners argued that passage of Senate Bill 101 would lead to irreparable consequences: an end to segregation in the South, the end of the Bill of Rights, and the rise of communism in the United States. These arguments seized upon conservative backlash toward liberal thinking and the rising power of business interests. Third, southerners argued that the FEPC represented an infringement on their states' rights, and that failure to stop the bill would lead to future action against other states, particularly western ones. The three arguments amplified the harms of the FEPC bill, justifying southern filibustering and calling for an end to the commission once and for all.

Decorum

Much as in 1937, southern senators relied upon arguments from decorum to justify their behavior. Whereas in the anti-lynching bill, the southern bloc took on an aggressive demeanor, emulating caucus leader Connally, the tenor of the southern argument during the FEPC bill debate took a more genteel tone. This was likely thanks to the influence of Russell, known as a "senator's senator," a master of the inner life of the Senate rather than of bombastic oratory.[295] Russell's willingness to accommodate his colleagues and emphasize integrity meant that a

[294] Finley, 84.
[295] Fite, 126.

frontal approach on the values and character of civil rights senators would have been out of character.[296]

Decorum is always a challenging argument to make with regards to the filibuster, given that, on its face, it disrupts decorum instead of producing harmony. While Theodore Sheckels has observed that the filibuster frequently consisted of substantive arguments rather than just Senators reading the phone book as popularly imagined, the tactic still angered Senators.[297] Southerners faced challenges in resolving these tensions, and in 1937, relied on two main arguments. First, they denied they were filibustering, instead arguing that the southern caucus merely felt so strongly about the issue that they wouldn't give up the floor. This was, of course, a *pro forma* argument. Southerners knew exactly what they were doing and were perfectly happy to talk the bill to death. However, they escaped blame because of their second argument: the southern caucus could not be filibustering because they were engaged in substantive debate. By making applicable arguments, southerners dissociated themselves from obstruction. Instead, they portrayed themselves as aggrieved senators who wanted to debate.

The one tension remaining consisted of tone. Tom Connally (D-TX), the southern caucus's leader, lacked Russell's tact. So southern caucus arguments in 1937 and 1942 became imbued with the acerbic tongue of their leader and that, combined with the political necessity of giving ultra-racists like Theodore Bilbo and Allen Ellender speaking time, made southerners look nasty. Russell's ascendency helped resolve this tension. Georgia's junior Senator was known for his genteel southern charm; he was every bit the gentlemen. Southern arguments followed Russell's lead, emphasizing legislative harms and dispatching with bile. Combined

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[296] Fite, 126.
[297] Theodore F. Sheckels, *When Congress Debates: A Bakhtinian Paradigm* (Westport: Praeger, 2000).

with previously established southern arguments, southerners could justify their actions and appear decorous, falling into line with the norms of their rhetorical forum.

Subsequently, southerners used two challenges from decorum. They began by alleging that Chavez took advantage of them by introducing the bill before they expected, a parliamentary trick that violated Senate norms. That justified talking the bill to death, dissociating their actions from a filibuster. Dissociation allowed southerners to resolve the tension between arguments over decorum and their actions. The two arguments meant that Chavez and the liberals fought dirty, while the southern bloc's response to the FEPC bill was in line with Senate norms. Hence, it was southerners who behaved appropriately.

First, southerners challenged Chavez for introducing Senate Bill 101 in an ambush. Chavez's decision was shrewd; as Keith Finley explains, southerners initially wanted to filibuster the motion to proceed, insuring the bill's death.[298] Instead, Chavez forced southerners to debate the FEPC bill "with the added threat of an all-or-nothing cloture vote that would create a federal commission to ban job discrimination based on race or creed."[299] Southerners sought to reclaim the moral high ground, and chose to attack Chavez for his parliamentary maneuver. They began on January 17, when Walter George (D-GA) protested Chavez's actions: "When the Senate met on Monday, the distinguished majority leader asked that nothing be done until the President's message was submitted. Many of us were laboring under the definite impression, induced by the action taken at that time, that no controversial matter of any kind would be brought up at this time."[300] While Chavez and Wayne Morse (R-OR) responded that the committee approved the bill, George's broader argument was that Chavez defied the majority leader and broke the rules.

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[298] Finley, 84.
[299] Finley, 84.
[300] 79 Cong. Rec. 84 (1946).

Allen Overton (D-LA) reiterated southern complaints shortly after, complaining that southerners had been "assured from what has always been considered a very reliable source [Leader Barkley] that no movement would be made to take up this legislation today, but that possibly it would come up next week."[301] Overton, portraying Chavez as defying the will of Senate Majority Leader Alben Barkley (D-KY), then tipped the southern bloc's hand: "[Chavez] knows that if we had not received that assurance we could have pursued a course whereby his motion to take up the bill would not have been voted on today, or perhaps for a number of days."[302] Overton's complaint was telling; southerners had been outmaneuvered, and attempted to use Senate norms to attack Chavez for doing so.

However, on January 21st, Richard Russell admitted that Chavez had "caught us flat-footed" and was "within his rights in making the motion which he made, although many of us who oppose the bill had an understanding that the motion would not be made."[303] Russell softened his language and reframed the southern caucus's position. Their primary objection was that Chavez "held the floor for most of one afternoon. He talked in support of his bill much longer than anyone else, and then he went on the radio in the evening and said that a terrible filibuster was being conducted against the bill."[304] Russell continued, irritated at allegations that southerners were filibustering the bill: "I resent this insidious campaign. I can take my part of the abuse and my colleagues who are associated with me in this fight can take theirs, but I say it is a bit unfair to start a shadow filibuster when the only time taken on the bill has been used by the proponents of the proposed legislation."[305]

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[301] 79 Cong. Rec. 89 (1946).
[302] 79 Cong. Rec. 89 (1946).
[303] 79 Cong. Rec. 160 (1946).
[304] 79 Cong. Rec. 160 (1946).
[305] 79 Cong. Rec. 161 (1946).

Russell's comments on the 21st defined subsequent southern procedural arguments. His grievance cast southerners as misunderstood and inappropriately attacked by civil rights forces. Russell's comments suggested that Chavez assumed southerners would filibuster and made his attacks without considering what happened in the Senate. Subsequent southern arguments on procedure all rejected the notion that they were engaged in a filibuster, dissociating themselves from the practice and their opponent's challenges. Instead of filibustering, argued southerners, they simply opposed destructive legislation. If they talked the bill to death, so be it, but, insisted southerners, their actions did not constitute a filibuster.

Russell was the first to defend the southern position. On January 22nd, he rose, stating: "I wish to have the Record show that those who are opposing this bill are not responsible for [forestalling crucial legislation] in this time, when an attempt is being made to dragoon us over the radio and in the press by charging that we are a group of filibusterers because of the fact that we have strong convictions on this proposed legislation."[306] Casting aspersions upon those who attacked southerners, Russell asserted that substantive arguments differentiated southern action from a filibuster. Other senators took up the same argument, and John Bankhead (D-AL) even began his speech on the 24th by dismissing a question, stating "[i]f I were engaged in an absolute filibuster, I should invite all these delays, but I should like to proceed with what I conceive to be an argument on the bill."[307]

Subsequent southern arguments made clear that they would not tolerate being charged with filibustering. Bankhead bemoaned the attack, complaining that talking about the bill was the only way to be heard: "Some persons complain about a filibuster. The only way to get Senators to hear our side of the argument is to take plenty of time about it…. Some Member may remain

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306 79 Cong. Rec. 179 (1946).
307 79 Cong. Rec. 318 (1946).

for the purpose of obtaining recognition…. That gives us an opportunity to reason with him, although he may be too thoroughly committed to be affected by the reasoning."[308] Characterizing the other side as close-minded, Bankhead challenged civil rights senators' ability to act decorously. The senator argued that it was "our right and duty… to take advantage of every opportunity which may be made available to us to be heard on this question concerning which there has been such great disinclination to listen to argument."[309] Southerners "have not yet filibustered. Every speech which has been made here… has been directed to the merits of this measure- as much so as any series of speeches occupying 2 or 3 days on any subject could be…. [U]p to this time this debate has been a legitimate, open argument based upon the facts and the reasons and the principles of government involved."[310] Hence, Bankhead recast southern actions not as dilatory, but as central to the function of the body. Opponents who cast aspersions at the southerners lacked open minds, and therefore, lacked decorum.

Russell joined Bankhead in his defense of the southern bloc, though the Georgian was brusque in his argument. Russell argued that "in the effort that is being made to spread this campaign of poison against those of us who are opposing it, there have been these innuendos and these false charges and these intimations that there has been unfair treatment of Senators who wish to speak on the bill.... I resent that attitude."[311] Here, the Senator from Georgia used metaphor to negatively characterize civil rights senators' assault on the southern caucus. Russell used repetition to build the slanders against the southerners, before defending the actions of his bloc as "in keeping with what has happened here when Senators who were for the bill objected day after day to the introduction of any measure, or to the reception of even a committee report,

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[308] 79 Cong. Rec. 320 (1946).
[309] 79 Cong. Rec. 320 (1946).
[310] 79 Cong. Rec. 324 (1946).
[311] 79 Cong. Rec. 581 (1946).

and who rushed out to the newspapers and charged that those who were opposing the bill were stalling all progress in the Senate because we would not let them pass this bill until it was fully discussed."[312] The south, therefore, took the blame for filibustering, despite their actions being no different from pro-FEPC senators, and they suffered a slander despite their insistence upon debating the measure.

Bankhead reiterated his argument near the end of the debate, on February 8th. Claiming that "the debate which has taken place in connection with the pending bill has been one in which information, logic, and arguments on economics, on the Constitution, and on many legal phases of this bill have been brought forward," the Senator from Alabama defended his colleagues' actions.[313] He also noted that "The time has not been consumed in reading from newspapers, books, and roll calls which took up much of the time of previous filibusters."[314] Here, the dissociation became clearest. Southerners portrayed their actions as debate and took advantage of the popular notion of filibusters to craft a strawperson. Bankhead continued, irritated at "those who talk about these southern filibusters."[315] Southern arguments had been misconstrued, because it was southern Senators that "have discussed the proposal. We have pointed out the viciousness of the bill and its unconstitutionality of it until there are not many Members of the Senate who, in my judgment, would be willing to vote for the bill."[316] Southern actions amounted to discussion, not filibustering.

Still, Bankhead was cautious. He concluded that "there has been no filibuster upon this measure, although I am not ashamed of filibustering if the very foundations of my section are

[312] 79 Cong. Rec. 581 (1946).
[313] 79 Cong. Rec. 1152 (1946).
[314] 79 Cong. Rec. 1152 (1946).
[315] 79 Cong. Rec. 1152 (1946).
[316] 79 Cong. Rec. 1152 (1946).

threatened."[317] Indeed, the southern argument about the filibuster carefully defended their actions. Earlier in the debate, John McClellan (D-AR), spoke disdainfully of the filibuster, noting it "is most distasteful to me; it is most displeasing."[318] The Senator from Arkansas found it "regrettable that there should arise in the Senate of the United States a situation which would require the minority to resort to every parliamentary procedure permitted by the rules of the Senate in order to try to prevent the passage of a measure which is obnoxious to every person who has a fair understanding of the meaning of freedom and liberty."[319] Note, however, the slippage in the southern argument. To McClellan, the nature of the FEPC bill merited use of the filibuster. Southerners used this argument as insurance; even if everyone thought they were filibustering Senate Bill 101, their actions were justifiable because of the bill itself.

Theodore Bilbo made a similar argument on January 31st, after a threat for a 30-day filibuster. Bilbo began by noting that "[t]he privilege of unlimited debate, which makes filibusters possible, is one of the most sacred rights guaranteed to every Member of this esteemed and distinguished body."[320] Unlimited debate helped protect a minority that would otherwise "be helpless and defenseless and always and under all circumstances subject to the will of the majority, with not even a weapon with which to fight in the defense of the sovereign States that we represent on the floor of the Senate."[321] However, Bilbo noted that "[t]he filibuster never actually kills any bill. It merely affords ample discussion and delays action…. We can filibuster; we can prevent the passage of the pending bill, but we cannot kill it…. All we can do is to delay it, in order that the people of this country may know what it is, and if, after the people know all

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[317] 79 Cong. Rec. 1152 (1946).
[318] 79 Cong. Rec. 333 (1946).
[319] 79 Cong. Rec. 333 (1946).
[320] 79 Cong. Rec. 631 (1946).
[321] 79 Cong. Rec. 631 (1946).

the facts about it, they still want it, they will put men in the Congress who will pass it."[322] Here, the two arguments fused; Bilbo acknowledged the filibuster, put it in its contextual place within the body, but emphasized that the filibuster was a weapon used for the minority to force a discussion, not to forestall legislation for the sake of stalling. His metaphors fit the model of Senate debate as a battle.

Southern arguments challenged the decorum of pro-FEPC speakers, first by attacking the parliamentary trickery Chavez used to introduce the bill, and subsequently dissociating their actions from the negative connotations of the filibuster. In doing so, southerners argued that the opposition was not playing fair, and that they cheated on parliamentary procedure and slandered the opposition. Still, the charges were significantly more muted than they were in 1937 and were not without merit. Reframing the FEPC filibuster as a debate allowed the southern bloc to shield their actions in Senate norms and procedures, rather than racism.

Locus of the Irreparable

The FEPC bill differed from anti-lynching legislation in that southerners spent ample time discussing the merits of the legislation. While southern bloc senators occasionally mentioned that anti-lynching laws would lead to national law enforcement, they mostly emphasized legal issues with the bill. In 1946, however, southern senators took advantage of the national moment and instead asserted that the FEPC would lead to an end to segregation, the end of the Bill of Rights, and a communist takeover in the United States. In doing so, their speeches utilized what Chaim Perelman and Lucie Olbrechts-Tyteca call the "locus of the irreparable."

One of Perelman and Olbrechts-Tyteca's argumentative loci, the locus of the irreparable is a form of argument that asserts irreparable consequences from an act, as opposed to merely

[322] 79 Cong. Rec. 631 (1946).

bad results. That which is irredeemable is "important by that very fact:" once broken, the irreparable cannot be fixed.[323] The locus of the irreparable is a loci of quantity; there exists "the certitude that the effects, whether or not they were wanted, will continue indefinitely."[324] Southern senators, who feared the end of their way of life, emphasized the irreparable damage the FEPC would cause. In floor speeches, they argued that the FEPC would have three indefinite effects that would destroy the United States. First, provisions in the bill would destroy due process, irreparably damaging the Bill of Rights. Second, they argued that the bill would lead to a communist takeover in the United States. Third, they argued the bill would destroy segregation, and therefore end peaceful race relations in the south.

Southern senators first focused their attentions on how the FEPC bill would destroy the Bill of Rights. These arguments mostly consisted of strawperson claims; as Finley noted, "the temporary FEPC created during the war proved far less odious than southerners depicted it," and assuredly had less powers than they claimed.[325] However, southern arguments emphasized the danger of passing legislation that would erode fundamental rights. Exaggeration and hyperbole reigned supreme; as James Eastland argued in the opening days of the filibuster, "[g]radually, step by step, we whittle away the rights for which our forefathers fought and died. We are gradually… encroaching upon the fundamental rights of human liberty for which our forefathers made great sacrifices."[326] The FEPC was the start of a slippery slope that attacked property rights and the right to trial by jury and would lead to the creation of a totalitarian state in the United States, so southerners claimed.

[323] Chaim Perelman and Lucie Olbrechts-Tyteca, The New Rhetoric: A Treatise on Argumentation (Notre Dame: University of Notre Dame Press, 2010). 92.
[324] Perelman and Olbrechts-Tyteca, 92.
[325] Finley, 93.
[326] 79 Cong. Rec. 91 (1946).

Southerners first alleged that the FEPC threatened property rights. The commission, designed to ensure that workers were not discriminated against, heard complaints of job discrimination from minority groups. Southerners took umbrage at those hearings, alleging that the organization could control who employers could hire. As John McClellan (D-AR) argued on January 24th, "[W]e are asked to take away the right of such employer to select the person with whom he wishes to work, or the person in whom he wishes to place special confidence and trust. We are proposing to take such liberty away from him."[327] Burnet Maybank (D-SC) had made a similar claim the day before, arguing that under the FEPC, "there would be permanent discrimination in the employment of workers in proportion to their numbers."[328] Southerners portrayed the FEPC as an organization that would mandate employment numbers, a potent argument to make in a business-friendly Senate. The FEPC could force companies to hire African Americans, or Jewish-Americans, as senators were fond of alleging, and companies were powerless to stop them. In the wake of a conservative backlash against government intervention, emphasizing employer rights was a strong strategic move.

Russell and his caucus attempted to solve the issue of a relatively humble temporary FEPC once again through dissociation. Russell argued on the 23rd of January that "[t]here is certainly a tremendous difference between a committee such as exists at the present time, which handles employment in the Federal Government and polices those who have contracts with the Federal Government… and a vast catch-all bill of this kind which invades the rights of private property of every individual in this country."[329] Putting aside the accuracy of Russell's claims, his dissociative move reinforced the southern argument: passing the FEPC bill would irreparably

[327] 79 Cong. Rec. 330 (1946).
[328] 79 Cong. Rec. 244 (1946).
[329] 79 Cong. Rec. 251 (1946).

damage property rights in the United States. As Walter George put it, "When the Government of the United States, through its Congress, attempts to tell private business… who shall be employed and who shall not be employed, it steps entirely outside its constitutional power. When the Congress of the United States attempts to dictate to the individual citizen whom he shall employ it is guilty of odious intermeddling, and moreover assumes the role of tyranny…. [I]t relies on mere physical and economic power to accomplish its purposes."[330]

George developed the crux of the argument for southerners: FEPC overreach would destroy the United States Constitution and end the democratic experiment. The bill would not only target the South but infect the nation. Josiah Bailey (D-NC) made the disease metaphor explicit: "It reaches like an epidemic or plague into the relations of all men in our land. It spares no home; it spares no feature of business. It involves every individual- the farmer, the worker, the labor unions, the employment agencies, the mills, the mines, the stores, the merchants, the contractors."[331] The bill threatened not just the South, but everyone in the United States.

Russell later escalated the scope of the threat, describing the bill through another metaphor: "the entering wedge to complete state socialism and communism."[332] He labeled the FEPC "a vast employment agency for aliens, either those here or those who might wish to come to our shores," which was "to the detriment of native-born American citizens, who, after all, are supposed to have some remaining rights in this country."[333] Russell's conclusion was clear: the fabric of the United States was threatened by the FEPC bill: "The bill provides that if an employer does not give a job to a man belonging to a minority group, the employer is thereby discriminating against him, and he may be put into jail. It may be argued that the seeker of

[330] 79 Cong. Rec. 491 (1946).
[331] 79 Cong. Rec. 157 (1946).
[332] 79 Cong. Rec. 179 (1946).
[333] 79 Cong. Rec. 179 (1946).

employment would not be discriminated against, but nevertheless the employer could be put into jail if he refused to afford employment."[334]

Southerners alleged that Senate Bill 101 threatened due process rights. Part of the commission's task was to hold hearings over complaints of discrimination in the workplace, but Chavez's bill was vague as to what those hearings would entail. Southerners exploited the vagueness, alleging that the FEPC would eliminate jury trials and strip away necessary protections for those accused of violating the law. Worse, the FEPC would be an independent agency; as Russell framed it, "it is proposed to create a new agency to go into all the business houses of this Nation of every kind, shape, and character, with the right to examine books without a warrant, with the right to haul people around indiscriminately and to try them on any complaint, real or imaginary, that discrimination has been practiced."[335] Russell's enumeration of the issues tied them to broader conservative interests, and southerners proceeded to portray the FEPC as an intrusive institution that would repress Americans.

Russell was joined by John Bankhead, who, on January 24, attacked the specificity of the bill: "[W]hat is the program which we are asked to adopt? Who will limit the expenditures connected with it? The bill provides for no limitation whatsoever. The language of the bill is left wide open. The agents of the Commission may go forth at will and search, search, search. They may go into the records and take copies wherever they may be found, and without a search warrant, and they may retain them."[336] Bankhead continued, alleging that "[t]he authors of the bill did not even fix a place for… trials, because they did not intend to have any trials. Any lawyer who studies the bill will promptly agree that was the intendment…. The bill does not

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[334] 79 Cong. Rec. 329 (1946).
[335] 79 Cong. Rec. 179-180 (1946).
[336] 79 Cong. Rec. 324 (1946).

provide that the Commission shall conduct a trial, or that a court shall meet and hear the allegations. It does not provide that when one is charged with an offense it must be on probable cause, supported by an affidavit, as the jurisprudence in every State in the American Union requires."[337]

Southern arguments preyed upon growing fears of statism brought on by backlash to the New Deal. Walter George provided a particularly menacing reading of Senate Bill 101, alleging that "the agents selected or elected or chosen to administer it may go into any private business anywhere, without probable cause, in the very teeth of one of the original ten amendments to the Constitution which we call the Bill of Rights."[338] George proceeded to enumerate a series of violations found within the bill: [Under] the bill, jury trials are to be entirely abolished. In the bill there is nothing that looks toward a jury hearing, to a right to be heard by a jury, if one be accused of discrimination on account of race, creed, color, or ancestry of another, insofar as human employment is concerned."[339] This meant "anyone accused of having discriminated in employing his workers or in failing to advance them, or in discharging an unruly worker, on account of his race, creed or his ancestry, may be hauled before a court if he refuses to give evidence to a court when he is called on to testify, and punished as for contempt. That applies to any citizen anywhere in the United States or in any of its insular possessions."[340] George concluded that the FEPC flew "in the face of the whole spirit of the Bill of Rights. The Bill of Rights sought to give every man a trial by a jury of his peers, in the community where the alleged offense was committed, on a charge by men who likewise were acquainted with his

[337] 79 Cong. Rec. 323 (1946).
[338] 79 Cong. Rec. 495 (1946).
[339] 79 Cong. Rec. 495 (1946).
[340] 79 Cong. Rec. 495 (1946).

circumstances and with his condition."[341] The FEPC, by not guaranteeing these rights, failed to meet constitutional standards.

The erosion of the Constitution led to the spread of communism in the United States, the second charge made by the bill's opponents. George Lewis argues that anti-communist arguments in segregationist discourse drew upon southern traditions that feared revolutions accompanied by violence.[342] Anti-communism also revealed fears of outsiders influencing local politics, and was a way for southerners to assert American-ness.[343] Lewis argued that, by 1950, "the white South saw itself as the last bastion of an American-ness made up of… white, northern European Protestant stock," emphasizing fears of miscegenation.[344] Hence, anti-communists in the South saw communist positions on civil rights as not only a threat against the United States, but the Southern way of life.

While these arguments manifested themselves as early as 1937, anti-communism played a prominent role in southern arguments during the FEPC debate. Senators feared the FEPC's power, portraying the bill as the first step in a Communist takeover of the U.S. government, and part of a plan to infiltrate and destroy American from inside. Senators frequently made anti-communism claims in conjunction with arguments about the FEPC's erosion of fundamental rights. James Eastland, for instance, argued on the 17th of January, that the FEPC bill, by centralizing control of employment in the commission, made the United States more like the Soviet Union: "In Russia the bureaucrats receive the money. They control the power and wealth of Russia. That, Mr. President, is the direction in which we are going in the United States today.

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[341] 79 Cong. Rec. 495 (1946).
[342] George Lewis, *The White South and the Red Menace: Segregationists, Anticommunism, and Massive Resistance*, 1945-1965 (Gainesville: University Press of Florida, 2004), 11-15.
[343] Lewis, 11-15.
[344] Lewis, 16.

We are travelling in the direction of bureaucratic and Nazi control. The pending bill is the greatest step toward the destruction of human liberty and democratic control in America that has ever been proposed for consideration by the Congress."[345] Eastland proceeded to argue that the primary proponents of the bill associated with and were funded by Communists.

Eastland was joined by Olin Johnston, who on January 30th, inveighed against the bill's aims. Johnston first argued that passage of the FEPC bill "would set back immeasurably the colored race's chance for self-improvement and advancement of its position in the life of the nation."[346] Therefore, Johnson argued, the only purpose of the bill could be "that the proponents of the bill are mainly interested in securing bureaucratic control over the business and industrial life of the nation by throwing the control of employment into the hands of a central government bureau rather than leaving it to the decisions of the individual employers; and that they are doing it in such a way that it must be forced upon the people of the South." Johnston vowed that his beloved south "will resist such attempt, and many other people will resist this proposed legislation when attempts are made to enforce it."[347] The Senator's arguments evoked anti-New Deal hysteria over big government and tied into anti-communist arguments.

Eastland continued his line of argument on the 5th of February, integrating arguments for segregation with arguments against Communist agitators. He claimed: "There is an attempt to tear down the social institutions of the South, institutions which protect the racial integrity of both races; and it is proposed to mongrelize them. There is behind this whole program of a plan to have sent to the Senate of the United States a different type of men to represent the Southern States so that this country may be made over into a Marxist State."[348] As a result, Eastland

[345] 79 Cong. Rec. 91 (1946).
[346] 79 Cong. Rec. 567 (1946).
[347] 79 Cong. Rec. 567 (1946).
[348] 79 Cong. Rec. 884 (1946).

proclaimed “[t]he southern delegation in the United States Senate is now standing between the people of the country and Marxism.” In these arguments, southerners preyed on fears of Communist infiltration, using those fears to valorize their efforts, while portraying the bill as the impetus for invasion. John McClellan (D-AR) went so far as to ask Eastland whether it was “characteristic of the Communists… to try to infiltrate rather than try to move by means of a direct approach” when instituting policy.[349] Eastland answered in the affirmative, arguing that the FEPC bill “would greatly facilitate the advancement of that policy.”[350]

Some senators, like W. Lee O’Daniel (D-TX) extended an olive branch to proponents of the FEPC, observing that “[m]en with ulterior motives who favor this bill have endeavored to convince some outstanding men in public life to serve as coauthors of the bill.”[351] Here, O’Daniel dissociated Chavez and the FEPC’s supporters from communists, but despite his willingness to praise the opposition, the Texan intimated Senate liberals were dupes. It fell to southern senators, “who know that the bill is bad legislation to tell the truth about it to the majority of the people of the country, by speaking on the floor of the Senate so that the news may go out through the news services to all the people of America in order that they may learn of the plot which has been hatched in connection with this bill, and which is merely a step in, or a part of, a widespread plan to destroy our American form of Government.”[352] O’Daniel’s speech combined multiple different southern positions, from arguments from decorum, to claims about the irreparable damage the FEPC bill would do. He further alleged that the bill was a Communist plot designed to destroy the country, and “most of the howl about filibustering comes from the Communist commentators…. That shows who is back of this bill. They are criticizing our great

[349] 79 Cong. Rec. 822 (1946).
[350] 79 Cong. Rec. 822 (1946).
[351] 79 Cong. Rec. 700 (1946).
[352] 79 Cong. Rec. 700 (1946).

American Government, criticizing the men who hold office in this, the greatest deliberative body on the face of the earth."[353]

Finally, southerners saw FEPC as the end of segregation, and thus, their way of life. While Keith Finley notes that race hurt southern support every time it was brought up, the racial question was a necessity because of Jim Crow.[354] As a result, southerners attempted to focus on positive views of African Americans, to couch their racism in a veneer of geniality.[355] Finley argues that talking about race limited what southern senators could do, and it surely did. But southern senators faced pressures from their home states to defend segregation, and they did so using the locus of the irreparable. To pass the FEPC, argued southerners, meant endangering peace between African-Americans and whites, and upsetting a delicate balance with which all southerners, regardless of race, were happy. Senators, in other words, presented a more genteel version of Jim Crow that differed from more rabid populists like Strom Thurmond, or later figures like Ross Barnett and George Wallace.

That genteel attitude meant distancing themselves from violent racism, as Clyde Hoey (D-NC) did on January 23. Hoey mused, "I think the country at large misconstrues segregation for discrimination. I do not believe in race prejudice. I believe in race pride. I do not believe in race amalgamation, but I believe in race integrity. I do not believe in social equality, but I believe in equality before the law."[356] The senator from North Carolina dissociated his beliefs from more malevolent racism, instead choosing paternalistic definitions for his beliefs that reiterated southern values. Segregation was about pride, races should be kept pure, and all men should be equal before the law. Hoey viewed segregation positively and asserted it "does not deny to any

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[353] 79 Cong. Rec. 700 (1946).
[354] Finley, 93.
[355] Finley, 91.
[356] 79 Cong. Rec. 235 (1946).

Negro in North Carolina the right to all the benefits of his life and character, and it gives him the purpose and the privilege and the opportunity of serving along with his own people, where he is happier, and where everyone else concerned is more content."[357]

Southerners insisted that they did not oppose African-Americans, but that they favored free association. John McClellan (D-AR) argued that southerners "do not wish to have social equality between all races, so that we would be compelled to surrender our right under the Constitution to associate with those of our own race if we choose to do so. We do not wish to have that barrier stricken down. We do not wish ever to see the amalgamation of the black and white races occur."[358] Despite his protestations, McClellan asserted: "[t]here is no prejudice against the Negroes. We want them to prosper. We want them to have jobs. So far as I know, in the South the Negroes have every opportunity which anyone else has."[359] McClellan was joined by Olin Johnston, who proclaimed his interest "in the people of my South, both white and black."[360]

Russell summarized the problem on February 5th, arguing that "[m]en of good faith, both white and black, have worked tirelessly in the south in the 80 years since the great tragedy of the War Between the States, to formulate a pattern of relationships between the races which would be fair to all. We have made our blunders, but through a process of trial and error we have made great progress."[361] The FEPC bill interfered with the establishment of the southern way of life. Russell continued: "Not satisfied with our pattern of life, the proponents of the bill seek to create a monumental Federal agency with vast powers, greater than those of any other agency ever

[357] 79 Cong. Rec. 235 (1946).
[358] 79 Cong. Rec. 336 (1946).
[359] 79 Cong. Rec. 336 (1946).
[360] 79 Cong. Rec. 563 (1946).
[361] 79 Cong. Rec. 883-884 (1946).

previously contemplated, to strike down that pattern and, whether the people of the Southern States wish it or not, to compel them to accept the views of those in other sections in regard to segregation."[362] Here, the senator from Georgia succinctly described his section's position on the FEPC: it would potentially erode segregation, throwing the south into chaos.

Southerners feared the FEPC would create regional unrest. On February 4th, Tom Stewart (D-TN) noted the FEPC bill "actually has possibilities of bringing serious trouble and unrest to one of the greatest sections of this country. The southern Negro is not as ill-content and unhappy as some people pretend he is. The southern Negroes have schools, and each year sees more and more of them built…. Their freedom to work and earn their own way has not been denied. They own property, and the laws of the States protect them, just as they protect others."[363] Implicit in Stewart's argument was the claim that northern intervention produced chaos in the south. Stewart was joined by Olin Johnston, who warned of the FEPC: "if something is done which will make the members of either the white race or the colored race think that the members of one race are doing an injustice to the other, it will be found that friction will immediately develop. If two sticks are rubbed against each other long enough fire will result. Sufficient friction can result from the passage of the pending proposed legislation to cause serious trouble."[364]

Of course, members like Harry Byrd (D-VA) occasionally bucked the trend of southern moderation, asserting that "[t]here is no question today about racial discrimination in the South. We want the Negroes to work. My principal difficulty is to get them to work. That is the only real trouble we are having."[365] Byrd followed that nasty crack by arguing that "the South must handle such problems itself, and outside interference would do very much more harm than it

[362] 79 Cong. Rec. 884 (1946).
[363] 79 Cong. Rec. 806 (1946).
[364] 79 Cong. Rec. 563 (1946).
[365] 79 Cong. Rec. 719 (1946).

could possibly do good," though his argument further cemented northern opposition.[366] Still, overt racism was kept at a minimum.

The southern bloc did present a solution, though it was not compelling. Instead of risking southern stability, they argued, it made more sense to wait for a time in which man was unencumbered by sin and began to love his neighbor, a dissociative claim later picked up by President Dwight D. Eisenhower. For Clyde Hoey, "discrimination cannot be regulated by law. Sin cannot be controlled by law. You cannot pass a law to make everybody love his enemy. We cannot regulate the whole economy of a man and the thought of a man by passing a law."[367] Likewise, Walter George (D-GA) argued that, "[w]hether we like it or not we must be patient and await the coming of that time when, through the gentle influences of culture, of education, and of religion, improved relationships will manifest themselves in every section of our country. I have no doubt that time will come."[368]

The pattern in southern arguments regarding segregation intimated that ending the institution would result in chaos in the South. Senators chose paternalistic terms to describe their relationship with African-Americans and to defend segregation and focused on the risk of its collapse. The social institution was too dangerous to just let slip away, and for liberals to insist upon a change was to risk the very well-being of the South. Their approach was naïve and misguided, argued southerners, and could best be accomplished by waiting for the better angels of our nature to arrive.

Claims regarding the locus of the irreparable were particularly potent for conservative southerners. The locus of the irreparable is an inherently conservative style of argument that

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[366] 79 Cong. Rec. 719 (1946).
[367] 79 Cong. Rec. 235 (1946).
[368] 79 Cong. Rec. 494 (1946).

emphasizes the fragility and irreplaceability of the status quo. In these debates, southerners emphasized two arguments about the irreparability of the American way of life that both portrayed the FEPC as toxic and dangerous to America and positioned southerners as heroes of the Republic. The third argument, designed to appeal to regional audiences, perhaps betrayed Southern fears about an end to segregation, but also intimated the risk of crisis in the South. Supporting rhetorical strategies reinforced the locus of the irreparable, using metaphors with negative associations and strategies like labeling and definition to intimate the FEPC was more dangerous than it was.

Reciprocity

In the 1937 anti-lynching bill debate, southerners emphasized arguments from reciprocity, arguing that because North and South were equal, that anti-lynching laws belonged under the purview of local governments. Evoking the specter of Reconstruction, the southern bloc pushed northern senators to explain why their region deserved to be targeted. In 1945, many of those arguments were unavailable. Created during World War II, the FEPC largely dealt with federal contracts and contractors, meaning states' rights arguments were not applicable. Still, the southern bloc managed to craft new reciprocity arguments. This time, they made economic arguments, alleging that the FEPC was a symptom of wider economic policies targeting the South. What made this position unique was that southerners attempted to elicit the sympathies of western senators, noting the ways in which northern senators challenged their states' autonomy. Hence, reciprocity arguments in 1946 pointed out the unequal ways in which southern (and western) states were treated. The underlying assumption in arguments from reciprocity is that the reciprocal parties are equal. Southerners argued that, under the Constitution, each state should be treated equally. However, the FEPC bill discriminated against the South, much like

contemporary law governing freight rates discriminated against the west. Their arguments rested upon a sense of fairness: if southern businesses would be regulated, so could western businesses, and to regulate either undercut the equality each state possessed.

First, southerners insisted that the FEPC, in attempting to curtail segregation, was needlessly meddlesome. Frequently lacking specificity, the southern bloc intimated that Senate Bill 101 was a bootheel on their neck. John Overton (D-LA), when challenged by Chavez about disposal of the FEPC bill, asserted "… it is not going to be passed until we have an opportunity of saying what we want to say. I do not think it is important that action be had upon a bill which creates a commission in a Government which now reeks with bureaucracy, a bill which would create a commission which would be discriminatory in its very constitution, a bill which would create a commission the fundamental purpose and the scarcely concealed purpose of which is to once again grind the heel into the face of our southland."[369] The climax construction elegantly shaped the southern case; not only did the bill have several terrible effects, but its purpose was to target the South. The statement also recalled Reconstruction enthymematically.

Most fond of this argument was Olin Johnston (D-SC), who on January 30th, inveighed against the FEPC: "I am here to day to tell the world that the South did not start this movement [against the bill]. I have heard Senators say on this floor "You who are from the South know more about how to handle the colored race than I do," and then they turn around and say, "But we will tell you how to run things down in your part of the country."[370] Johnson's objections intimated southern superiority, while denouncing (unnamed) northern senators for secretly agreeing with the southern bloc. He also expressed general concern with the bill, asserting that

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[369] 79 Cong. Rec. 117 (1946).
[370] 79 Cong. Rec. 563 (1946).

"[t]he South sees no reason why a bill which has almost the unanimous opposition of its people should have crammed down its throat this FEPC measure."[371]

The senator from South Carolina decried the bill as treating states unequally, drawing upon other examples to demonstrate a pattern of abuse directed toward the south. Johnson argued that the South would have been better off had it won the Civil War: "ever since the War Between the States something has been popping up from time to time as a result of efforts to try to penalize the South…. We have been discriminated against to the extent of billions of dollars in freight rates alone. For a long while the South was kept from having industries; but thank the Lord, we are getting them now."[372] Here, the senator from South Carolina inveighed against economic grievances, blaming the north for slow industrial growth in the south, also a common argument in Reconstruction. The FEPC was, therefore, another in a long line of economic grievances targeted toward the southern people.

He further suggested that northern involvement interfered with the desires of African Americans. Johnson argued: "The people of the South believe that they are the best friends of the colored race. Why should we not be their best friends, Mr. President? We know that we have them with us. They will remain with us, and if they are not allowed to help build up our state, they will pull it down. That being true, why should certain persons in other States come to South Carolina and tell us how to conduct our affairs?" Johnson's statement here alluded to "outsiders" meddling in southern affairs, a common argument, and on theme with the broader southern case: northerners meddled in southern affairs to the detriment of economic and social progress in the region. Hence, there was little basis for economic discrimination: it was the prejudice of northerners that led to the FEPC bill.

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[371] 79 Cong. Rec. 565 (1946).
[372] 79 Cong. Rec. 563 (1946).

Southerners soon pivoted to how bills targeting the south merely represented the first wave of legislation to curtail state rights. Several senators made sure to emphasize the impact it would have on the west. Clyde Hoey (D-NC) asserted that senators "from the South are not introducing bills in Congress to try to regulate the North, the West, or New England. We are willing that the people of those sections should settle their own problems, and that in the way they think best."[373] Tom Stewart joined in as well, on February 4th: "The remedy is far worse than the alleged disease which it is proposed to cure. It will bring snoopers and busybodies, smellers and agitators, alleged do gooders and troublemakers into every phase of American life, not only in my southland, but in the North, East, and the West as well."[374] In other words, letting the Senate set a precedent with the FEPC would erode state rights, and therefore the underlying reciprocity between them.

As Keith Finley observes, southern attempts to appeal to western colleagues fit with the broader tactic of strategic delay. By "appealing to senators from outside the region on the common ground of economic discrimination," the southern caucus could find the votes necessary to defeat the cloture amendment.[375] Southerners targeted freight rates as an area in which both their region and the west had been unfairly targeted through economic pressure. Olin Johnston argued "The West had better wake up too. It is in the same situation so far as freight rates are concerned. It is asleep, and does not know that anything has happened…. As soon as the west wakes up and wants some industries, particularly in the Northwest, it will find that its head is completely cut off so far as freight rates are concerned, and it cannot do a thing until there is an adjustment of freight rates."[376] This led to an exchange later in the debate between Johnston and

[373] 79 Cong. Rec. 238 (1946).
[374] 79 Cong. Rec. 808 (1946).
[375] Finley, 88.
[376] 79 Cong. Rec. 563 (1946).

Stewart, in which Johnston asked whether "only the South is fighting this particular bill before the Senate."[377] Stewart responded: "That has been stated, but it is not a correct statement. There is plenty of sympathy in other sections."[378]

Freight rates came up several times in the debate as an additional example of how northerners targeted other regions. On January 24th, Burnet Maybank interrupted John McClellan, who, at the time, was arguing that discrimination did not impact commerce, to ask whether "the freight rates interfere with certain commerce?"[379] McClellan answered in the affirmative. Maybank then asked if "many of the discriminations against the South and Southwest interfere with commerce- but not the FEPC?"[380] Once again, McClellan answered positively, adding that "no one is really concerned about the main problem facing the South…. The solution of it can wait. It has existed for years. The people there will live over it and live under it. They will continue to suffer."[381] Here, McClellan tied a common concern among western and southern senators to northern prejudice, arguing that the FEPC was similar to freight rate legislation, which impacted both south and west. Both jeopardized the equal relationship underpinning the states.

Southern bloc complaints about force against southern states still occurred with regularity. By claiming that northerners treated southern states differently than they did others, Southerners, ironically, rested their arguments on a belief in a basic sense of fairness. In 1945, emphasizing points of common concern with western senators allowed them to demonstrate that, if the FEPC bill were passed, there would be precedent to target westerners as well. This

[377] 79 Cong. Rec. 806 (1946).
[378] 79 Cong. Rec. 806 (1946).
[379] 79 Cong. Rec. 342 (1946).
[380] 79 Cong. Rec. 342 (1946).
[381] 79 Cong. Rec. 343 (1946).

represented a key moment in southern resistance; unlike in the anti-lynching debates, southerners made overtures to senators from outside their region. That tactic would grow increasingly important as national opinion turned against segregation. Here, however, the argument mostly turned up in questioning on economic issues, indicating that southerners tried to tie their western colleagues to similar economic problems. This strategy fit the conservative moment, allowing southerners to develop allies outside the region, but also allowing their arguments to rest upon assertions that each individual state was equal in power to the others.

Conclusion

The Senate cast the cloture vote for the FEPC bill on February 8, 1946, 48-36. The measure fell well shy of the necessary two-thirds to end debate on the bill, and Russell had finally killed the FEPC legislation. Russell's biographer, Gilbert Fite, called the victory "relatively easy," and in some respects, the sixteen-vote margin was impressive.[382] Finley, meanwhile, viewed the FEPC bill as a sea change; for the first time, "advocates of racial equality mustered more than a majority."[383] The truth likely lies somewhere in the middle. While the FEPC victory took only three weeks, and southerners won easily, it did mark the beginning of the end of southern reliance on cloture votes. In the future, they would have to use the filibuster as a bargaining chip, threatening to stop the Senate dead in its tracks for a prolonged period of time.

Still, the FEPC fight helped develop the post-war blueprint for southern segregationists in the Senate. Decorum arguments evolved to fit the genial nature of the new southern caucus leader, Richard Russell, and focused on dissociating them from the filibuster, further allowing southerners tactical leeway and moral high ground with regard to Senate norms. Arguments over

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[382] Fite, 228.
[383] Finley, 92.

decorum in the body would grow increasingly important as the southern bloc faced challenges in the 1950s and 1960s that required the use of longer, more involved, filibusters.

Meanwhile, using arguments based in the locus of the irreparable appealed to the conservative nature of the institution. Citing the excessive damage the FEPC bill could cause allowed southerners to amplify the potential harm for the bill, thus justifying their filibuster. Locus of the irreparable arguments also allowed for clear ties to topical arguments, particularly ones about communism, that allowed southerners to reiterate their value structures and appeal to specific local audiences.

Finally, arguments from reciprocity both signaled to southerners the importance of local control, while attempting to court other senators. Southerners asserted that all states were equal, but that the FEPC did not treat southern states equally. In a major break from the anti-lynching debates in previous years, southerners attempted to directly address western senators, cultivating fears of northern intervention in their states. Combined with western senators' who "unequivocally championed unlimited debate," southerners had the beginnings of a coalition to stop civil rights measures in their tracks.[384]

The FEPC victory was hard-fought, but it was also easier than subsequent battles would be. Louis Coleridge Kesselman, writing in 1948, observed that the FEPC drive "suffered perhaps more than most reform drives for lack of general public information and because of the relative novelty of the principle involved."[385] Public opinion in 1945 was marked by indecision, as 58% of white Americans had no idea the President had even signed the FEPC executive order.[386] Southerners were also right to capitalize on pro-business sentiment; Kesselman notes that the

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[384] Finley, 93.
[385] Louis Coleridge Kesselman, *The Social Politics of FEPC: A Study in Reform Pressure Movements* (Chapel Hill: University of North Carolina Press, 1948). 175.
[386] Kesselman, 175.

National Association of State Chambers of Commerce fought hard against both national and local FEPC bills, and business opposition was fierce.[387]

Despite favorable conditions, defeat of the FEPC was important for the southern caucus. Not only had they forestalled invasive civil rights legislation and ended the FEPC commission they had spent five years trying to destroy, but they had the beginning of a rhetorical roadmap that would prove useful in subsequent decades. Combining claims of reciprocity and the locus of the irreparable would become a staple of southern discourse, and Russell's masterful knowledge of not only Senate procedure, but Senate norms, would come in handy as civil rights advocates pushed legislation that was even more invasive. Fourteen years after the battle to destroy the FEPC, Russell and his caucus would have to mobilize all their resources in an even bigger fight.

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[387] Kesselman, 170.

CHAPTER 4: HOLDING OFF THE CIVIL RIGHTS ACT OF 1960

Introduction

After victory over the FEPC bill in 1946, the civil rights conversation quieted. Save for a few procedural skirmishes in the Senate, the nation was consumed with other, more existential problems. The rise of the Soviet Union accelerated American fears over communism. When the Soviets detonated an atomic bomb in 1948, sparking the Cold War, Congress focused its attention on foreign policy. The late 40s and early 50s were dominated by Red Scare politics, and though tensions over civil rights simmered, they took time to find the public eye.

However, the *Brown v. Board of Education of Topeka, Kansas* decision, handed down in May 1954, sent a shock through the South. Ruling that segregation was unconstitutional, the Warren Court sent southerners scrambling. The lynching of Emmett Till in 1955 and the Montgomery Bus Boycott, which ran from late 1955 into 1956, steered the conversation back toward civil rights, and the Eisenhower administration felt pressure to act. The 1957 Civil Rights Act was a compromise measure, borne out of friendship between Russell and Senate Majority Leader Lyndon B. Johnson (D-TX), but the tide was turning against southern senators. The conflict reached its crescendo in 1960, when Johnson used parliamentary trickery to bring civil rights amendments to the floor of the Senate, bypassing the Senate Judiciary Committee.

In this chapter, I examine the filibuster of the Civil Rights Act of 1960, which was not only the last major southern victory, but a culmination of southern argumentative tactics. I argue that southerners used a blend of procedural and topical arguments to defeat the legislation. Procedural arguments first emphasized the destructive nature of bypassing committees. When those arguments failed, and southerners were forced into round-the-clock filibusters, the procedural arguments shifted into justifications for midnight quorum calls that reinforced the

importance of debate in the body. Meanwhile, southerners relied on three arguments to defeat the bill on the merits. Reciprocity arguments insisted that the bill was an unnecessary relic of Reconstruction and treated southern states unfairly. Locus of the irreparable arguments asserted that the legislation would lead to irrevocable damage to fundamental freedoms. Scapegoating arguments portrayed the legislation as being driven by anti-American enemies, found both in the academy and activist communities. Southerners used the three arguments to attack the bill as anti-American and anti-South, amplifying the harms of the provisions they found most dangerous.

Historical Context

Though victorious in 1946, Richard Russell grew skeptical of long-term efforts to hold civil rights legislation at bay. Russell remarked after the debate ended that "we have held the bridge up until now, but it is disheartening to see how the advocates of this monstrosity [FEPC] increase in strength each year."[388] Keith Finley speculates that Russell, having surveyed the political scene, understood that Republican opposition was on procedural rather than substantive grounds, and that the southern caucus's use of the filibuster was the critical bulwark stopping a flood of civil rights legislation from drenching the South. After the failure of the Arkansas Plan, a proposed compromise civil rights bill authored by Arkansas Representative Brooks Hays with Russell's support, it became clear that southerners were running out of options. In the late 1940s and early 1950s, they took the fight to radio, alleging that the southern caucus acted to prevent "an assault against every American's right to associate with whom they wanted to and to use their property as they saw fit," one of their locus of the irreparable claims.[389]

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[388] Keith M. Finley, *Delaying the Dream: Southern Senators and the Fight against Civil Rights, 1938-1965* (Baton Rouge: Louisiana State University Press, 2008), 134.
[389] Finley, 137.

The southern caucus was right to worry, as the winds of political favor were shifting toward civil rights. Scientific racism, a popular tactic of Theodore Bilbo and Allen Ellender in the 1937 anti-lynching debate, lost a significant amount of credence as the world saw the horrors of the Holocaust.[390] The NAACP accelerated its campaign against segregation as well, and with the assistance of grassroots activism honed during the war with the "Double-V" campaign, pressure began to build in Dixie.[391] While Harry Truman failed to pass major civil rights initiatives through a recalcitrant Congress, he desegregated the Armed Forces in 1948 despite resistance from Army Chief of Staff Dwight D. Eisenhower and his successor, General Omar Bradley.[392]

Though the southern caucus consisted universally of Democrats, they looked forward to the 1952 election and the near-certainty of Eisenhower's election to the presidency. Eisenhower's ambivalence toward civil rights looked appealing to southerners. While the President was not personally racist, he was the product of a segregated army, and "viewed the nation's problems through southern-tinted glasses."[393] They were pleased that Eisenhower enunciated a strong states' rights agenda on the campaign trail.[394] But they miscalculated.

Eisenhower named Earl Warren, a liberal California Republican, to the Supreme Court. Warren's gregarious attitude and gift for making friends, along with a substantial amount of effort, secured unanimous consent to overturn de jure racial segregation in American schools.[395]

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[390] James T. Patterson, *Grand Expectations: The United States, 1945-1974* (New York: Oxford University Press, 1996), 385.
[391] Thomas L. Bynum, *NAACP Youth and the Fight for Black Freedom, 1936-1965* (Knoxville: University of Tennessee Press, 2013).
[392] Harry S. Ashmore, *Civil Rights and Wrongs: A Memoir of Race and Politics, 1944-1994* (New York: Pantheon Books, 1994), 86-87.
[393] Robert Mann, *The Walls of Jericho: Lyndon Johnson, Hubert Humphrey, Richard Russell, and the Struggle for Civil Rights* (New York: Harcourt Brace and Company, 1996), 159.
[394] Finley, 137-138.
[395] Patterson, *Grand Expectations*, 389.

The *Brown v. Board of Education* decision, passed on what southerners called "Black Monday," was a massive blow to Southern efforts. The decision, drafted by Warren with the input of the other nine justices, relied on psychological and sociological studies presented by NAACP attorneys.[396] The notes of the decision included works prepared by social scientists, including Kenneth Clark and Gunner Myrdal, though the Court pointed out that *Plessy v. Ferguson*, the original decision upholding segregation, relied on psychological studies too.[397] Warren took significant effort to win over every Justice on the court, including Stanley Reed, who had wanted the court to enforce the "equal" part of the "separate-but-equal" mandate more rigorously.[398] But, Warren argued to his colleagues, a unanimous decision would be critical to dissuading Southern resistance, and would be in the best interest of the nation. Warren's wrangling likely produced a better outcome than a divided court, but southerners were not dissuaded.

The *Brown* decision represented the beginning of what historians call the "short civil rights movement," the traditional narrative of the civil rights movement.[399] The decision led to a dramatic change in the rhetorical situation, and shaped both the political stage and southern arguments in the years to come. Southerners began a campaign that Virginia Senator Harry F. Byrd descried as "massive resistance," the widespread legal and social campaign against desegregation.[400] Despite the unanimous decision, *Brown* led southerners to "litigate, organize,

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[396] James T. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (New York: Oxford University Press, 2001), 66-67.
[397] Patterson, *Brown v. Board of Education*, 67.
[398] Patterson, *Brown v. Board of Education*, 55.
[399] Jacquelyn Dowd Hall, "The Long Civil Rights Movement and the Political Uses of the Past," *The Journal of American History* 91.4 (2005): 1233-1263, accessed May 17, 2018.
[400] Francis M. Wilhoit, *The Politics of Massive Resistance* (New York: George Braziller, 1973). Numan V. Bartley, *The Rise of Massive Resistance: Race and Politics in the South During the 1950's* (Baton Rouge: Louisiana State University Press, 1969). Clive Webb, ed, *Massive Resistance: Southern Opposition to the Second Reconstruction* (New York, Oxford University Press, 2005).

agree on a sectionwide statement of resistance and… devise strategies for assignment of students that would satisfy the federal courts without giving away anything of substance."[401]

Creation of the section-wide statement fell to southern Senators, who were initially disorganized. Several members of the southern caucus in the Senate spoke their mind on the floor, questioning the justifications used by the Court in their ruling.[402] It took the caucus some time to gather their thoughts and reconcile political differences between conservatives and liberals within the southern caucus, which differed not in substance, but in degree.[403] The compromise statement became the "Declaration of Constitutional Principles," commonly known as the Southern Manifesto.[404] Delivered on the floor of the Senate by Walter George, a racial moderate, the statement argued that the *Brown* decision was unconstitutional and based on sociological pseudoscience rather than the law.[405] Southerners pledged to use "all lawful means" to oppose the *Brown* decision, indicating that they would do everything short of breaking the law to stop desegregation efforts.

Eisenhower, meanwhile, was blindsided by the Warren Court's decision. Historians differ on whether the President personally opposed desegregation, or was just concerned with southern reaction.[406] Regardless, Eisenhower "elected to regard *Brown* as an order from the court rather than as a moral imperative."[407] The president chose neutrality, as he was torn between African-

[401] Patterson, *Brown v. Board of Education*, 94.
[402] Finley, 139.
[403] Finley, 140. John Kyle Day, *The Southern Manifesto: Massive Resistance and the Fight to Preserve Segregation* (Jackson: University Press of Mississippi, 2014), 5.
[404] Finley, 146.
[405] Russell chose George to deliver the statement because he faced a tough re-election battle against then-Governor Herman Talmadge.
[406] Jim Newton, among others, observes that Eisenhower, at a dinner intended for Washington elite, told Warren that southerners just wanted to avoid seeing "their sweet little girls… alongside some big overgrown Negroes." There were few corroborating witnesses, and historians differ as to whether Eisenhower said the remarks or supported segregation more broadly. Newton, *Eisenhower: The White House Years* (New York: Doubleday, 2011), 173. David A. Nichols, *A Matter of Justice: Eisenhower and the Beginning of the Civil Rights Revolution* (New York: Simon and Schuster, 2007).
[407] Newton, 174.

Americans and the uneasiness of southern people, who were his friends and colleagues.[408] Eisenhower hoped his statement would "moderate the inevitable political backlash against *Brown*," and argued that it was impossible to change hearts via legislation, a sentiment that David Nichols argues was sincere.[409] Eisenhower empathized with the arduous task of adjusting to life under *Brown*, and was relieved when *Brown II* insisted desegregation occur at "all deliberate speed," which allowed for southern delay.[410]

Still, the president could not escape the specter of the civil rights debate. Public backlash over the lynching of Emmett Till combined with the high-profile Montgomery Bus Boycott led to intense public pressure on Eisenhower to take action on civil rights. In consultation with his cabinet, the President rolled out a voting rights measure on April 9th, 1956.[411] The president's support for the bill was tepid, because he believed that "progress in race relations would only happen when popular attitudes were ready for it."[412] But Eisenhower's attorney general, Herbert Brownell, supported an even more expansive civil rights effort.[413] The bill also received support from Vice President Richard Nixon, who told a group of House freshmen that the bill would pass the Senate without compromise.[414] Nixon underestimated southern resistance.

Southerners objected to the administration's entire proposal, but in particular to Part III, which gave the Attorney General the power to "fight and prevent violations of voting rights and other civil rights," and to Part IV, which denied jury trials to those found in contempt of the new law.[415] Russell took the floor on July 2nd, 1956, and inveighed against Part III, calling it a "force

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[408] Newton, 174.
[409] Nichols, 99.
[410] Nichols, 99, 174.
[411] Finley, 152.
[412] Patterson, *Grand Expectations*, 412.
[413] Finley, 152; Patterson, *Grand Expectations*, 412.
[414] Mann, 197.
[415] Mann, 191.

bill" that would cause "unspeakable confusion, bitterness and bloodshed" throughout the South.[416] Georgia's senior senator delivered an inflammatory rhetorical broadside consisting of arguments typical of the Southern caucus. The speech, aimed at midwestern Republicans, the weakest link in the civil rights caucus, garnered national attention,[417] and President Eisenhower's tepid defense and relative ignorance of the bill halted momentum for Senate liberals.[418] Russell's goal in the fight was not to defeat the bill outright, but to strike a compromise. The southern caucus's leader understood that he had lost most of his Republican support, and that the South was down to eighteen reliable votes.[419] Hence, the best possible solution was to threaten to filibuster to weaken the bill.

Russell's goals of compromise were made possible by his status as a senior statesman and his relationship with Senate Majority Leader Lyndon B. Johnson. Johnson, the junior senator from Texas, initially started as a civil rights moderate, but only because he was a pragmatist.[420] Governing his politics through the idea that politics was the "art of the possible," the Majority Leader opposed several civil rights measures early in his career in order to keep his caucus together.[421] But Johnson also owed his status as Democratic leader to his friendship with Russell, who began wooing Georgia's junior senator from the moment he entered the Senate in 1949.[422] Their relationship was exceptionally productive, and when Johnson was elected leader, he had

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[416] Mann, 193; Robert A. Caro, *The Years of Lyndon Johnson: Master of the Senate* (New York: Alfred A. Knopf, 2002), 913-918.
[417] Caro, 918.
[418] Mann, 194. Caro, 918-919. Caro notes that Eisenhower was ignorant of the contents of his own bill, allowing Attorney General Herbert Brownell to take the lead in crafting the legislation.
[419] Mann, 196.
[420] Caro, 838.
[421] Mann, 139.
[422] Mann, 106-108; Caro, 207-208.

Russell move his desk right behind the leader's, a nod to Russell's "immense influence in the Senate" that also insured his mentor would be able to whisper advice to him.[423]

Senate liberals often thought that Johnson pandered to Russell, and while Johnson held his post due to Russell's "benevolent though admiring patronage," the Democratic leader was his own man.[424] In 1957, Johnson desperately wanted a civil rights bill to transform him from a southern leader to a national one.[425] But he understood he needed a weakened Part III and Part IV to pass the Civil Rights Act.[426] So in early July, Johnson began laying the rhetorical groundwork, encouraging moderation and reason, and coming out on July 16th in favor of a compromise position that would bring the bill to the floor while weakening Part III and Part IV in committee.[427] It took two weeks and took much of Johnson's political skill, but the compromise went through. Without Johnson's support, the southerners would have been forced into a filibuster.[428]

One member, however, refused to accept the compromise that Russell orchestrated. Strom Thurmond, the firebrand conservative from South Carolina, was furious that the Senate caucus leader had compromised. He launched a one-man filibuster of the Civil Rights Act of 1957 that lasted for twenty-four hours and eighteen minutes, angering members of the southern caucus who accused him of grandstanding and worried about their own electoral prospects.[429] Southern voters also responded poorly, seeing the 1957 compromise as defeat, and as the

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[423] Mann, 140.
[424] William S. White, *Citadel: The Story of the US Senate* (New York: Harper and Brothers, 1957), 102.
[425] Robert Dallek, *Lone Star Rising: Lyndon Johnson and His Times 1908-1960* (New York: Oxford University Press, 1991), 518.
[426] Dallek, 521. Dallek suggests that Johnson approached Russell seeking compromise.
[427] Doris Kearns Goodwin, *Lyndon Johnson and the American Dream* (New York: Harper and Row, 1976), 148-149.
[428] Finley, 187.
[429] Finley 185-186; Mann 220-221.

weakening of southern resolve. But the victory was substantial; the southerners had successfully delayed substantive civil rights legislation for a few years longer.[430]

Despite victory in 1957, the arc of history was bending away from southern conservatives. In late 1957, President Eisenhower used federal troops from the 101st Airborne to forcibly desegregate schools in Little Rock, Arkansas. Russell compared the force to "Hitler's storm troopers," expressing the betrayal that many southerners felt from Eisenhower.[431] Elections in 1958 "revealed a leftward turn in national public opinion," in which Democrats picked up 48 House seats and 13 Senate seats, giving more energy to civil rights activists.[432] But the Senate was mostly quiet on civil rights until 1959, when Johnson announced his plans to "open discussion on civil rights in mid-February if no action occurred… before that time."[433] Johnson was partially motivated by politics; he knew that if he wanted the 1960 presidential nomination he coveted, he would have to act on civil rights to win over liberals.[434] But the bill had to get past southern conservatives. The stage was set for another conflict over civil rights.

Immediate Context

The 1960 civil rights legislation proposed by the Eisenhower Administration consisted of several provisions stemming from 1959 proposals: federal penalties for bombing, an extension of the Civil Rights Commission, additional powers to oversee local voting records, and a proposal, sponsored by Everett Dirksen (R-IL) and Barry Goldwater (R-AZ) to make it "a federal crime to interfere with a federal school desegregation order."[435] However, the proposal included an

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[430] Finley, 187.
[431] Patterson, *Grand Expectations*, 415.
[432] Finley, 196.
[433] Finley, 201.
[434] Caro, 1033.
[435] Mann 243-244.

additional plan "for court-appointed voting referees to force the registration of blacks who were unlawfully disqualified or purged."[436]

The bill faced several obstacles as soon as it was proposed. Southerners decried northern attempts to pass civil rights legislation, arguing, as Russel Long (D-LA) did, that the bill would make it harder to restrict unqualified voters, or as Sam Ervin (D-NC) did, that the bill was unnecessary. Johnson was reluctant to support a bill that was too liberal, knowing that, for the sake of his presidential ambitions, he needed a compromise with Russell to hold together a national coalition.[437]

Still, Johnson was true to his word. He brought up the combined Administration bill on February 15th, receiving unanimous consent to have the Senate move onto a minor piece of legislation passed by the House that granted a portion of an Army base in Stella, Missouri for use by students whose school had burned down. Here, Johnson outflanked southern senators by opening the bill for civil rights amendments "[b]ecause there [was], as yet, no civil rights legislation on the Senate Calendar."[438] The majority leader had successfully bypassed the Senate Judiciary Committee, controlled by southern Democrats. Russell thought that Johnson would only offer a motion to begin debate on civil rights, which southerners could then filibuster, until launching more filibusters against potential amendments.

Russell was badly outflanked by his protégé, and, as Robert Mann notes, suffered the "double indignity that legislation reported out of Russell's own Armed Services Committee would now be transformed into a civil rights bill."[439] The southern leader denounced Johnson

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[436] Mann, 247-248.
[437] Dallek, 563. Dallek notes that some liberals suspected a deal between Russell and Johnson to deliberately weaken the bill, though Johnson's parliamentary moves suggested a willingness to win the fight.
[438] Mann, 248-249.
[439] Mann, 249.

and Republican Minority Leader Everett Dirksen, and prepared for a filibuster. But the southern caucus lacked allies. Russell attempted to postpone consideration of the bill on February 16th and lost badly.[440] On February 23rd, Johnson made a bad situation worse, and announced that on the following Monday, February 29th, the Senate would take up an around-the-clock session to debate civil rights.[441] The majority leader had thus co-opted a common argument against cloture: that Senators needed time to debate and consider the legislation before them.

Johnson pinned the Southern caucus against the wall. Russell threatened quorum calls at all hour of the night, to intimidate civil rights senators. Johnson did not flinch, hoping that the older southern caucus would surrender in the face of twenty-four-hour marathon sessions on the floor of the Senate. The health and age of the southerners was an important consideration, and they made arguments to that effect on the floor. Johnson then called their bluff, moving to adjourn the Senate on February 26th, ostensibly to allow Senators to have mercy on their elderly colleagues, but symbolically a show of power from the majority.[442] Russell instructed his caucus to vote against the measure, and it was defeated in a landslide.

Southerners gathered to strategize, and it was Russell's Georgia colleague Herman Talmadge who came up with the idea to divide the caucus into teams of six.[443] Each team of six would be responsible for a day of legislative debate. Those teams would then split into pairs, and each pair would filibuster for eight hours, taking turns talking and resting. Hence, each Senator in the southern bloc would be responsible for eight hours of debate every three days, while forcing quorum calls at inopportune times. Quorum calls served two purposes: first, they

[440] Finley, 204; Mann, 251.
[441] Mann, 251.
[442] Mann, 253.
[443] There is some irony in that Russell, who fought hard against Talmadge's election, relied on his new junior colleague for tactical innovation.

annoyed civil rights senators and disrupted their rest, and second, without a quorum, southerners could force adjournment and speak even longer. Armed with their plan, southerners took the floor and gleefully blocked the legislation.

The filibuster consisted of both arguments from decorum and topical arguments designed to attack the legislation. In the following section, I consider both in turn. Southerners began with arguments based in decorum. They started, before the 29th of February, by arguing that Johnson's behavior was unfair and not in keeping with the rules of the Senate. But after the filibuster had begun in force, they quickly turned to attacking civil rights senators for not paying attention. Southerners justified their quorum calls by insisting that their arguments were of utmost importance, because the civil rights proposals required careful consideration. Here, Russell and his colleagues exploited the last area in which they had political friends, attempting to fracture the civil rights coalition by focusing on western conservatives who put the sanctity of the debate over everything else. By engaging in debate, and then reminding civil rights conservatives of what they were doing, they could stop a cloture vote.

To make the ruse convincing, Southerners engaged in a topical broadside against the legislation. Here, three main argumentative strategies defined their speeches. First was reciprocity, where Southerners decried federal voting provisions as a direct throwback to Reconstruction. Here, however, southerners also had to defend their premise for the first time, and spent ample time noting that the south was, in fact, equal. Any issues with voting numbers, claimed senators, was the fault of African-Americans who did not register or failed to keep their records in order. Second, southerners relied on the locus of the irreparable to emphasize the harms of the legislation. Unable to muster support from western colleagues, southerners emphasized the harms of ending Jim Crow, largely to southern voters who were angered by the

1957 compromise. Finally, southerners scapegoated any target they could hit, focusing fire on the Warren Court, the NAACP, and the federal Civil Rights Commission. These groups, argued southerners, were attempting to agitate their way into conquering the South, and, broadly speaking, the caucus attacked sociologists who observed the effects of discrimination against African-Americans. These three arguments worked together to form the core southern complaint: that outside forces were working to destroy the southern way of life.

Procedural Arguments

While the procedural arguments appear to outsiders to be nonsensical, they guide the Senate's actions. This was especially true in 1960, the "golden age" of the Senate. The speaking rule gave great power to minorities, and conservative members of the body sought to protect that rule, which they saw as fundamental to the Senate itself.[444] Russell had used the attitude of Senate conservatives to his advantage in 1957, when he appealed to their "belief in a senator's right to unlimited debate."[445] Hence, the southerners were able to appeal to Republican conservatives who had only reluctantly supported civil rights due to their commitment to leadership.[446] Donald Matthews observes that the right to speak is important for several reasons, and that "reciprocity [in debate] rules the day" in the mid-century Senate.[447] Likewise, William S. White observed that, when considering cloture reform in the late 1940s, that Senate

[444] This attitude stems from Federalist No. 63, where the Senate is held up to protect against the whims of the majority. The Senate's speaking rule gives great power to individual Senators to forestall legislation, and so rules that prohibit talking are often frowned upon. James Madison, "Federalist No. 63", *The Federalist Papers*, accessed September 15, 2016. http://www.gutenberg.org/files/1404/1404-h/1404-h.htm#link2H_4_0063 Neil MacNeil and Richard A. Baker, *The American Senate: An Insider's History* (New York: Oxford University Press, 2015). Sarah A. Binder and Steven S. Smith, *Politics or Principle: Filibustering in the United States Senate* (Washington D.C: Brookings Institution Press, 1997).
[445] Caro, 920.
[446] Caro, 920. Keith Finley notes that southern reliance on conservative Republicans was not uncommon, but focuses on the topical arguments made rather than the procedural ones. Russell's innovation was realizing that when topical arguments failed to move conservatives, ones rooted in the Senate's conservative nature would. Finley, 220.
[447] Donald Matthews, *U.S. Senators and their World* (Chapel Hill: University of North Carolina Press, 1960), 243-249. Matthews notes that there are individual political motivations at play, as well as strategic benefits for limiting restrictions on the speaking rule.

traditionalists made sure to protect the right to debate endlessly. White concluded that the Senate, as of the 1960s, has "never really given ground upon the issue of its rules."[448]

With this knowledge in hand, the southern caucus made the speaking rule the issue upon which their entire case rested. As Robert Caro argued, by conceding some ground in 1957, but emphasizing a change to debate norms in the Senate, Southerners had preserved the filibuster.[449] They had effectively reclaimed their Republican conservative allies, who would vote for civil rights bills but against cloture motions, and therefore had leverage. If they needed the filibuster, as they did in 1960, they could use it, relying upon the argumentative strands that had been laid in the past.[450] So despite their frustration at the use of an obstructionist tool like the filibuster, liberals could do nothing without conservative support. Southerners, therefore, took every opportunity to remind conservatives that free and open debate in the Senate was at stake during the civil rights fight.

Johnson's decision to force round-the-clock sessions meant, however, that senators could not claim to be gagged. They had, after all, ample time to argue their positions. Therefore, they developed two strategies based in decorum arguments. First, early in the debate, the southerners argued that the committee system was critical to Senate debate. The floor was not the only place in which debate was encouraged; instead, committee work was necessary to effective governance. Second, southerners went back to the well regarding debate, asserting they had not only a right to speak, but a right to be heard. That right to be heard justified quorum calls at all hours of the day, especially at inopportune times. Both arguments, combined with a pro forma defense of Jim Crow, made southerners appear to be champions of the Senate's norms regarding

[448] William S. White, *Citadel: The Story of the US Senate* (New York: Harper and Brothers, 1957), 64-68.
[449] Caro 921-922.
[450] Caro, 922.

free and open debate, while they simultaneously capitalized on those rules to kill any measures in the bill that could benefit African-Americans.

First, southerners asserted that the process made a mockery of the Senate by subverting the committee system. Neil MacNeil and Richard Baker argue that, in the twentieth-century Senate, many senators spent most of their time in their offices or in committee hearings rather than on the floor.[451] MacNeil and Baker note that the judiciary and executive often rely on Senate debate to interpret laws, and that enterprising senators would load committee reports "with their own spin on a bill's meaning, seeking to influence the later interpretation of the measure."[452] Matthews also notes that circumventing the committee process was "frowned upon;" seen as "writing legislation on the floor" and bypassing powerful senior members, corrupting the body.[453] Southerners used these norms to stall civil rights legislation. With James Eastland (D-MS) in charge of the Judiciary Committee, it was impossible to bring civil rights legislation to the floor save for a discharge petition. By making claims about the importance of the committee system, southerners both protected one of their best tools to stop civil rights legislation and demonstrated the further erosion of Senate norms to wary conservatives.

Russell began by alleging that Johnson's maneuver was "a lynching of orderly procedure in the Senate of the United States. In other words, the end justifies the means- "Let us at em, come the 15th day of February."[454] The lynching metaphor was characteristic of the vitriolic rhetoric used by the southern leader, and more than a bit ironic considering the legislation's anti-violence provisions. Russell was joined by John Stennis (D-MS), who claimed that, "with all

[451] Neil MacNeil and Richard A. Baker, *The American Senate: An Insider's History* (New York: Oxford University Press, 2015), 290.
[452] MacNeil and Baker, 292.
[453] Matthews, 147.
[454] 86 Cong. Rec 2472 (1960).

deference to every Member of this body, I believe that this is an illustration of our abandonment of the concept of the Senate being a deliberative body."[455] Stennis' claim indicated the importance of the committee system to the Senate's informal rules surrounding debate, a nod to conservative interests.

Once Russell had calmed down, he made a more coherent argument as to the problems with bypassing the committee system. The Senator from Georgia argued that "orderly procedure in the Senate depends on a committee report upon hearings, and upon committee action. Senators can no longer take refuge in the fact that the Committee on the Judiciary will not act."[456] Here, Russell tipped his hand, expressing frustration at the failure of seniority in the case of the civil rights bill, but the broader criticism was that individual rights in the body would be eroded. The senator continued, calling the process a "hodgepodge," and noting that he knew, "from the press reports, what the other legislative proposals are."[457] Russell asserted that his caucus was "entitled to see them, and not have them shoved at us on the floor of the Senate in typewritten form. We are entitled to have an opportunity to make our case. We are as badly outnumbered as any minority has ever been in this Chamber in undertaking to defend a cause in which we believe. We are entitled to more orderly procedure than is accorded to us in this situation." The repetition of "entitled" reinforced claims from decorum; Johnson was cheating southerners of their opportunity to debate. If the majority leader was so willing to cheat his own party members, he would assuredly be willing to cheat conservative Republicans.

Committee work was necessary, argued southerners, for every member of the Senate to be able to accomplish their duty. If committees did not examine bills, senators would have no

[455] 86 Cong. Rec 2473 (1960).
[456] 86 Cong. Rec 2473 (1960).
[457] 86 Cong. Rec 2473 (1960).

evidence to aid their voting process. The southern argument utilized scapegoating, much like their topical arguments. As Olin Johnston (D-SC) argued on February 24th, "[m]ust we give way to the demands of individuals who seek political preference by playing into the hands of and for the favor of loud-mouthed minority groups? I contend that the orderly procedures and safeguards established for all proposed legislation by our rules and precedent should be followed here and now as they have in the past."[458] Johnson's argument, a microcosm of southern topical arguments, blamed activist groups by scapegoating them, and intimated a dark future for the Senate should orderly process not be followed.

Spessard Holland (D-FL) joined his colleagues later in the debate, asserting that the issue was not a rules violation, but a norms violation: "I do not claim that anything is done in this approach which contravenes the rules of the Senate, but I am simply inviting attention to the fact… that this approach is not only completely unusual but it leaves no assurance whatever as to what type of proposed legislation will be before the Senate in this matter."[459] Holland's dissociation separated legal permission from justice. By bypassing committees, Johnson disrupted normative rules in the Senate, violating the norms of discourse that governed debate. Hence, his maneuver risked the Senate itself.

John Stennis made a similar argument, observing during a speech by Sam Ervin (D-NC) that the absence of his civil rights colleagues "underscores to me with alarm… the confusion and the uncertainty into which the Senate has permitted itself to drift, when bills are before the body without any recommendation of a committee or any report of any kind…. There is nothing for us to be guided by except the learning which may come from the membership on the floor."[460]

[458] 86 Cong. Rec 3381 (1960).
[459] 86 Cong. Rec 3344 (1960).
[460] 86 Cong. Rec 2609 (1960).

Here, the senator appealed to the better angels of his northern colleagues, alleging that they needed to learn from the committee process. The drift metaphor suggested an un-mooring of norms, reinforced by Ervin's failures to adequately discuss the legislation. Stennis observed that Ervin "spoke for 3 hours, but he barely touched the surface of the amendments offered by the Senator from Illinois (Dirksen)."[461]

Second, southerners argued that they had not just a right to speak, but a right to be heard. Though Johnson was happy to allow the southern caucus ample time to talk on the floor, the majority leader banked on the advanced age of Dixie's senators working to his advantage. Southerners initially sought to co-opt their colleagues, forcing them into the same conditions in which Johnson had put them. As Stennis argued on the 16th of February, "[w]hat is necessary is a study of the proposals by men who are capable and competent. The only way we can obtain such a study under this procedure is in open debate on the floor of the Senate, which is not attended and is not heard."[462] Therefore, everyone, not just the obstructing southerners, needed to be in the chamber.

This tactic failed. Johnson was happy to let the southerners bloviate on the Senate floor, but the caucus would require the use of frequent quorum calls to compel members to return to the chamber. As Robert Mann observes, quorum calls were both bothersome to civil rights senators and critical to southern strategies. Under Senate rules, "each senator could deliver only two speeches during a single legislative day," which ended only when the Senate was adjourned.[463] In order to keep speaking, southerners would either have to adjourn the Senate to reset their speech totals, or introduce amendments consisting of minor wording changes. But the

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[461] 86 Cong. Rec 2609 (1960).
[462] 86 Cong. Rec 2610 (1960).
[463] Mann, 254.

burden was on civil rights senators to show up for quorum calls to force southern hands. This meant that southerners needed to justify their legislative tactics, with the added burden of explaining why it was so important that senators be on the floor at 3 AM.

To do so, southerners gleefully relied on norms surrounding debate in the Senate. The round-the-clock filibuster was peppered with quorum calls at inopportune times, and whenever challenged, the southern caucus's designated speaker would act aggrieved. One such instance occurred between Gale W. McGee (D-WY) and Spessard Holland on March 1st, early in the filibuster. McGee testily asked Holland if he could leave the floor long enough to take a nap, and the senator from Florida responded tersely: "… I am distressed to note that there are not more Senators who are interested in hearing me, and that the appeal of the cots has been so great that their presence in the Chamber has been prevented."[464] Holland justified his tone, arguing that he was "explaining why I feel there should be a quorum call, because while I am used to talking to empty seats on occasion, my successor may not be, and he might well feel slighted, which I do not. I want to give him an opportunity to speak to a full Chamber. Therefore, I will suggest the absence of a quorum when I shall have concluded my talk."[465] Holland's sarcasm got to the root of the southern argument: debate was important, and senators needed to pay attention.

The exchange between McGee and Holland was endemic of southern strategies regarding quorum calls. First, Holland made sure that everyone understood that he did not feel slighted, but that he concerned himself with the feelings of the subsequent speaker. The passive aggressive comment allowed the senator from Florida to appear charitable while justifying his decision to call a quorum: it was not for his sake, after all, but for someone else who surely had important things to say. Second, McGee asked his question after midnight, and Holland did not conclude

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[464] 86 Cong. Rec 3929 (1960).
[465] 86 Cong. Rec 3929 (1960).

until 3 AM. The senator from Wyoming was less shirking his duty and more tired. Regardless, it signaled to conservative Republicans that the southern caucus understood the importance of the debate rule, while also exhausting the more liberal civil rights senators. Late quorum calls functioned as both a procedural argument and a tactical maneuver.

Civil rights senators challenged southerners on their frequent quorum calls, but generally these arguments did not go well. On March 2nd, for instance, Jacob Javits (R-NY), objected to the litany of quorum calls, demanding of Sam Ervin:"[w]ill the Senator advise us whether in view of the fact that he had a quorum call made about an hour and a half ago, in order to give him an opportunity to address Members of the Senate who were aroused and came into the Chamber for that purpose, he nonetheless intends to have another quorum call; and though he has completed his address, he would yet have Senators aroused and brought in to hear it?"[466] Ervin responded: "I am requesting a quorum call for the benefit of the next speaker, who has to be notified."[467] The New York Republican shot back: "It is not necessary that there be a quorum call for that purpose. I am willing to seek recognition to spare the Senators from being aroused."[468] Ervin declined Javits' request, insisting that "the next speaker has a good speech which Senators ought to hear. And before I yield the floor, I think they should be notified."[469] True to his word, Ervin made a quorum call after finishing his speech, much to Javits' chagrin.

Occasionally, Senators would talk about the absence of their colleagues on the floor as well. John McClellan (D-AR) and Russell Long (D-LA) had one of these conversations on March 2, precipitated by McClellan bemoaning the absence of key civil rights senators: "I think it is quite unfortunate that the Senators from the State of New York are not in the Chamber to

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[466] 86 Cong. Rec 4099 (1960).
[467] 86 Cong. Rec 4099 (1960).
[468] 86 Cong. Rec 4099 (1960).
[469] 86 Cong. Rec 4099 (1960).

hear this able discussion."[470] Long responded, hoping "to catch the Senators from New York on the floor sometime this evening in order to call this to their attention."[471] McClellan seized the moment, asserting that "if we have to make these long speeches in order to get them to listen, we should be able to catch occasionally one of those who are trying to force this issue through?"[472] Long concurred, arguing that "[w]hen a Senator rises about something this important, yes."[473] Southerners reinforced the idea that they cared about the Senate and its procedures, while liberal Republicans and Democrats did not, a nod to conservatives.

Southern topicality also mattered a great deal to justify quorum calls and northern participation; to woo conservative support on cloture, Southerners had to make actual arguments. As a result, the southern caucus insisted that they were not filibustering, sometimes bluntly. As McClellan put it on March 1st, "Oh no; we are not filibustering."[474] Quorum calls and long speeches were justifiable because the speeches were topical. As George Smathers (D-FL) put it in a question to James Sparkman (D-AL) on March 3rd, "despite the suggestions of [Sen. Douglas's (D-IL)] questions… every senator who has thus far talked on the subject under consideration and debated the issue has consistently remained on the issue? No Senator has read recipes into the Record, which he mentioned as happening some 15 or 20 years ago. There has not been a recitation of the phone book. Every Senator has directed his remarks to the point which was then before the Senate."[475] Alluding to Huey Long's famous "potlikker" filibuster in the 1930s, Smathers made his point clear: southerners could delay as long as they did so while

[470] 86 Cong. Rec 4194 (1960).
[471] 86 Cong. Rec 4194-4195 (1960).
[472] 86 Cong. Rec 4195 (1960).
[473] 86 Cong. Rec 4195 (1960).
[474] 86 Cong. Rec 3986 (1960).
[475] 86 Cong. Rec 4276 (1960).

engaging in debate. In doing so, they reminded conservative, anti-cloture senators where they stood.

The arguments from decorum used in 1960 were the lynchpin of the southern strategy. Russell and his caucus knew they did not have the votes to beat civil rights legislation on the merits, but they did have the votes to forestall cloture. In doing so, they could leverage conservative recalcitrance to erode Senate debate rules and force a favorable compromise with the amiable Johnson. The senators took advantage of their more conservative colleagues' reluctance to vote for cloture, turning part of the debate into an argument about Senate procedure. Claims that Senate leadership and liberal civil rights senators sought to erode the committee system while ignoring debate spoke directly to those colleagues they lost after 1946, meaning they could retain them on cloture motions, which was necessary to defeat the legislation. Both arguments emphasized the importance of debate within the body, but southerners had to demonstrate their willingness to debate, as opposed to just stall, for conservatives to acquiesce. In doing so, they took advantage of those who, like Eisenhower, were sympathetic to the southern perspective.

Topical Arguments

Keith Finley asserts that, when filibustering the Civil Rights Act of 1960, southern arguments took on a decidedly regional tone. The historian observes that senators needed to assuage "lingering doubts raised by the 1957 civil rights fight that the caucus had lost its resolve," while illustrating to outsiders "why Jim Crow remained essential" to the Southern character.[476] In the process, Finley argues, southerners drew parallels to Reconstruction, evoking the Dunning School, while attempting to marginalize African-American protesters demonstrating

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[476] Finley, 207.

throughout the south.[477] While Finley sees these arguments as the result of slimming chances of a successful cloture vote, and a desire to reinforce the importance of Jim Crow to their constituents, southern arguments addressed two audiences simultaneously. First, the arguments addressed their constituency, meaning that Russell's decision to "relax" some of his previous discipline allowed senators to adequately handle an increasingly hostile audience at home.[478] Second, however, the southern arguments had to explain away increasing racial chaos to a northern audience, which necessitated the use of familiar, moderate arguments.

As a result, topical southern arguments utilized three strategies. First, as in the previous two debates, southerners relied on arguments from reciprocity to assert that the south was equal to the north and the west. Here, southerners alleged that the Civil Rights Act of 1960 represented a new Reconstruction, meaning that southern states were treated differently from their northern counterparts. For the first time, the caucus answered northern claims that African-Americans in the south were disenfranchised. They did so by arguing that African-Americans chose not to register to vote, and the use of federal registrars to compel them was unnecessary, because the laws were equal in North and South. Second, southerners relied on the locus of the irreparable to assert that the civil rights bill would destroy due process rights in the United States. Amplifying the potential harms of the bill marginalized critics in 1946, and peeled away key Republican votes in 1957.[479] The caucus tried again in 1960 to push conservative senators away from a liberal version of the bill and toward compromise. Finally, southerners utilized scapegoating, lashing out at the NAACP, the Warren Court, and the Civil Rights Commission, blaming them for the ills besetting the south. By labeling southern enemies, the caucus gave voice to southern

[477] Finley, 208-209. The Dunning School of history asserted that newly freed African-Americans, coordinating with Union carpetbaggers, took liberties with their newfound freedoms to threaten southern civilization.
[478] Finley, 207.
[479] Caro, 918.

concerns while mobilizing institutional power to marginalize social movements and their allies. The three strategies worked to define southern opposition to civil rights legislation: the bill treated the south unfairly while eroding the rights of the American people, all in the service of a power-hungry, exploitative minority group.

Reciprocity

As in 1946, southern arguments from reciprocity took on terms specific to the debate they were waging.[480] The base southern claim rested on the premise that southern states were treated differently from their northern counterparts despite being equal in status. In 1960, southerners used two permutations to the base argument. First, they alleged that the Civil Rights Act was so radical that it represented a new Reconstruction, advancing proposals more extreme than what Radical Republican Charles Sumner would have supported. If states were equal, this represented a betrayal of American principles and was partisan targeting of southern states by the north. Second, the south defended their treatment of African-Americans, alleging they were perfectly happy to allow African-American voters to register, and that all eligible voters were protected under the law. The problem was that African-Americans refused to register. Hence, liberals advocating for civil rights were targeting southern states for something they could not control. After all, it was not the responsibility of southern whites to ensure that African-Americans pursued their civic duty with the same verve, just that they had the same rights available to them.

Southerners began by arguing that the legislation unfairly targeted the South, and made up a "second Reconstruction." Finley argues that the southern caucus used this as an opportunity

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[480] Chaim Perelman defines reciprocity as "the equal treatment of beings who are essentially alike." Chaim Perelman, *Justice* (New York: Random House, 1967), 23. In this series of debates, southerners consistently asserted that states were alike, as individual political entities within the Republic of the United States, and therefore had the same rights as all the other states. This was a form of Calhounian Republicanism. John G. Grove, *John C. Calhoun's Theory of Republicanism* (Lawrence, Kansas: University Press of Kansas, 2016).

to "highlight their continuity with the principles of their forefathers;" to beat a "second Reconstruction just as completely as their predecessors had defeated the first" was to assert their southern heritage.[481] These arguments both addressed their constituents, but their colleagues as well, alleging that the legislation demanded moderation and a more nationally-oriented scope. Southerners defined the legislation as the "Reconstruction Statute," harkening back to original proposals during Reconstruction that oppressed the South. In doing so, southerners mobilized powerful authority evidence from figures like Charles Sumner to argue the Civil Rights Act of 1960 was uniquely harmful, and more vicious than the most sectional period in American history.

Southerners began by comparing the CRA of 1960 to Reconstruction statutes championed by Sumner, noting that even Sumner opposed integrating schools. As James Eastland (D-MS) remarked on February 23rd, "[o]n his deathbed, [Sumner] had exacted a promise… that: 'This project for securing the extension of Federal guarantee of equal rights for blacks should not be abandoned by the party. It must be modified: its most extreme provision, for instance, concerning the integration of the races in the schools, must be abandoned.'"[482] Eastland continued, arguing that "when Congress did enact the vicious [Reconstruction] act of March 1, 1875, a provision attempting to integrate white and Negro children in schools was omitted. It was omitted at the direction of Senator Charles Sumner." In this case, southerners argued that integration laws were so extreme, they were even opposed by radical Charles Sumner. Southerners frequently used Abraham Lincoln to the same effect; even the most anti-southern, pro-African American politicians during Reconstruction would oppose the degree to which civil rights bills promoted integration and attacked the south.

[481] Finley, 209.
[482] 86 Cong. Rec 3189 (1960).

John Sparkman (D-AL) took the Reconstruction debate even further. Drawing from the original Reconstruction debates, the Senator from Alabama concluded that: "The pending amendment is a resurrection of the vicious Reconstruction Act which was on the statute books from 1871 until approximately February 9, 1894, where it was repealed by Congress. Even the Republicans were glad to have it repealed, because the Democrats had then come into power; and after the Republicans had used the Reconstruction Act to take away the voting right of many citizens and to run the elections in the way the Republicans wanted them run they naturally were afraid of what the Democrats were going to do with that act."[483] Slipping in some claims based in the locus of the irreparable, Sparkman noted that even "the Republicans themselves were really glad to see the vicious Reconstruction Act taken off the statute books. There was no weeping or gnashing of teeth or wailing when that statute was removed from the books."[484]

Sparkman concluded that "the people behind the pending proposal may be absolutely sincere in their purpose. I am sure that a great many of those who were in favor of placing the 1871 act on the statute books were also absolutely sincere in their purpose."[485] However, to do so would be reckless, as human nature had not changed. Voting rights laws were "used as a political weapon; and if it were on the statute books today, it would be used as a political weapon, and, as I have tried to point out tonight, it would tend to discredit the judiciary of the country."[486] Here, Sparkman drew upon Eisenhower's position that hearts and minds needed to change prior to legislative action. It was the folly of man responsible for bigotry in the south, not the legal code, a dissociative move. Attempting to re-living Reconstruction would lead to bad, divisive bills that both threatened the country and undermined southern equality with northern states.

[483] 86 Cong. Rec 3244 (1960).
[484] 86 Cong. Rec 3244 (1960).
[485] 86 Cong. Rec 3255 (1960).
[486] 86 Cong. Rec 3255 (1960).

Second, southerners asserted that nothing was wrong down south. Increased civil unrest from 1954 onward made this claim a difficult, but necessary one to make, because civil rights senators used it to justify more invasive civil rights laws. But if nothing was wrong, the case for federal involvement dissipated. Spessard Holland, for instance, proclaimed his willingness to "stand on the record of our State [Florida] for a spirit of tolerance, sympathy, understanding, and compassion, represented by an expression of the Governor, the attorney general, and the secretary of state, but as an expression of the great majority of the people of or state."[487] Florida's strong record began "back in 1937, when we struck out the poll tax requirement for all voting in our State and when we reduced the qualifications to such terms that there are no educational standards; any able-bodied citizen who is in good repute and has not committed a serious crime and who is of the proper age and residence is entitled to register and then to vote."[488]

There were a couple strategies at play here. First, Florida was not Alabama; deep-south senators normally did not praise their tolerance or sympathy for African-Americans, leaving border state senators like Holland or John McClellan of Arkansas to defend the South.[489] Indeed, McClellan made a similar point in questioning, when he observed that what Holland "has said with respect to Negroes voting in his State is also true with respect to Arkansas; and that what he has said about Negroes being solicited to register and vote in his State is true also in the State of Arkansas."[490] Second, southerners tended to inflate the increased registration numbers. Holland noted that registration was allowed, provided the citizen was in good repute, had not committed a

[487] 86 Cong. Rec 3926 (1960).
[488] 86 Cong. Rec 3926 (1960).
[489] Spessard Holland was an excellent choice considering he sponsored the Twenty-Fourth Amendment, outlawing the poll tax. The amendment received eight southern votes. Holland could harken back to his own foray into civil rights legislation to appear moderate.
[490] 86 Cong. Rec 4367 (1960).

crime, and was of the proper residence. Those three things were frequently challenged by racist local officials.

Regardless of the facts on the ground, southerners asserted that African Americans voted when they bothered to register, which was the real problem. Smathers, in an exchange with Russell Long (D-LA), noted that "[i]n the South it is true… that we have, in fact, a very high participation of voting by those Negroes who are registered to vote. Of the total number of Negroes eligible to vote, who are under 50 years old, we have a very high percentage who register and participate."[491] Again, southerners qualified the African-Americans eligible to register, blurring actual attempts to suppress participation. That did not stop senators like Herman Talmadge (D-GA) from proclaiming that "The people of the Southern States, in every area of the South, realize that the Constitution of the United States guarantees the civil rights of all citizens, and our laws respecting them are enforced without discrimination among all citizens, white and colored."[492]

Occasionally, senators noted that federal reform led to a decrease in registration numbers. Once again, Spessard Holland praised Florida's efforts, proclaiming that "[w]hen we have registered 152,000 plus of our Negro citizens, and when they are voting freely in all parts of the State and are showing interest in our public affairs, and when we are showing by our attitude, both public and private, that we welcome them, I say that it would be the worst thing in the world, so far as a State like Florida is concerned, to have the Federal Government come in and take the position of coercion and compulsion which is required by the bill, and make it appear to some that when a registration officer is doing his duty, he is being a minion of the Federal Government, taking directions from the Federal Government, and, as a matter of fact, carrying

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[491] 86 Cong. Rec 4282 (1960).
[492] 86 Cong. Rec 4304 (1960).

out the mandate of far-off Washington."[493] Russell Long remarked on March 7th that "the Negro registration in Louisiana increased much more rapidly, before all the pressure was brought to bear by radicals and extremists."[494]

Ultimately, the issue lay with federal power, not southern malfeasance. As Long argued on the 26th, "State and local governments should be permitted to regulate the action of such law as it is possible for them to regulate effectively…. The states can effectively regulate with regard to the private rights of its citizens and the relation of its citizens to the State governments. There is, therefore, no real need for Federal power in this field."[495] Southerners had allowed African-Americans to register, and further federal meddling only exacerbated the situation. Long closed by echoing Eisenhower's positions on civil rights, arguing that the bill was "opposed by the majority of the people in the very areas of the country where it intended to be most effective. The remedy or the objective to which this legislation supposedly is directed will not be accomplished by the imposition of a law which is opposed by the majority of the people in a community. I am therefore convinced that this legislation will tend only to antagonize the people and lead instead to increasingly strained relations between Federal and State governments."[496] The solution, therefore, was not legislation that treated the south differently from northern states, because it only exacerbated the problems the region was accused of. Rather, civil rights senators needed to leave the south alone to solve their own problems. Legislation could not fix the social ills facing Dixie.

Both these arguments aided southern efforts. Arguments from history spoke to southerner constituents, demonstrating that they understood their frustration over compromise in 1957.

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[493] 86 Cong. Rec 4367 (1960).
[494] 86 Cong. Rec 4718 (1960).
[495] 86 Cong. Rec 3615 (1960).
[496] 86 Cong. Rec 3615 (1960).

Simultaneously, arguing the radical nature of the bill made compromise possible in 1960; by vilifying certain provisions to categorize the Civil Rights Act of 1960 as uniquely vicious toward the South, it became possible to excise those provisions and end the filibuster. Second, southerners finally defended their region's record on civil rights. Here, they allowed border senators to point out the few reforms that had been made on voting rights, while observing that further federal meddling on an issue that belonged to the states only exacerbated things. In both situations, the unequal treatment of the states and the unique oppression of southern states exacerbated existing tensions between north and south and between white and black.

Locus of the Irreparable

Much as in 1946, southerners sought to amplify the harms of civil rights legislation. Their arguments frequently drew from the locus of the irreparable, in which a choice could result in an irreparable change.[497] The Civil Rights Act of 1960 posed such a choice, and threatened to destroy both due process rights and racial progress in the South. Here, arguments were tailored both toward more moderate national figures, in much the same way that arguments in 1946 were, and toward southern audiences. Senators began by alleging that two provisions of the Civil Rights Act, the voting protection provisions, and the firebombing provision, eroded key rights. Russell's objective was to elicit compromise on key provisions, and attacking the voting rights provision as extreme signaled that it was the key sticking point. The firebombing provision, meanwhile, spoke to southern concerns about states' rights in law enforcement. Southerners also argued that passage of the legislation would lead to massive disruption in the south, including in race relations.

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[497] Chaim Perelman and Lucie Olbrechts-Tyteca call the locus of the irreparable an argument that asserts irreparable consequences from an action. The locus of the irreparable is distinguished from normal negative consequences in that the effects continue indefinitely, irreparably damaging the subject. Chaim Perelman and Lucie Olbrechts-Tyteca, The New Rhetoric: A Treatise on Argumentation (Notre Dame: University of Notre Dame Press, 2010). 92.

First, southerners attacked provisions in the law designed to put federal registrars in place to oversee voting. Sam Ervin (D-NC) led the charge beginning on February 16th, explaining the flaws of the provision: "It is proposed in all of the bills implementing this proposal… that the State election officials be removed, in effect *pro tanto*, from their offices on a certificate of the Civil Rights commission, which the President of the United States would have to obey, according to the proposal, even though he should think it unwise to take such action."[498] The voting rights provisions would therefore not only usurp national control, but the President of the United States, likely a warning to Eisenhower and the administration. Ervin continued, noting that this process would be done "without any notice to the State election officials, and without according them any opportunity to be heard in their own defense."[499] Hence, "the appointment of federal registrars [is] absolutely incompatible with the due process clause of the fifth amendment. That is true because the bills do not provide for any notice to the State election officials who are to be removed *pro tanto* from their offices for cause, and do not provide any opportunity for such officials to be heard in their own defense. It seems to me that such a procedure should be abhorrent to the heart and the mind of any person who believes in fair play."[500] So the voting rights provision struck at the heart of the Fifth Amendment, the appointment of local officers, and the power of the presidency. To enact such legislation would irreparably shape America for the worse, giving more power to the Attorney General.

Ervin was joined by Lister Hill (D-AL) on February 25th, who addressed Section 3 of the bill, designed to increase protections for voting by compelling the production of voting records. Hill argued that the bill gave too much power to the Attorney General, observing that he would

[498] 86 Cong. Rec 2602 (1960).
[499] 86 Cong. Rec 2602 (1960).
[500] 86 Cong. Rec 2602 (1960).

have "the right to make public the manner in which any person or any number of persons have voted. In other words, Mr. President, it would gravely endanger the secrecy of the ballot… a close scrutiny of the proposal reveals it to be an effort on the part of the Federal Government to desecrate one of our most precious inheritances- the right to a secret ballot."[501] Given that it was Eisenhower's Attorney General, Herbert Brownell, that led the charge for civil rights legislation, this was a not-so-subtle observation that the south would lose even more if the bill was passed.

Hill continued, portraying his critique as a defense of the secret ballot, "one of the greatest bastions of human liberty that the mind of man has created. This right, like the right of trial by jury, is an indispensable component of American democracy."[502] Hill's hyperbole allowed him to then claim dire consequences: "Once this right is infringed upon, our concept of American democracy will have been drastically altered, for it will never be the same…. [W]e will have to adjust ourselves to a new mode of self-government, for the enlightened concept of government of the people, by the people, and for the people will have been seriously abridged."[503] Closing with an allusion to the Gettysburg Address, part of the southern tendency to cite northern political figures in support of their cause, reinforced the purported harm that the legislation would cause.

Absalom Robinson (D-VA), in turn, emphasized the danger of federalizing voting. Remarking that the bill would "authorize Federal voting referees to issue orders rubberstamped by Federal courts which will, to all intents and purposes, register voters just as though they had been registered by the State election officials under the ordinary procedures," Virginia's junior Senator invoked the erosion of states' rights so common in Southern arguments.[504] In response,

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[501] 86 Cong. Rec 3464 (1960).
[502] 86 Cong. Rec 3464 (1960).
[503] 86 Cong. Rec 3464 (1960).
[504] 86 Cong. Rec 3775-3776 (1960).

Russell Long (D-LA) asked Robinson "if there is not every prospect on earth that such a proposal as this could lead to stealing elections, particularly in presidential years?"[505] Robertson responded that he "would not like to say that somebody is going to steal an election, but he will have to admit that it opens the door. If anyone would want to be as crooked as that, he could be, under this bill, and it goes far beyond any power the Federal Government has under the Constitution and far beyond any power that is permissible under the 15th amendment."[506]

The voting provisions would also grant more power to federal judges, the source of southern consternation since *Brown* was handed down in 1954. Sam Ervin, in questioning Robinson on the 29th, asked if the voting provisions would "give these voting referees more power than the district judge, because it would require the Federal district judge to follow their recommendations, unless the evidence alleged to support them was clearly erroneous?"[507] Robinson answered in the affirmative. Ervin continued: "[D]oes not the section provide for a source of unlimited confusion, in that it would allow the State elected officials, or the State registrars of voters, to continue to function in respect to voters who are not allegedly being deprived of their right to vote, and would not that allow the Federal voting referees to register other persons?"[508] Again, Robinson answered in the affirmative. Ervin's line of questioning was designed to establish that not only would the federal government meddle in southern affairs, but that the meddling would be directed by their worst enemies in federal judges.

Second, southerners alleged that the firebombing provisions in the bill eroded local control over law enforcement. Part of a long-standing campaign against anti-lynching and anti-violence legislation, the southern caucus primarily focused their efforts on claims that

[505] 86 Cong. Rec 3776 (1960).
[506] 86 Cong. Rec 3776 (1960).
[507] 86 Cong. Rec 3779 (1960).
[508] 86 Cong. Rec 3779 (1960).

firebombing provisions eroded local law enforcement's rights, and were an unnecessary erosion of individual state rights. Lister Hill argued that the firebombing provision was "unnecessary and… it would constitute a further erosion of the rights of the State and of the basic principle of the Federal system- an indestructible union of indestructible States."[509] He was joined by George Smathers (D-FL), who called the provision "vicious" because "it would constitute an unwarranted invasion of local police authority…. No one wants it except a few persons who represent, regrettably, minority groups, and who somehow believe that the passage of such legislation might endear them to their particular groups."[510] Firebombing provisions were unnecessary and damaging, but they did aid civil rights groups. Here, both Hill and Smathers impugned the motives of civil rights senators, accusing them of damaging the country for short-term political benefits.

The firebombing provision also allowed southerners to resurrect claims about eroded due process rights, common in 1946. Hill, in a series of questions to Smathers on March 7th, remarked that the firebombing provisions provide "that [a suspect] may be tried not merely in the district, at the Constitution of the United States provides he shall be tried, but also he may be tried in any district wherein he may be held in custody or confinement, or in any Federal judicial district in which he may be apprehended. In other words, if he should commit the crime in the State of Florida, under the sixth amendment of the Constitution of the United States he must be tried in the state and the district in Florida…. Yet under this provision, he might be tried in Hawaii, Puerto Rico, or somewhere else, even up in the State of Maine."[511] The firebombing provision, therefore, threatened southern autonomy and state rights.

[509] 86 Cong. Rec 3463 (1960).
[510] 86 Cong. Rec 4710 (1960).
[511] 86 Cong. Rec 4722 (1960).

Third, civil rights bills caused irreparable damage to the southern states by stirring up dissenters. Southerners spent a significant amount of time discussing how civil rights legislation fulminated dissent and resistance to local laws, blaming civil rights senators for the disruption caused by protesters. Many of these arguments were evocative of Eisenhower's statements after *Brown*, which emphasized that laws could not change hearts and minds. Southern statements went further, alleging that civil rights bills endangered peaceful relations between white and black, and that by insisting on legislative changes, made it impossible for such a time to come.

Spessard Holland (D-FL) made this argument during a defense of local control over voting laws. Holland argued that Florida's method of voter registration, "which is progressive and which gives people the right to register and vote, is a far cry from an act which brings in the criminal law, which brings in the use of injunctions, which brings in force and coercion, tries to knock down long-established customs overnight, and expects people who have not been used to voting to run up to their courthouse the next day to register and vote."[512] Here, Holland portrayed northerners and social movement groups as agitators disrupting natural cycles. Florida's senator continued, noting that registration and enfranchisement "does not happen that way. It takes considerable time. We Americans must be a little bit patient on this subject and on many others. We are forgetting that things do not happen overnight. We are forgetting that we have to let old customs and old views and old principles have a little time to disestablish themselves in people's minds before we get full results."[513]

Holland was joined by his colleague George Smathers almost a week later. Smathers, too, bemoaned the use of legislative force in lieu of changing hearts and minds, arguing that the Senate "can pass laws until we build them up higher than this building- we have already 8

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[512] 86 Cong. Rec 3922 (1960).
[513] 86 Cong. Rec 3922 (1960).

pounds of proposals over here on the floor today. If any of them are passed, unless they are accepted by the people, the problem of enforcement will only create further resentment than that which already exists."[514] Smathers' visualization of the Senate's civil rights bills, paired with a good deal of hyperbole, stood only to prove that bills were irrelevant. It was acceptance by the people that mattered.

The Senator continued, "new laws will retard progress. As a matter of fact, they will set us back. They will lessen the regard of one side for the other. They will destroy the lines of communications between the colored people and the white people. It will set us back, and most of the proponents of this legislation, deep down in their hearts, understand that, but they are putting on a great show because they want to get this minority vote on their side in the upcoming election in the hope that they can win the Presidency and all the rest." Here, Smathers tied skepticism of legislation into degradation of southern race relations, and accused the bill's supporters of exploiting southerners for electoral gains. Undoubtedly, the Senator attempted to criticize both Johnson and Massachusetts Senator John F. Kennedy, both contenders for the Democratic party's nomination for the presidency.

This apoplectic tone manifested throughout southern speeches. John McClellan bemoaned the civil rights bills in the Senate as "a constant source of agitation and inspiration to bring about such conditions as we are reading about.[515] Arkansas' senator continued, arguing that "[n]obody will be any happier. No one will be any better off. No one will be served. The interests of our country will not be protected and enhanced."[516] Ultimately, the issue was that the Senate "cannot do by human law what the Creator said must be done, and can only be done, by

[514] 86 Cong. Rec 4714 (1960).
[515] 86 Cong. Rec 4700 (1960).
[516] 86 Cong. Rec 4700 (1960).

the process of evolution. That is a truth which needs to be instilled and inculcated in the minds and hearts of the people. If we try to do otherwise, we shall fail. We shall only stir up discord, enmity, and strife."[517] Southern attempts to appeal to a higher power, a form of transcendence, allowed them to amplify the costs of legislation and accuse northerners of destroying their way of life.

Locus of the irreparable arguments were targeted toward multiple audiences. Some focused on how the southern way of life was destroyed, while others demonstrated that the bill would erode fundamental American rights. All of the amendments to the civil rights bill, however, were done at the behest of agitating outsiders at the risk of southern identity and American values. This *sturm und drang* set the stage for compromise, while reinforcing the caucus's will to fight and furthering the notion of southern senators as representing fundamental American values. All that was left was to address those groups who were responsible for the chaos.

Scapegoating

Finally, southerners utilized scapegoating to focus fire away from their caucus and toward others. Described by Kenneth Burke as the process by which a society transfers guilt to a "sacrificial receptacle for the ritual unburdening of one's sins," scapegoating played two roles for the southern caucus. First, it was an attempt to blame traditional southern targets for the ills of civil rights legislation. Second, it was an attempt to use institutional power to defame social movement groups. In this section, I explore how southerners targeted both government forces in the Civil Rights Commission and the Supreme Court in addition to outside agitators, largely in the form of the National Association for the Advancement of Colored Peoples (NAACP).

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[517] 86 Cong. Rec 4700 (1960).

Attacks on the first two groups served to reinforce southern identity, while attacks on the second served to marginalize social movement groups.

First, southerners heaped blame on left-wingers and judges, normally in the form of the Civil Rights Commission and the Supreme Court. Allen Ellender started with the Civil Rights Commission on February 17th, arguing that proponents of civil rights bills "have the temerity to base the need for this legislation upon the fact that the Civil Rights Commission has recommended it."[518] These recommendations, however, were "biased, prejudiced, and without any objective basis in fact," because they were based on sociological data published in popular magazines: "[n]one of their conclusions… were reached because of hearings held all over the country, but they were based on citations from Harper's Weekly and other periodicals."[519] Ellender purposely intimated shoddy workmanship on the part of civil rights forces, given that the Harper's references were from other places, but concludes that "a practice of this kind might be appropriate in some quarters, but… it has no place in a report to the Congress of the United States, by an arm of the executive branch of the Government."[520] Ellender's intimation, that academic sources are somehow biased, was a form of paralepsis that blamed problems with race relations on academics.

Ellender continued this complaint, arguing that "[i]f a concerted effort were made to trace to their sources a bulk of the statements made about, and charges led against, the South… it would be found that they are based upon the rankest kind of hearsay evidence, on conclusions reached by individuals whose qualifications would not quality them to appear as experts on the subject at hand." Louisiana's senior senator used a climax construction to ridicule the expert

[518] 86 Cong. Rec 2732 (1960).
[519] 86 Cong. Rec 2732 (1960).
[520] 86 Cong. Rec 2733 (1960).

testimony utilized by the commission: "In addition to containing flat statements of fact with little or no objective, firsthand information recited to support such statements, in addition to using isolated instances in order to ridicule State officials in the performance of their official duties, the Commission's report positively exudes an atmosphere of bias."[521] Ultimately, misperceptions were the fault of the sociologists who put together the data, and Ellender attacked the authorities responsible for allegedly distorting a fair image of the South.

Southerners also targeted the Supreme Court. Still rankled by the *Brown* decision, targeting the Supreme Court became a way by which senators could both express their dissatisfaction on behalf of their constituents, and reinforce their opposition to researchers who rightfully attacked segregation. Here, the southern caucus accused the Supreme Court of not following the Constitution. As McClellan argued in questioning Sen. Harry Byrd (D-VA), the Brown decision demonstrated that "the whim of men can change even the Constitution of the United States… [t]hey do not change the Constitution, but their whims change, and thus they undertake in that way to change the law of the land."[522] These whims were particularly dangerous, because "[i]f a Supreme Court decision is the law of the land, if its interpretation of the Constitution is the law of the land, who is under a higher obligation than the members of the Supreme Court to observe it?"[523] Their failure to live up to their obligations meant they betrayed the American people.

Herman Talmadge (D-GA) argued that the court had gone even further; its "arrogations of legislative power and encroachments upon the rights of the States and individual citizens have become so flagrant as to draw the stinging rebuke of the Conference of State Chief Justices and

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[521] 86 Cong. Rec 2732 (1960).
[522] 86 Cong. Rec 4002 (1960).
[523] 86 Cong. Rec 4002 (1960).

subsequently the American Bar Association recommended specific legislation to put a halt to the Court's invasions of States rights and the powers of Congress."[524] Brown represented "a complete departure from judicial decisions based on the Constitution, the law, and established legal precedent. It substitutes in their stead bald court edicts based upon so-called modern authority and the personal opinions of the Justices."[525] In establishing the precedent set in Brown, "[t]he Court found it necessary to jump a number of high hurdles in order to reach its conclusion. Its first hurdle was the 14th Amendment itself…. It brushed the 10th Amendment aside as if it did not exist and did not even mention it in its ruling."[526] Talmadge proceeded to attack the sociological evidence in the case and attacked Gunner Myrdal as a "Swedish socialist."[527] The anti-Supreme Court arguments filled much the same role as anti-Civil Rights Commission claims. The goal of the southern caucus was to discredit the experts who established the harms of integration, which would in turn discredit conclusions drawn by the Civil Rights Commission and the Supreme Court.

The southern caucus also focused fire on the NAACP, who they accused of misleading on civil rights legislation. Sam Ervin argued on March 2nd that "[t]here are in this country organizations which make it a vocation to agitate racial problems and to recommend the enactment of civil rights laws for their solution. There is an organization which has gone from New York to the Southern States in the past few weeks to stir up trouble for the purpose, as I think the Senator from Georgia [Russell] correctly charged, of assisting in the passage of so-

[524] 86 Cong. Rec 3619 (1960).
[525] 86 Cong. Rec 3619 (1960).
[526] 86 Cong. Rec 3619 (1960).
[527] 86 Cong. Rec 3620 (1960).

called civil rights bills."[528] Here, the NAACP was portrayed as an outsider group disturbing southern order, an argument tailored toward southern audiences.

Ervin continued, suggesting that the NAACP represented a threat to southern order: "These organizations delude and exploit the race for whom they pretend to be working. They tell those people that they can "law" or legislate their way to first class citizenship and the better life. Mr. President, no man can "law" or legislate their way to first class citizenship and the better life. Those things are rewards for personal integrity and personal industry."[529] Again evoking the "hearts and minds" defense Eisenhower was so fond of, Ervin intimated that the NAACP stood opposed to personal industry, choosing instead to use the law to change things. Ervin concluded that the "organizations, individuals, and politicians- if there any be- who try to delude the members of the Negro race into believing that they can "law" or legislate their way to first class citizenship or the better life are merely exploiting these people; and in the final analysis are their enemies instead of their friends."[530]

Southerners positioned themselves as true defenders of the south, fighting against interlopers. On February 15th, Russell bemoaned the unfair treatment of the southern caucus, arguing that "[i]n all of this controversy, and discussion we have heard a great deal about minorities. The only minority in the Senate that is considered not to have any rights at all is the group of Southern Democrats that has been undertaking to protect its people and the rights of its States."[531]As a result, the caucus would not compromise on matters that were so important. As John McClellan argued, "[w]hatever the outcome may be insofar as the kind of legislation that is enacted, it will not satisfy, it will not be adequate to satisfy, the proponents of this legislation….

[528] 86 Cong. Rec 4082 (1960).
[529] 86 Cong. Rec 4082 (1960).
[530] 86 Cong. Rec 4082 (1960).
[531] 86 Cong. Rec 2470 (1960).

It will not be adequate to satisfy the organizations on the outside that are agitating the race conflict and race controversy. It will not appease them. A settlement or compromise with them on any basis cannot be made which will terminate what is becoming a constant, if not eternal, controversy, wherein the issue if so-called civil rights is involved."[532]

Conclusion

Lyndon Johnson gave up on the round-the-clock filibuster on March 5th, and on the 10th, when liberals forced a cloture vote, Johnson and Minority Leader Everett Dirksen worked to defeat it, undercutting their claims that "a outmoded cloture rule was preventing the Senate from acting."[533] Keith Finley observed that the failed vote was a response to what many Senators "considered a premature effort to stifle the filibuster."[534] Johnson took the opportunity to seek compromise. On March 24th, the Senate took up the House version of the civil rights bill, sending it to the Judiciary Committee with instructions to report back in five days; Eastland and his committee took the opportunity to water down the bill, producing a compromise that only satisfied the moderates.[535]

The final bill featured provisions that made all violations of judicial orders federal crimes and made all bombings subject to uniform penalties, thus removing the most sectional parts of the bill. Thus, southerners achieved their primary goals in defanging the legislation and forestalling even worse incursions by civil rights activists. In doing so, they relied upon conservative Republican votes, but on the cloture measure instead of to defeat the bill. That made decorum arguments especially important. The southern caucus had to demonstrate that

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[532] 86 Cong. Rec 4605 (1960).
[533] Mann, 258.
[534] Finley, 218.
[535] Mann, 259-260.

they understood the rules and norms surrounding debate, and that any attempt to defeat them would erode those norms.

Meanwhile, the topical arguments began to sound old. Once again, southerners argued that they were unfairly targeted and that the Civil Rights Act was unfairly sectional. These arguments moved the Senate to remove the most targeted regional provisions. However, their arguments as to the consolidation of power in Washington, made most frequently through appeals to the locus of the irreparable, tended not to work. If anything, the final bill's compromise, in which all violations of judicial orders were subject to federal penalty, and under which all bombings would be harshly punished, led to an increase in federal power. Scapegoating likely worked to diminish the effectiveness of civil rights groups, but hardly worked in the context of the body, where the real threat lay with liberal Democrats and Republicans who believed action on civil rights was necessary. It mostly spoke to constituents rather than colleagues.

The southern caucus was rapidly running out of time. The liberal turn in the next decade accelerated that process, as did Johnson's transformation from a moderate deal-maker into a civil rights activist. Still, the southern caucus had experience at defeating legislation. It took massive transformations in the liberal civil rights caucus to ultimately undo southern successes.

CHAPTER 5: RICHARD RUSSELL'S LAST STAND

Introduction

Compromise in 1960 was largely possible thanks to a disinterested majority leader and disorganized liberal support for civil rights. The issue had yet to crystalize, and Russell and his colleagues parleyed division within civil rights ranks to neuter the Civil Rights Act of 1960. Unfortunately for Russell and the southerners, however, local Southern politicians intensified violence against African-Americans engaged in direct protest. No longer able to control the narrative coming out of the region, and without shrewd local politicians who made concessions to preserve the broader structure of Jim Crow[536], Russell and his colleagues reckoned with a civil rights debate in which the actions of Birmingham Public Safety Commissioner Bull Connor reverberated worldwide.[537]

As white Southerners grew more violent, civil rights senators grew more organized. The Kennedy Administration, slow to move on anti-discrimination legislation, found itself compelled to action by violence in the South. President John F. Kennedy responded admirably, framing the conflict as a moral imperative for the United States.[538] After the president's assassination, civil rights leaders grew concerned about his replacement, Lyndon B. Johnson, but Johnson was committed to civil rights.[539] For the first time in history, the southern bloc faced organized

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[536] The one exception was Albany, GA sheriff Laurie Pritchett, who had studied nonviolent protest and came to the conclusion that only extreme violence would result in federal intervention. Pritchett proceeded to calmly and orderly arrest hundreds of protesters, including Martin Luther King, Jr., and the mayor of Albany was rewarded with praise from Attorney General Robert F. Kennedy. Nick Bryant, *The Bystander: John F. Kennedy and the Struggle for Black Equality* (New York: Basic Books, 2006): 281.
[537] George Lewis, *The White South and the Red Menace: Segregationists, Anticommunism, and Massive Resistance*, 1945-1965 (Gainesville: University Press of Florida, 2004).
[538] John F. Kennedy, "Radio and Television Report to the American People on Civil Rights," June 11, 1963, Online by Gerhard Peters and John T. Woolley, *The American Presidency Project.* http://www.presidency.ucsb.edu/ws/?pid=9271.
[539] Robert Mann, *The Walls of Jericho: Lyndon Johnson, Hubert Humphrey, Richard Russell, and the Struggle for Civil Rights* (New York: Harcourt Brace and Company, 1996).

opposition led by a man who they had negotiated with numerous times in the past. But Johnson and Senate liberals made it clear that there would be no compromise.

This chapter examines the southern senators' last stand over civil rights, but in doing so, also emphasizes the importance of northern and western organization. In the subsequent pages, I argue that southerners ran the same arguments they had used in previous debates, attempting to rebuild a conservative coalition to stop the Civil Rights Act of 1964. However, southern arguments failed to adapt to changing circumstances and vigorous opposition. Southern caucus members emphasized the damage the bill could cause, utilizing locus of the irreparable arguments to win over twelve of their colleagues to stop cloture. Simultaneously, they sought to scapegoat civil rights groups, portraying them as extremists and alleging that activists would never be satisfied with any legislation produced by the federal government. However, civil rights senators, organized by Minnesota senator Hubert H. Humphrey, thwarted the southern onslaught by responding to their arguments, after building a case of their own. The civil rights caucus prepared for debate so thoroughly that they defanged southern arguments over decorum in the Senate chamber and the damage the bill would cause. Southerners, left with relics of previous debates, could not find enough votes to defeat cloture.

In the following pages, I begin by exploring the immediate context of the bill, driven by the Kennedy Administration's desire to respond to southern violence and the Johnson Administration's need to deliver a strong civil rights package to solidify activist support. I then explore the bill's legislative history, before turning to a two-part criticism of the rhetoric deployed by southerners. Here, I first examine how Humphrey and civil rights senators resolved southern concerns over decorum in the Senate, presenting a week-long series of constructive speeches intended to lay out a case for the bill while southerners were forced to make claims

about the importance of the committee system that looked petty in response. Second, I examine how southerners deployed locus of the irreparable arguments, alleging that the bill would erode jury protections and lead to an expansive federal bureaucracy that would regulate every facet of American life. Third, I examine how southerners attempted to scapegoat popular civil rights leaders. I conclude by noting the importance of debate to the passage of the Civil Rights Act.

Historical Context

The Civil Rights Act of 1960 was of relatively little political importance compared to the presidential election of the same year. Vice President Richard Nixon secured the Republican nomination early, but the Democratic Party had yet to choose a standard bearer. Four Senators vied for the nomination: moderate, charismatic John F. Kennedy of Massachusetts, insider Stuart Symington of Missouri, liberal Hubert H. Humphrey of Minnesota, and Senate Majority Leader Lyndon Johnson (though Johnson declared right before the convention). Kennedy won the nomination thanks to a strong, well-organized, and well-funded campaign. He chose Johnson to be vice president, an attempt to balance the ticket, which angered civil rights activists aghast at his "southern background and voting record on civil rights."[540] Popular wisdom suggested that civil rights leader Martin Luther King, Jr. would endorse Nixon over Kennedy, swinging the black vote.[541] But after personally intervening when King was imprisoned by a Georgia judge right before the election, King publicly thanked the Democrat from Massachusetts.[542] The civil rights leader declined to endorse Kennedy, however, choosing to remain non-partisan.[543]

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[540] Mann, 277.
[541] Levingston, 180.
[542] Bryant, 185. King expressed appreciation, saying he was "deeply indebted to Senator Kennedy, who served as a great force in making my release possible." The Reverend Martin Luther King, Sr., a Republican, was much less subtle, saying that he had "expected to vote against Senator Kennedy because of his religion. But now he can be my president, Catholic or whatever he is…. I've got all my votes and I've got a suitcase and I'm going to take them up there and dump them in his lap." Mann, 285.
[543] Steven Levingston, *Kennedy and King: The President, the Pastor, and the Battle over Civil Rights* (New York: Hachette, 2017), 96-97.

After the election, the Kennedy administration put civil rights legislation on the backburner. Nick Bryant observes, however, that Kennedy understood "the moral and political necessity of offering black voters some evidence of reform," and pursued equal employment opportunities early in his tenure. Steven Levingston argues, however, that the Kennedy Administration missed a "potential opening on civil rights" earlier in his term, intimidated by southern leadership in the Senate.[544]

As Kennedy's administration proceeded, conditions in the South grew worse, demanding a more forceful federal response, The Freedom Rides, consisting of groups of college students from the North attempting to test southern compliance with federal desegregation orders on interstate buses, were attacked by mobs in Alabama.[545] While Attorney General Robert Kennedy played mediator, southerners blamed the Freedom Riders for the violence.[546] Efforts to desegregate the University of Mississippi also resulted in bloodshed, as James Meredith's attempts to enroll led to a pitched battle. The Kennedy Administration, which worked to avoid another Little Rock style disaster, utterly failed to keep the peace, with two dead and 166 federal marshals wounded.[547] 1963 brought more violence, this time thanks to Birmingham Commissioner of Public Safety Bull Connor, who used police dogs and fire hoses to turn back protesters seeking desegregation of the city.

While not a watershed moment, the events in Birmingham did cause the Kennedy Administration to shift tactics, and by 1963, Kennedy was "deeply and fervently committed to the cause of human rights as a moral necessity inconsistent with his political instincts."[548] On

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[544] Levingston, 121-122.
[545] Mann, 310; Levingston, 263-264.
[546] For an account of Kennedy's tactics mediating the conflict, see John Murphy, "Domesticating Dissent: The Kennedys and the Freedom Rides," *Communication Monographs* 59 (1992): 61-78.
[547] Bryant, 332. Mann, 332.
[548] Bryant, 389. Theodore Sorensen, *Kennedy* (New York: Harper and Row, 1965), 470.

June 11th, 1963, Kennedy responded to the standoff over the desegregation of the University of Alabama with a nationally televised civil rights address, in which the President argued that "[o]ne hundred years of delay have passed since President Lincoln freed the slaves, yet their heirs, their grandsons, are not fully free."[549] The speech represented Kennedy's strongest attempt to mobilize civil rights proponents toward an aggressive civil rights agenda, and demonstrated his administration's willingness finally to put political weight behind major civil rights legislation.

While civil rights leaders, including Martin Luther King, Jr, saw the speech as an unequivocal success, it angered southern Senators.[550] Russell responded with outrage, decrying Kennedy's approach as Communist: "The outstanding distinction between a government of free men and a socialistic or communistic state, is the fact that free men can own and control property, whereas statism denies property rights to the individual."[551] Russell declared that he stood opposed to civil rights legislation from the Kennedy administration, and would oppose the president's bill "with every means and resource at my command."[552]

Russell prepared to lead his caucus into battle, but the southerners in 1964 were older than they had been in previous fights. Robert Mann suggests that Russell's only real opportunity in 1963 would have been either "to compromise or offer a reasonable alternative to Kennedy's legislation."[553] Senators within the southern bloc's ranks also began to wonder if it would be possible to win. Russell Long acknowledged the region's reliance on eighteen senators, remarking that the best chance the south had was to "convince enough Senators to join us to the

[549] Kennedy, "Radio and Television Report to the American People on Civil Rights."
[550] Levingston 406-407.
[551] Mann, 366.
[552] Mann, 366.
[553] Mann 366.

extent of not voting for cloture."[554] Still, younger members of the caucus, like Strom Thurmond (D-SC) relished the possibility of a fight. Thurmond speculated that a "united southern front… would pressure the Kennedy administration to capitulate," ignoring, as Keith Finley observes, the immense pressure exerted on the President by black civil rights leaders.[555] Russell moved ahead cautiously, seeking a battle based not in massive resistance, out of fear that "it would harden public opinion against segregationists," but instead looking to wage a battle of attrition against the Kennedy Administration, attacking their political capital before an election year.[556]

On June 19th, 1963, the President introduced a civil rights bill with two primary features: the first, to ban discrimination in places of public accommodation (or at least those with a "substantial" impact on interstate commerce), and the second, to give the Attorney General the authority to begin desegregation of schools.[557] But the bill was dead on arrival. Robert Mann notes that Majority Leader Mike Mansfield (R-MT) did not think he had enough votes to reach a mere majority, and that Republicans would not compromise on the public accommodations clause.[558] In negotiations with civil rights leaders, Kennedy "emphasized the difficulty of stopping the anticipated southern filibuster," and Mansfield, upon introducing the administration's bill, also endorsed and co-sponsored legislation with Minority Leader Everett Dirksen (R-IL) that excluded the public accommodations clauses.

More important, however, might have been a conversation that Vice President Lyndon Johnson, Russell's longtime protégé, had with Kennedy's long-time aide, Theodore Sorensen, on June 3rd. In the conversation, Johnson urged the President to "sit down with Russell and answer

[554] Finley, 242.
[555] Finley, 246.
[556] Bryant, 428.
[557] Sorensen, 497.
[558] Mann, 366.

every argument Russell made against civil rights legislation with responses that carried weight." Make the anti-civil rights crowd "show every single card they got."[559] Meanwhile, Russell, despite being eager to fight the bill, had begun showing reservations, admitting in an August interview that African-Americans had been exposed to indignities and mistreatment.[560] Still, argued the Senator, "we shouldn't upset the whole scheme of constitutional government and expect people to swallow laws governing their most intimate social relations. The tempo of change is the crux of the whole matter."[561] Russell's argument, shaded with tinges of *kairos*, overlooked the stars aligning for pro-civil rights forces.

President Kennedy's assassination on November 22, 1963, irrevocably changed the political calculus surrounding the civil rights bill. The new president, Lyndon Johnson, threw his full support behind Kennedy's civil rights measure in a speech to Congress on November 27th, to the shock of civil rights leaders and the chagrin of his former southern colleagues.[562] The man now in charge of passing strong civil rights legislation was perhaps the perfect architect to do so. He started by naming Russell to the Warren Commission over the Georgian's objections. Russell, who had no interest in being on the commission, especially with his anticipated work on the civil rights filibuster, fought the president vociferously on the appointment, and begged to be released from duty in February 1964.[563]

Meanwhile, President Johnson passed day-to-day stewardship of the legislation to Attorney General Robert F. Kennedy.[564] He then turned his attention to the House of

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559 Gilbert C. Fite, Richard B Russell Jr., Senator from Georgia (Chapel Hill: University of North Carolina Press, 1991), 402.
560 Mann, 375.
561 Mann, 375.
562 Fite, 408; Mann 382-385.
563 Fite, 405-407; Mann 386-388. Mann reports that Russell felt "overloaded" between the commission's work and his normal duties in the Senate, no doubt intensified by the upcoming fight.
564 Mann, 389.

Representatives, where public opinion allowed him to pressure Rules Committee Chairman Howard Smith, a segregationist who allowed the bill onto the floor after public opinion polls shifted after Kennedy's assassination.[565] House opposition to the bill was soft, and no southern weakening amendments were added to the bill.[566] The House passed HR 7152, the Civil Rights Act of 1964, on February 10, 1964, 290-130. The bill included both of Kennedy's initial provisions, a fair employment provision, an extension of the Civil Rights Commission, and Congressional authority to cut off federal funds to programs that discriminated. Gilbert Fite notes that "almost every aspect of the bill was unsatisfactory to Russell," and yet it had passed with a massive majority.[567] So the Southern caucus's leader prepared for a fight, knowing the odds were against him.

Immediate Context

While segregationists hoped that Russell would be able to persuade his protégé to eliminate some of the worst provisions of the Civil Rights Act, Russell knew better.[568] There would be no compromise on the bill. Russell was chagrined by the nature of the legislation; he "severely criticized abolishing a person's right to operate a segregated service or business," and viewed the use of federal power to stop an owner from discriminating as an infringement on property rights.[569] Hence, southerners would not compromise on either the public accommodations or fair employment provisions. Johnson, meanwhile, felt the same way. Operating on the understanding that the Senate could not stop a filibuster, the president "approved the Justice Department's plan for a bold, frontal assault in the Senate."[570] Johnson

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[565] Mann, 388-389. The Judiciary Committee in the House passed the bill prior to Kennedy's assassination. Bryant, 458.
[566] Mann, 389.
[567] Fite, 409.
[568] Fite, 410.
[569] Fite, 409.
[570] Mann, 391.

knew that his newfound credibility on civil rights would be dissolved if he compromised, and the issue had evolved into one where principle overrode politics.[571]

The critical goal faced by civil rights advocates in the Senate was to reach sixty-seven votes for cloture. While assistant Attorney General Nicholas Katzenbach saw seventy-four votes for cloture, Johnson only saw fifty-eight, and the President encouraged Mike Mansfield to push the Senate into round-the-clock sessions to force the filibuster to crack.[572] The majority leader refused, arguing that the dignity of the Senate would not be turned into a "circus," and the Senate went ahead without the long sessions that defined the 1960 debate.[573] Mansfield selected majority whip Hubert Humphrey (D-MN) as the floor leader for the legislation. Humphrey, who Mansfield had described as "one of the nation's leading advocates of federal action in the field of civil rights since the 1948 [Democratic] convention," was more than up for the task.[574]

Humphrey took a cue from the southern bloc's approach in 1960, organizing the civil rights caucus for a long debate. The senator from Minnesota met with Thomas Kuchel (R-CA), the go-between appointed by minority leader Everett Dirksen, and nominated seven "title captains" to represent and defend each part of the bill on the floor.[575] Civil rights senators were stationed on the floor at all times to "challenge both southern arguments regarding the bill's constitutionality as well as claims concerning the idyllic nature of the region's race relations."[576] Humphrey added in Republican support as it came while organizing an aggressive public relations campaign against southern forces.[577]

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[571] Mann, 392.
[572] Mann, 393.
[573] Mann, 394.
[574] Carl Solberg, Hubert Humphrey: A Biography (New York: WW Norton and Company, 1984), 222.
[575] Solberg, 222; Mann, 396; Finley, 254.
[576] Finley, 254.
[577] Finley, 254; Solberg, 222.

Meanwhile, Russell organized his eighteen Southerners, with the addition of Republican John Tower of Texas, in much the same way that he had in 1960. The first debate of the bill in the Senate, held in March, concerned whether to place the bill directly onto the Senate's agenda, bypassing the committee system. As in 1960, southerners fought vociferously to stop the majority leader, but lost, 54-27.[578] So the southerners retreated to fight over cloture, where they needed twelve additional votes in addition to their nineteen to stop the bill. Russell placed his faith in his strategies of delay, mostly because there was no other choice. The only hope for victory was to filibuster indefinitely and force the White House to compromise.[579]

The biggest change in 1964 was the importance of floor debate. Johnson's no-mercy strategy required Humphrey be organized and willing to fight on every provision of the bill, much as the Texan had argued to Sorensen that Kennedy should handle the civil rights fight in 1963. Thomas Kuchel had encouraged Humphrey and civil rights senators to "respond immediately and fully to any Southern argument, the better to demonstrate to wavering senators the commitment to the bill and the wrongness of the Southern Democrats' position."[580] Meanwhile, senators had bypassed committee consideration, and that required the Senate to give southerners long periods of time to defend the region's interests, if only because "[a]ny perceived "miscarriage of justice" in Washington in which southerners were "gagged" with undue haste would also touch off a wave of violence."[581] Russell and his colleagues had two

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[578]Fite, 412. Here, Russell ended a filibuster against the motion to consider, which is where southerners initially focused their attention. John G. Stewart, "The Civil Rights Act of 1964: Tactics 1," Robert D. Loevy, ed., The Civil Rights Act of 1964: The Passage of the Law That Ended Racial Segregation (Albany: State University of New York Press, 1997), 211-274, 222.
[579] Mann, 400.
[580] Clay Risen, The Bill of the Century: The Epic Battle for the Civil Rights Act (New York: Bloomsbury Press, 2014), 186. See also Stewart, 228.
[581] Finley, 254.

months to debate the measure, while Humphrey diligently worked behind the scenes to gather votes.

Those votes came from Everett Dirksen, the moderate Republican majority leader, who was known for his pragmatism. Everyone in Washington, from Johnson, to Russell, to Humphrey, to Mansfield, knew that the fate of the civil rights bill rode on him. Humphrey "cultivated" Dirksen as much as possible during the debate, praising the minority leader into negotiation.[582] Humphrey insisted on negotiating with Dirksen in his office, exploiting Russell's refusal to compromise on any amendments.[583] On May 13th, the group came to a compromise: the attorney general's expanded powers would be restricted in both public accommodations and fair employment cases, the bill would require complaints about discriminations first be filed with state or local officials, the bill would rule out busing as a way to desegregate schools, and any cutoff of federal funds to punish discrimination would be limited.[584] The compromises left the bulk of the bill intact.

Mansfield, Humphrey, Dirksen, and Kuchel all introduced a substitute bill on May 26th, and began to whip votes for it. While most Republicans supported the bill, Humphrey had to negotiate with Republican policy committee chairman Bourke Hickenlooper (R-IA), who wanted some further limiting amendments. Humphrey argued that these votes helped deliver what they needed for cloture and called Johnson on June 9th to inform the President that he had sixty-six votes with a handful in reserve.

Ultimately, southern defeat was the result of a well-organized liberal bloc and massive political pressure. But southerners had turned the tide against popular legislation before, in 1937.

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[582] Solberg, 223.
[583] Solberg, 223.
[584] Mann, 420.

They did so by making the bill toxic, relying on powerful topical arguments to sway both public opinion and their colleagues. Here, the southern caucus failed to muster reasonable arguments against the legislation for two reasons. First, their reliance on arguments from decorum finally caught up to them, as Senate liberals presented an extensive affirmative case. Southern arguments rang hollow: after nearly thirty years, Senate liberals finally gave them the debate they wanted.

Second, and more important, the substantive arguments southerners chose were poor. Whereas in 1937 and 1946, southerners effectively refuted civil rights senators by appealing to their more conservative colleagues, there were not enough on the right for the same arguments to work in 1964. Southerners relied heavily on claims based in the locus of the irreparable, arguing that the Civil Rights Act of 1964 would destroy critical American institutions like due process. Keith Finley argues that southerners "[r]ecognized the necessity of swaying their colleagues," and attempted to muster the spirit of the American Revolution, portraying themselves as "defenders of the American political system."[585] However, there were two problems. First, these arguments were not persuasive in 1964 because southerners had relied on the same claims for years with few ill effects borne of civil rights bills. Rather, conditions in the South had seemed to deteriorate. Second, Senate liberals were all too happy to answer these claims, engaging in long periods of cross examination, and eventually cutting a compromise with minority leader Dirksen. Beyond locus of the irreparable, southerners relied on scapegoating, blaming Martin Luther King, Jr. and CORE for instability. Unable to rely on reciprocity, as demagogues down south gave civil rights activists ammunition to use against Jim Crow, southerners tried demonizing movement leaders. But these claims fell flat, in part because they rang hollow in the face of

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[585] Finley 257.

southern injustice. Hence, an outflanked and outgunned southern bloc used bad arguments in the face of good legislation and shrewd opposing senators.

Decorum

Arguments from decorum formed the backbone of southern arguments throughout the civil rights filibuster era. Even in 1937 and 1946, when the caucus presented topical arguments that persuaded enough of their colleagues, their power rested on the debate rule, and more specifically, their ability to justify a filibuster in the face of opposition. In 1960, their insistence that the Senate obey the norms of debate laid out in almost two centuries of the body gave them the leverage to wage twenty-four hour filibusters and to elicit a compromise from civil rights forces.

In 1964, however, the advantage disappeared. For the first time, civil rights senators developed a substantive affirmative case. While liberals had always defended their bills, they normally gave an opening speech or two coupled with some cross-examination. The fullest defense of a civil rights bill came from Dennis Chavez in 1946, who aggressively defended the Fair Employment Practice Commission, but even he stood alone in the face of southern opposition. For almost thirty years, civil rights defenders had been out-organized. This time, however Humphrey's masterful organization of pro-civil rights forces reduced the southern argument to petty complaints over bypassing committee review rather than allowing Russell to claim civil rights senators were striking at the heart of the Senate. In the subsequent section, I lay out how civil rights senators routed claims based in decorum, beginning by examining their opening salvos in favor of the bill before turning to the tepid southern response, rooted in claims about the committee system.

The civil rights caucus began the debate, giving the bulk of the speeches for the first nine days. The liberals moved section by section through the bill, justifying each one in turn. Meanwhile, they did their best to alternate between Democrats and Republicans to demonstrate unity across party lines. This behavior was intentional; as Humphrey asserted on the first day of the debate, he would, with Thomas Kuchel (R-CA), "attempt to lay the affirmative case for the bill before the Senate."[586] Humphrey promptly proceeded through an extended defense of each provision of the bill alluding to Kennedy's civil rights address in the process. The Minnesotan called the legislation's massive scope necessary, because "the primary ingredients for a full and free life are inseparable from each other."[587] Humphrey argued that the Civil Rights Act "cannot be attacked on its merits. Instead bogeymen and hobgoblins have been raised to frighten well-meaning Americans."[588] Using a climax construction, the senator worked through refutations to the bill:

> It is said that the bill would make the Attorney General a dictator, when in fact the only power he is given is the authority to introduce lawsuits to give some American citizens their constitutional rights and require other Americans to obey the law. It is called a force bill, when in fact it places first reliance on conciliation and voluntary action, and authorizes legal action only as a last resort. It is called an attack on State government, when in fact the bill specifically directs that State and local officials and agencies will be used wherever feasible… It is claimed the bill would produce a gigantic federal bureaucracy, when in fact it will result in creating about 400 permanent new Federal jobs. It is claimed that it would impair

[586] 88 Cong. Record 6528 (1964).
[587] 88 Cong. Record 6552 (1964).
[588] 88 Cong. Record 6552 (1964).

> a property owner's ability to sell or rent his home, when in fact there is nothing in the bill pertaining to housing. It is claimed that the bill would require racial quotas for all hiring, when in fact it provides that race shall be a basis for making personnel decisions.[589]

This carefully crafted section used parallel structure alongside repetition to effectively refute each major southern argument in turn, implicitly concluding that southern arguments were free of fact. Humphrey concluded that the bill did "no more than what our Constitution guarantees." Using authority evidence combined with thorough refutation, Humphrey neutralized southern claims against the legislation.

Following Humphrey, Kuchel spoke, again defending each title in turn. The next day, March 31st, Kenneth Keating (R-NY) announced that civil rights senators had decided to discuss each title in turn over the next week. Keating observed that "it would be helpful if the opponents of the legislation proceed to answer in any way they can the arguments that have been made- that is, if they have any answers."[590] Senator John Stennis (D-MS) interjected, grumbling that southerners received their printed copies of the Congressional Record "this morning at 7 or 7:30, and… there is not plenty of time to go through it and read anything, or to make note of facts which have been cited which one believes should be contradicted between the time the Record is received and the 11 o'clock convening of the Senate…. Let me say to the Senator that they will be answered, but not in such a few hours as the time elapsing between delivery of the Record and the convening of the Senate."[591]

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[589] 88 Cong. Record 6552-6523 (1964).
[590] 88 Cong. Record 6635 (1964).
[591] 88 Cong. Record 6635 (1964).

This rather testy exchange exemplified how the civil rights senators had cut the southern caucus off at the knees. In past debates, civil rights senators mustered a handful of speeches, allowing southerners to plead that they were being trampled by colleagues who disrespected Senate norms. In this debate, however, liberals took a full week, composed of around twenty speeches, to lay out the case for the Civil Rights Act of 1964. Stennis's complaint, that southerners only had a few hours to read the *Record*, sounded ludicrous in the face of a week of debate. After all, southerners could have attended the debates, as they argued civil rights forces should have in 1937, 1945 and 1960.

Civil rights senators, always present on the floor, proceeded to cross-examine southerners during their speeches. By performing as the Southern caucus had demanded for years, civil rights senators defanged southern procedural arguments, leaving the caucus either to attack the bill on its merits, or to make weak procedural arguments. Despite being outflanked, the southerners tried two arguments from decorum. First, they tried mustering arguments against the leadership's decision to bypass the committee system, and second, they attacked the cloture process.

First, as in 1960, southern senators argued that the process by which the majority leader brought the bill to the floor bypassed the committee system.[592] The committee system, conveniently controlled by southern Democrats, provided an avenue by which bills could be debated and expert testimony could be provided. It also served as a way for southerners to bottle up civil rights legislation, a convenient check on civil rights senators, thanks to southern

[592] Neil MacNeil and Richard Baker discuss the importance of the committee system for free debate in the post-1900 Senate, as do I in Chapter 4. Neil MacNeil and Richard A. Baker, *The American Senate: An Insider's History* (New York: Oxford University Press, 2015), 290-292.

seniority in the body.[593] But Mansfield, like Johnson before him, understood this, and placed the Civil Rights Act directly onto the calendar.

Southerners saw this as an affront to proper procedure. As Harry Byrd (D-VA) argued, placing civil rights bills directly on the calendar "is becoming normal for civil rights bills when they cannot stand up under committee examination."[594] Byrd argued that, "[f]or all practical purposes, there was no committee examination on [the CRA of 1964], as it stands, in the House of Representatives, and committee consideration was completely bypassed in the Senate."[595] While "hearings have been held in the past on pieces of the bill," the "differences are magnified when the pieces are consolidated."[596] Here Byrd maligned the process and categorized the bill as a mashup of older proposals, implying that the bill's pieces had all been defeated.

The impact of bypassing the committee process was severe because "[t]he public was not allowed to be heard on this bill. Those affected have been denied the right to be heard, and the public generally and the Senate are denied the information to be developed in formal testimony."[597] Likewise, bypassing the committee process "denied the Senate and the public the benefit of majority and minority views, and has precluded the requirements of the Cordon rule-to publish the proposed changes in existing law and their effect."[598] On its face, Byrd's complaints looked reasonable. But the Virginian ignored southern abuse of the committee system in the process.

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[593] Southerners, all Democrats save for John Tower of Texas, did not have to worry about significant general election challenges, as the Democratic Party was the only functional party in most Southern states, and had been since Reconstruction. Hence, their members generally controlled most of the Senate's committees during the 1950s and 1960s.
[594] 88 Cong. Record 8043-8044 (1964).
[595] 88 Cong. Record 8044 (1964).
[596] 88 Cong. Record 8044 (1964).
[597] 88 Cong. Record 8044 (1964).
[598] 88 Cong. Record 8044 (1964).

Simultaneously, there was something galling about claiming that the bill had not been debated enough, given that the Senate was in the middle of a filibuster. Lister Hill (D-AL) tried this argument on the 20th of April, arguing that the bill was "drawn up and steamrolled through the House committee with only two minutes- I will not say debate, because there cannot be a 2-minute debate- 2 minutes of discussion."[599] Hill detailed the process for the Senate: "The chairman of the committee, who was one of the authors of the bill, took 1 minute and yielded an additional minute to the ranking Republican, who was a coauthor of the bill; and after the 2 minutes of discussion by those two members of committee, the bill was rammed through the committee."[600] As a result, argued Hill, the House introduced perfecting amendments to fix the legislation.

Ultimately, however, southerners did not rely on the committee system argument. By giving them ample time on the Senate floor, civil rights senators undercut the impact of this argument. Indeed, Byrd's complaints about the committee system preceded a speech that was, effectively, a minority opinion of the impacts of the legislation, and Hill's preceded a tirade against the Fair Employment Practices Commission, the very issue he argued that House committee members had ignored. Furthermore, civil rights senators participated in that debate, essentially replicating the committee process on the floor of the Senate. Unlike previous debates, where southerners could argue, with some merit, that the opposition was not engaging in deliberation, the argument rang hollow in 1964. Finally, the whole position missed the key issue: Senators who cared about the debate rule were most interested in debate on the Senate floor and opposed cloture because they thought southerners were being gagged. Without attacking cloture, southerners could not rely on normative arguments.

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[599] 88 Cong. Record 8441 (1964).
[600] 88 Cong. Record 8441 (1964).

Southerners switched tactics in their second wave of procedural arguments, claiming that cloture was a form of censorship. On March 31st, for instance, immediately after one of Humphrey's opening salvos in favor of the bill, Richard Russell protested the majority's attempts to end debate, arguing that the southern caucus intended "to handle the debate against the bill in accordance to our own plans, and not in accordance with any plans made by the Senator from Minnesota (Humphrey)."[601] Russell categorized Humphrey's speech as a "book," and argued that the civil rights advocate "announced at the outset that he would not grant the same privilege [of debate] to those who were opposed to the bill."[602] Russell was particularly aggrieved that Humphrey asked not to be interrupted during his speech, a normative violation. While he announced his intention to "read" Humphrey's book, he decried his opponent, arguing that "I expect to hear him say every day, "Let us vote. Let us proceed to vote."[603] Russell insisted that "with all the other odds that are arrayed against us, including the emotional hysteria which has been generated and which pervades this land, we shall not be ready to vote at any time soon."[604] Here, Russell amplified the intensity of the opposition, framing the struggle in a similar way as to the Lost Cause. Russell continued: "[Humphrey] may issue his little challenge every day. However, I hope that Senators who are opposed to the bill will be more generous to the Senator from Minnesota than he was to him, and will yield for discussion and debate on the floor of the Senate when questions are asked."[605] Here, Russell closed with a claim from reciprocity, demanding the right to speak that Humphrey refused to give him.

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[601] 88 Cong. Record 6607 (1964).
[602] 88 Cong. Record 6607 (1964).
[603] 88 Cong. Record 6607 (1964).
[604] 88 Cong. Record 6607 (1964).
[605] 88 Cong. Record 6607 (1964).

Unfortunately for him, Russell faced an experienced opponent. Humphrey began his speech on the 30th by issuing a "friendly challenge" to opponents of the bill: that "we will join you in debating this bill; will you join with us in voting on HR 7152 after the debate has been concluded?"[606] Humphrey argued that civil rights senators were "prepared to debate the bill," even while they were "prepared to take a vote immediately on any title of the bill that any Senator would like to discuss."[607] Indeed, the Senator from Minnesota argued that the bill "needs more discussion," and called for "very full debate," though he "differentiate[d] between full debate and a filibuster. Full debate gives life to a bill; a filibuster seeks to kill it."[608] Here, Humphrey dissociated debate from a filibuster, arguing that debate needed to conclude at some point. His criticism disarmed southern arguments from previous debates that alleged they engaged in debate instead of filibustering; debate ends, while the filibuster does not.

Russell's complaints looked petty. Humphrey and the liberals had presented an affirmative case, announced their willingness to vote at any time, and called for southerners to present their case against the bill. By dissociating between full debate and filibuster, Humphrey indicated his willingness to discuss the measure on the merits, while demonstrating the importance of cloture to close off discussion once "full debate" had finished. All Russell could do was bluster that Humphrey's behavior was censorship, an argument that had little merit given the way in which the civil rights leader framed the debate. Civil rights senators undercut Russell's argument frequently throughout the debate as well, with Frank Carlson (R-KS) and Lee Metcalf (D-MT) observing on May 19th, near the end of the filibuster, that the debate had produced "an extensive legislative record" to aid "the courts in interpreting" the bill.[609]

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[606] 88 Cong. Record 6528 (1964).
[607] 88 Cong. Record 6606 (1964).
[608] 88 Cong. Record 6606 (1964).
[609] 88 Cong. Record 11317 (1964).

Ultimately, the decorum argument fell apart for southerners in 1964. No longer able to muster an argument compelling enough for anti-cloture Senators, "strategic delay" was no longer an option. Their arguments fell flat in the wake of northern Senators following the normative rules surrounding debate in the Senate. Claims about bypassing the committee system were unpersuasive in the wake of a sixty-day debate embraced by proponents willing to let the southerners make their arguments. Russell, angry that Humphrey negotiated unilaterally with the Republicans, saw his chances of compromise dissipate.[610] Likewise, Humphrey's willingness to debate took away southern leverage, and Russell's attempts to stigmatize cloture failed. This meant that southerners were forced to rely on attacking the Civil Rights Act on the merits. In a chamber full of civil rights-friendly Senators, Russell and his caucus were in a bad position.

Topical Arguments

The only hope southerners had to defeat the Civil Rights Act of 1964 lay in a prolonged filibuster that exhausted Senate liberals enough to come to the table for a compromise. To acquire leverage for that compromise, Southerners muted their overt racial appeals and focused on the legal implications of the bill, similar to the 1946 and 1960 debates. Keith Finley observes that the southerners "challenged the assumption that civil rights advocates embodied the highest ideals of the nation," instead portraying themselves as "the preservers of order, as the defenders of the Constitution, and as the embodiment of the Revolutionary credo."[611] The southern case was therefore one over threats to individual freedoms, peppered with "invective for the protest movement that called into question their mythological depiction of the [south's] race system."[612] Finley concludes that Russell bet on widespread northern bigotry, that racial turmoil in the north

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[610] Mann, 424.
[611] Finley, 258.
[612] Finley, 262.

would eventually cause moderate voters to reject the Civil Rights Act and support the southerners in their attempt to save their way of life.

Ultimately, the southern case rested on two strategies that had been used before. First, Southerners used arguments based in the locus of the irreparable. They argued that parts of the legislation would lead to irreparable damage to the fabric of the country, and that the bill needed to be defeated to avoid that damage. Unlike before, however, the sectional claims mostly disappeared, and southerners instead chose to court small-government conservatives by observing that the bill would erode the right to a jury trial and increase invasive government power. Second, Southerners attempted to scapegoat civil rights groups. However, they suffered due to the lack of a good target. Whereas in the past, they could avoid centering attacks on the NAACP and focus on more radical figures like Father Divine, who endorsed the Communist Party in the 1930s, here they were forced to reckon with the more moderate Martin Luther King, Jr, and groups like the Congress of Racial Equality (CORE). Southerners claimed that even mainstream civil rights groups could never be satisfied and would continue to erode the rights of Americans. Ultimately, the southern case did little to motivate anyone besides very conservative senators concerned about the growth of government, in large part because it was rehashed from previous debates.

Locus of the Irreparable

Most southern speeches during the filibuster used the locus of the irreparable as their primary strategy.[613] The gist of the southern position was that passage of the Civil Rights Act of 1964 would lead to irreparable damage to the fabric of the country defined at the founding.

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[613] The locus of the irreparable is, according to Chaim Perelman and Lucie Olbrechts-Tyteca, an argument that asserts irreparable consequences from an action. The locus of the irreparable features irrevocable damage caused by irreversible changes. Chaim Perelman and Lucie Olbrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation* (Notre Dame: University of Notre Dame Press, 2010). 92.

Generally aimed at conservative members of the Senate, locus of the irreparable arguments drew upon historical and legal evidence, which allowed senators to spend hours reading caselaw or historical examples into the record. This enumeration allowed them to take up large swaths of time while providing a seemingly well-supported case against the legislation. Simultaneously, they could mobilize a powerful American *ethos* against their colleagues.

However, southerners miscalculated. In previous debates, their fellow conservatives were ultimately amenable to locus of the irreparable claims. In 1964, however, Russell had few allies left, and attempted to use locus claims to sway public opinion. Southerners opted to rely on two locus of the irreparable claims: first, that the bill eroded jury trial protections, and second, that the CRA concentrated too much power in the hands of the federal government, particularly the Attorney General.[614] In the following section, I examine both claims over the jury trial amendment and the expansion of federal power in turn, noting how liberal resistance triumphed over southern recalcitrance.

First, southerners took issue with clauses in the legislation that, in their mind, eroded jury trial protections, provisions they denounced in 1957. On June 21st, Herman Talmadge (D-GA) introduced legislation to require a jury trial for anyone found in violation of a court decree attempting to enforce the bill's anti-discrimination titles.[615] This allowed southerners to defang the bill's ability to allow federal judges to issue contempt citations to those in violation of the legislation. The amendment allowed Southerners to claim that the bill fundamentally eroded specific rights under the law.

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[614] The Attorney General at the time was Robert F. Kennedy, who was replaced by Nicholas Katzenbach, the deputy Attorney General who participated in the Stand in the Schoolhouse Door with Alabama Governor George Wallace. Hence, southerners were particularly unhappy to grant power to the Attorney General.
[615] Risen, 177.

Starting on April 21st, and continuing well through June, southerners emphasized the bill's erosion of the right to a jury trial. Repeated ad nauseum throughout the latter half of the debate, the jury trial amendment generally took the same form every time. First, a southerner would decry the erosion of the jury trial. Second, they would use arguments from history to bolster their claims that jury trials were essential to American government. Third, they would claim to stand in the way of those forces seeking to destroy the American way of life. J. William Fulbright (D-AR) gave a representative example of this speech on April 22nd, early in the debate. He began by isolating the jury trial amendment, arguing that senators debating it were "dealing with one of the most important aspects of the bill. That is its attempt, as it is now presented, to deprive our citizens in many cases of a trial by jury by the procedure of injunction."[616]

Fulbright read the Sixth Amendment into the record, arguing that he did not "think there is any amendment or section of the whole Constitution more important to the rights of individuals in this country…. This particular amendment has been one of the principal reasons why this country, large as it is, and diverse as it is, has done such a good job throughout its history in preserving personal liberty and personal freedom, together with a government strong enough to maintain its integrity and its national security."[617] The Seventh Amendment, furthermore, provided that "even down to the amount of $20 the Constitution provides for the right of trial by jury."[618] The Fifth Amendment, meanwhile, demonstrated "how concerned the Founding Fathers were with the protection of the individual through the devices of the petit jury and the grand jury."[619]

[616] 88 Cong. Record 8700 (1964).
[617] 88 Cong. Record 8700 (1964).
[618] 88 Cong. Record 8700 (1964).
[619] 88 Cong. Record 8700 (1964).

Fulbright's procession through the criminal justice amendments in the Bill of Rights precipitated a climax construction describing the importance of the jury trial in world history. The right to a jury trial "was not created; it grew out of the usages of the immemorial past. We find it in the Roman Empire shortly after the death of Christ. We find it in the reign of Alfred the Great…. We find its essence in the Magna Carta…. We see it abused and abrogated in the English Star Chamber, and the extension of the Admirality Courts by the British Crown against the Colonies of America. We see it listed as an abuse by the Crown in the Declaration of Independence, and it seems to gather almost with a vengeance in the Constitution."[620] Fulbright's evocative language invokes what Richard Weaver called the "spaciousness" of rhetoric; language full of historical and literary resonance designed to call up "generalized associations,"[621] To pass the Civil Rights Act was to return to the days of the British Star Chamber, or to abuse citizens of the United States as the English had once abused citizens of her colonies. Fulbright's language evoked these early abuses against the American republic and attempted to associate the bill's sponsors with them.

Indeed, argued Fulbright, that was exactly what civil rights senators wanted to do. The "[p]roponents of our present civil rights bills, in defending the increased use of the injunctive process with the inevitable contempt trials, claim that the assumption of this jurisdiction by the Federal courts is a swifter and speedier mode of dealing with those who violate or threaten to violate the laws, than by the prescribed and customary method of proceeding in courts of law; that it is a short cut to the accomplishment of the desired object; that it avoids the delay and uncertainty incident to a jury trial, occasions less expense, and insures speedier judgment and

620 88 Cong. Record 8701 (1964).
621 Richard Weaver. *The ethics of rhetoric* (Chicago: Regenry, 1953), 169.

punishment."[622] This, of course, was not the case, in that civil rights senators wanted to prevent southern juries from failing to enforce federal law.

Facts aside, Fulbright acknowledged that his strawperson "may be conceded to be true. But the logical difficulty with this reasoning is that it confers jurisdiction on the mob equally with the chancellor.... It can make little difference to the victims of legal shortcuts whether it is the mob or the chancellor that deprives them of their constitutional rights. Regardless of whether they are hung to the nearest tree by a mob or are sentenced to the electric chair by the chancellor, the result is very similar"[623] Fulbright's conclusion was essentially that to bypass jury trials was to surrender to mob justice, an interesting metaphor given southern proclivities for lynching African-Americans. In questioning, James Eastland (D-AR) justified the limited scope of the bill's intentions, to apply only to contempt trials, by again pointing to the Constitution: "[i]t is claimed that a contempt citation is not a criminal prosecution, but… [the Founders]… provided that in a civil suit where the amount in controversy was in excess of $20 a trial by jury was required."[624]

Talmadge's jury trial amendment worked so well that Everett Dirksen and Mike Mansfield were forced to develop a competing amendment to save the bill.[625] However, the failure of the southern caucus to effectively attack the compromise, which weakened the penalty for contempt, severely weakened their argument. Russell, who refused to even consider the amendment, looked petty, and challenges from the civil rights forces pressed the southern caucus back even further.

[622] 88 Cong. Record 8702 (1964).
[623] 88 Cong. Record 8702 (1964).
[624] 88 Cong. Record 8703 (1964).
[625] Risen, 210.

John Cooper (R-KY), for instance, challenged Fulbright in questioning, observing that the Sixth Amendment "applies to criminal prosecutions. The seventh amendment applies to suits at common law."[626] Hence, the seventh amendment was not applicable in a contempt case, and, as Cooper observed, "[t]he courts have passed on this question again and again."[627] Furthermore, Cooper argued, there was no right to a jury trial in a contempt case, and "[t]here is no holding of the Supreme Court-past or present- which the Senator can produce to support his position."[628] Borrowing from southern arguments, Cooper read from *Green v. United States*, a case from 1958, in which the court held that "criminal contempts are not subject to jury trial as a matter of constitutional right."[629] Exchanges such as this one occurred multiple times throughout the debate, but frequently with the same result. Southerners would make a grandiose claim about the erosion of rights, generally leading to refutation by a northern senator. Once the compromise amendment resolved issues over jury trials, southerners got no traction.

When not talking about the jury trial amendment, southerners spent substantial time decrying the way in which the bill would erode state rights and increase the scope of federal power, as they argued in 1946. Southerners particularly assailed the Fair Employment Practices Commission provisions as un-American, directly calling back to arguments used in the original FEPC debate. On April 20th, for instance, Lister Hill (D-AL) took umbrage with Title VII of the Civil Rights Act, arguing that FEPC provisions "reflect more than any other section of [the bill] the highly improper and steamroller tactics that have been utilized by proponents of the bill to try and gain its enactment without subjecting it to the time-honored, time-proven legislative process and without letting the people of America know how the measure would deprive them of many

[626] 88 Cong. Record 8704 (1964).
[627] 88 Cong. Record 8704 (1964).
[628] 88 Cong. Record 8705 (1964).
[629] 88 Cong. Record 8705 (1964).

of their basic economic, legal, personal, and property rights."[630] Here, again, southerners tried to weave procedural complaints with substantive arguments.

Hill directly referenced the 1946 debate, arguing that "serving in this chamber are Senators who will recall previous occasions when the Senate debated and summarily put to rest compulsory so-called fair employment legislation because it recognized the threats such legislation posed to rights and property of the people of our Nation and to our constitutional system of government."[631] Describing FEPC as "a legislative wolf in sheep's clothing," the bill contained, "[u]nder the guise of promoting equal employment," "the weapons for the destruction of many of the civil and natural rights which the people of our country have enjoyed since the founding of our democracy."[632] Rather than giving rights to people, the FEPC was "based on the strange thesis that the best way to grant special privileges to a particular group of people is to deny the majority of other Americans those previous rights they already possess…. When in full operation, it would seek to force all employers and labor organizations having 25 or more members and who are engaged in an industry or business affecting commerce to give preferential treatment to any person of a racial or religious minority in order to avoid any charge of so-called discrimination against an application or an employee or a member."[633]

Hill's first claimed that the legislation gave "special rights" to minorities instead of guaranteeing them, asserted that Americans would be denied their rights, and amplified the consequences of the bill, foreshadowing subsequent arguments against affirmative action and civil rights legislation. Hill proceeded to detail his opposition to Title VII, until interrupted by Hubert Humphrey, who cross-examined him. Humphrey, who decorously expressed his wish that

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[630] 88 Cong. Record 8411 (1964).
[631] 88 Cong. Record 8411 (1964).
[632] 88 Cong. Record 8411 (1964).
[633] 88 Cong. Record 8411 (1964).

"before we conclude our consideration of this title, the Senator from Alabama will be saved from false assumptions about this title and its full significance," observed that passage of the bill would result in ending discrimination, which cost "the American economy between $13 and $17 billion per year."[634] Eventually, in cross-examination, Humphrey got George Smathers (D-FL), who interjected to defend Hill, to agree that "most of us agree that there should be no discrimination," which he jestingly labeled the "Smathers Doctrine.[635] Humphrey concluded by arguing that "[i]f everyone accepted… that no person should be discriminated against on account of race… title VII would not be needed. But title VII is the Smathers doctrine in law. The Senator from Florida is really the inspiration for title VII."[636]

Humphrey's long exchange discredited claims presented by Hill that FEPC legislation harmed Americans. The Senator from Alabama argued that the bill gave special rights to minorities, while Humphrey took Smathers' support and used it against the southerners. By defining title VII as the "Smathers doctrine in law," the Senator from Minnesota collapsed the difference in opinion between the two men, while his financial figures demonstrated the financial impact of segregation, providing a justification for legal rather than moral answers.

Ultimately, locus of the irreparable claims, so essential to the southern topical case, failed in 1964 for three reasons. First, their effectiveness was predicated on there being enough Senate conservatives who would balk at the dire claims made by southerners. The southern bloc found five non-southern votes against the bill when all was said and done, in part because even Senate conservatives supported civil rights legislation of some sort.[637] Second, the liberal resistance on

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[634] 88 Cong. Record 8450 (1964).
[635] 88 Cong. Record 8451 (1964).
[636] 88 Cong. Record 8451 (1964).
[637] Those votes came from Barry Goldwater (R-AZ), Bourke Hinkenlooper (R-IA), Norris Cotton (R-NH), Edwin Mechem (R-NM), and Milward Simpson (R-WY), predominantly western conservatives.

the floor of the upper house attacked the key underpinnings of the southern case, making claims of irreparability ludicrous. Liberals defended the bill as a moderate, necessary action, and poked holes in southern claims. Third, the locus claims presented were rehashed from the 1946, 1957, and 1960 debates in 1964. The lack of negative externalities from civil rights legislation in 1957 and 1960 likely made it harder to convince senators that the 1964 bill was the breaking point for democracy, especially in the face of southern violence against African Americans.

Scapegoating

Much as in previous debates, the southern caucus scapegoated their political enemies.[638] Scapegoating was an effective tool for the southern caucus when they could use the specter of communism or of radical leftists to scare their more conservative colleagues. In the 1937 and 1946 debates, for instance, their arguments utilizing the locus of the irreparable dwelled on American fears over communism, later appropriated by southern politicians outside the Senate. In these early debates, senators used radical activists like Father Divine as synecdoches for the civil rights movement when they were not attacking the NAACP directly. Pairing the two discredited the movement, and portrayed activists as radicals.

Usually these arguments worked in conjunction with substantive lines of debate; senators would accuse the NAACP of targeting the South during reciprocity claims, for instance. In 1964, the southern caucus did much the same thing. Generally, southerners went one of two routes. First, they portrayed the Reverend Dr. Martin Luther King, Jr. and civil rights organizations like CORE as radical, subversive activists who sought special treatment for their interest groups. Second, they used examples from northern states who had passed civil rights legislation to

[638] Kenneth Burke describes scapegoating as the process by which a society transfers guilt to a "sacrificial receptacle for the ritual unburdening of one's sins." Kenneth Burke, *Permanence and Change: An Anatomy of Purpose*, (Berkeley: University of California Press, 1965).

demonstrate its ineffectiveness and lambast civil rights organizations as unreasonable special interests. In the following section, I explore how southerners failed in their attempts to scapegoat civil rights groups. While the southern bloc had tried to scapegoat the NAACP in the past, they always had extremists to tie them to. In 1964, they did not.

First, senators attempted to portray civil rights activists as extremists. They started on April 9th, when, at the beginning of a speech alleging that the CRA of 1964 would destroy the right of business to hire whom they wanted, John Stennis (D-MS) observed that "in the past few weeks there have been a number of thinly veiled threats by leaders of the various organizations which are pushing so determinedly for the passage of the pending civil rights legislation to send lawless mobs back into the streets if there is any delay in acceding to their demands or if the pending bill is weakened in any respect."[639] Stennis categorized pro-civil rights groups as hostage takers, and intimated that the Senate was held hostage until they defeated the legislation. The senator from Mississippi argued that "some of the leaders of the more extreme organizations are both planning and moving to shape and build their "movement" in support of HR 7152 into a full-scale operation of direct violence."[640] Unfortunately, "instead of there being an effort to control and restrain these extremists, they have received sure encouragement from statements made by civil rights proponents on the floor of the Senate."[641] Here, Stennis attempted to associate his civil rights colleagues with the extremism of civil rights groups, a form of identification.

[639] 88 Cong. Record 7069-7070 (1964).
[640] 88 Cong. Record 7070 (1964).
[641] 88 Cong. Record 7070 (1964). Stennis clarified that he knew "no individual Senator intended to promote or even encourage any violence by any statement he would make here or anywhere else," attempting to maintain the proper tone for the body. Still, the insinuation was preposterous.

As evidence of "extremism," Stennis pointed to two examples. The first was a *Washington Post* where Stennis observed that Martin Luther King, Jr., "forecast "direct action" both in Washington and throughout the country if the debate in the Senate threatens to weaken the civil rights bill."[642] King argued that "[a]t first we would seek to persuade with our words and then with our deeds."[643] Stennis supplemented this observation with evidence provided from Julius Hobson, southeastern director of CORE, who proposed "sitin demonstrations after May 1 in the offices of Senators who might be filibustering the civil rights bill…. With or without passage of the civil rights bill, Hobson predicted that there would be an increase in the number of civil rights demonstrations this summer. He explained that most of these would be attempts to test the provisions of the legislation."[644]

Stennis categorized both examples as evidence that "civil rights leaders have in mind the instigation of direct action which is certain to result in further physical violence," collapsing direct action and violence.[645] Furthermore, the statements "show the futility of trying to appease those who control and direct the lawless mobs."[646] In this section, Stennis both accused peaceful civil rights activists of provoking violence and invoked the specter of appeasement to taint his colleagues' arguments. To provide an example of what protests might look like, Stennis cited an editorial from Shreveport, LA, which decried the National Council of Churches for sending a "task force" into the Mississippi delta "to wage war on what it describes as "persistent" poverty and racial injustice."[647] He also cited a *New York Times* article on a protest in Phoenix, Arizona, in which activists demanded passage of a public accommodations bill. Stennis was careful to

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[642] 88 Cong. Record 7070 (1964).
[643] 88 Cong. Record 7070 (1964).
[644] 88 Cong. Record 7070 (1964).
[645] 88 Cong. Record 7070 (1964). Given King and CORE were known for peaceful protests that turned violent thanks to Southern belligerence, it is safe to say Stennis was in the wrong blaming protesters.
[646] 88 Cong. Record 7070 (1964).
[647] 88 Cong. Record 7070 (1964).

note that "[o]ne young Negro girl was quoted as shouting "We need to kill them!" in reference to Arizona state legislators.[648]

Stennis concluded this series of examples by decrying the actions of protesters: "These demonstrations display complete scorn for law and order and established lawful authority. The demonstrators have descended, in peace-disturbing episodes of various sorts, upon the offices and even the homes, of Governors, mayors, and other public officials…. Now we have clear threats of additional violence as being part of the "direct action" which is being so carefully and deliberately planned."[649] The language in the statement both intimated and then asserted violent action on the part of protesters, and the Senator from Mississippi equivocated using shifting definitions of "peace." King and activists sought peaceful protest that would bring pressure by disrupting their opponents, and Stennis took advantage of this to compare their protests to violent action.

Southerners often embellished the attitudes of protesters. In between making grandiose claims about the destructive impacts of the civil rights bill, they decried African-American rabble-rousers disrupting the serenity of northern states, supposedly evidence that civil rights bills would fail. On April 14th, for instance, Strom Thurmond (D-SC) read into the record several articles about CORE's Brooklyn branch disrupting New York. The first consisted of CORE's plan to leave faucets on in New York to waste water if their demands for "an immediate working plan on housing, schools, employment, and police brutality" were not met.[650] The second was on CORE's national division's decision to suspend their Brooklyn chapter for "refusing to give up plans for a gigantic traffic jam at the World's Fair."[651] Utilizing these examples, Thurmond

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[648] 88 Cong. Record 7070 (1964).
[649] 88 Cong. Record 7070 (1964).
[650] 88 Cong. Record 7899 (1964).
[651] 88 Cong. Record 7910 (1964).

pressed New York senators Jacob Javits and Kenneth Keating, arguing that "New York has anti-discrimination laws; yet we see the trouble New York is having now."[652]

Here, Thurmond used the actions of CORE chapters that had been rebuked by the national organization to accuse civil rights protesters of being unreasonable. Despite acknowledging that "the CORE chapters… in spite of the outwardly expressed wishes of the national organization- intend to go ahead" with invasive, disruptive protests, Thurmond used them as examples to inveigh against Northern issues with civil rights, a brief use of sectional argument.[653] He also intimated that, inwardly, CORE was fine with these disruptive measures.

George Smathers (D-FL) joined Thurmond's attacks on, April 16th, arguing that civil rights leaders would never be satisfied. Civil rights forces told the Senate in 1957 that "if we passed a 1957 Civil Rights Act… that would satisfy the grievances of colored citizens and of minority groups; yet, after we passed the act of 1957, it did not satisfy the grievances, aspirations, or ambitions of certain minority groups."[654] Nor did subsequent attempts; "Congress enacted another bill in 1960, and we were told then that if we passed that particular bill… all the problems would be settled."[655] Ultimately, "here we are in 1964, being asked by the very same people who said in 1957 that all we needed to do was pass one bill, and in 1960 that all we needed to do was to pass one bill, to pass another bill. If this bill is passed… I have no doubt the same group will be back in 1966 asking for another bill, because it would not satisfy their aspirations or eliminate their grievances, or eliminate discrimination, or stop segregation."[656] Smathers portrayed civil rights activists as special interests always in search of more concessions

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[652] 88 Cong. Record 7899 (1964).
[653] 88 Cong. Record 7901 (1964).
[654] 88 Cong. Record 8222 (1964).
[655] 88 Cong. Record 8222 (1964).
[656] 88 Cong. Record 8222 (1964). Smathers was off by a year; the Fair Housing Act was passed in 1965. He was right, however, that additional legislation would be needed to eliminate segregation.

that would not work. As Smathers concluded, echoing Dwight D. Eisenhower, "[w]e cannot stop discrimination or segregation by the passage of laws."[657]

As evidence of the unreasonableness of activists and the ineffectiveness of laws, Smathers pointed to New York and Chicago, which "the Civil Rights Commission of 1959 reported" were "the most highly segregated areas in the world," despite "having the most laws against it."[658] Here, Smathers mobilized the failures of the north to support his embellishment of the demands of movement leaders. They knew new laws were worthless, he argued, but pushed for them anyway. In doing so, Smathers portrayed northern senators as feckless and beholden to civil rights groups, who actively worked against the good of the nation.

While scapegoating was historically useful for southerners, here the argument was more tarnished. First, King, the primary target of the southern bloc, had a net positive approval rating according to Gallup surveys at the time.[659] While the civil rights leader was not universally liked, there were few extremists to associate him with, and so it was harder for southerners to turn him into a scapegoat. Second, southerners were forced to embellish or use examples of groups that had been chastised by parent organizations. The southern forces were unprepared for media-savvy civil rights groups. Whereas before, southerners could make the claim that civil rights movement leaders were motivated by communism, thus exploiting societal fears of communism, it was harder to scapegoat relatively popular, if divisive, figures. Russell undoubtedly hoped that the efforts made by the southern caucus to engage in scapegoating would tarnish the reputation

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[657] 88 Cong. Record 8222 (1964).
[658] 88 Cong. Record 8222-8223 (1964).
[659] Frank Newport, "Martin Luther King: Revered More After Death Than Before," Gallup News Service, January 16, 2006. Accessed July 11, 2018. https://news.gallup.com/poll/20920/martin-luther-king-jr-revered-more-after-death-than-before.aspx

of civil rights leadership, but without being able to tie them to a more negative group, the efforts failed.

Conclusion

The cloture vote that ended debate on the Civil Rights Act of 1964 played out like a movie. The Senate gallery was full, while Humphrey sat beaming below. From the dying Clair Engle (D-CA) voting "aye" by pointing at his eye[660], to the slumped over figure of Richard Russell at his desk, the conflict finally over, June 10th was a monumental day. The passage of the CRA of 1964 took almost herculean effort and exceptionally good timing. Bull Connor's violence in Birmingham and George Wallace's stubbornness in Tuscaloosa spurred Kennedy into action, but it took his tragic death, the leadership of Johnson and Humphrey, activist pressure brought by King, and a willingness to bargain by Dirksen to bring southern control over the Senate to an end.

And yet, despite the fortuitous timing, it is essential that we remember how exactly those leaders, for the first time in Senate history, organized against the southern filibuster. Southern arguments assuredly failed; Russell's decision to gamble on wearing down the liberal opposition and negotiate a settled truce failed miserably, and their topical case failed to acquire enough conservative votes. Both strategies represented a failure to adapt to changing circumstances by southern senators. Violence in the south counteracted any claims that the damage caused by the Civil Rights Act was irreparable, and southerners lacked any scary activist threat to turn into a viable demagogue. But the most important failure was that of the decorum argument. Southerners could no longer justify their long filibusters and delay or defeat cloture by claiming that civil rights forces would not debate them. The mere presence of organized, methodical

[660] Engle died just over a month later, in late July.

resistance did in the strongest southern argument, and effective counter-responses, especially to claims over Talmadge's jury trial amendment and general southern concerns about rising state power, disarmed the southern case.

The 1964 Civil Rights Act debate showcased Congress at both its worst and its best. Russell's insistence that he could force a liberal defeat on civil rights by exploiting northern bigotry and by making wild claims about the damage the bill would cause certainly qualify as a low point. However, a clear and convincing case for civil rights, championed by both Democrats and Republicans, and both liberals and conservatives, carried the day. The Senate, designed to be a home for reasoned debate and discourse about issues facing Americans, lived up to its intended purpose with aplomb. As John Stewart noted, despite concerns over the Senate's ability to handle civil rights debate without sending the institution into a crisis, the institution enacted a strong, comprehensive bill "by having followed procedures fundamentally in accord with its traditional norms and practices and by having rejected any crash effort to force the legislation through by threat or intimidation."[661] Despite the messy, often unsettling transcript of the debate, it was reasoned argument that carried the day for civil rights legislation, even in the face of near-implacable resistance.

[661] John G. Stewart, "The Civil Rights Act of 1964: Tactics II," Robert D. Loevy, ed., The Civil Rights Act of 1964: The Passage of the Law That Ended Racial Segregation (Albany: State University of New York Press, 1997), 275-320, 276.

CHAPTER 6: CONCLUSION

The passage of the Civil Rights Act of 1964 did not end southern resistance to civil rights legislation, nor did the horrors faced by African Americans in the South cease. In mid-1964, protesters, led by John Lewis and the Student Nonviolent Coordinating Committee, began a campaign for voting rights in Selma, Alabama.[662] Martin Luther King, Jr. brought the Southern Christian Leadership Congress into the fight in early 1965, while both President Lyndon Johnson and Attorney General Nicholas Katzenbach prepared federal legislation to coincide with the protests.[663] Activists baited Sherriff James Clark into a few minor confrontations throughout January and February of 1965, and violence from law enforcement elevated tensions in the community. In March, events culminated in a planned march from Selma to Montgomery up US Highway 80, in which Clark led a battalion of Alabama State Troopers and white thugs against protesters on the other side of the Edmund Pettus Bridge.

Public outcry to Clark's violent overreaction was swift. ABC News cut into the Sunday night movie to deliver "a long film report of the assault on Highway 80," while President Johnson stayed abreast of events in the White House.[664] A week later, President Johnson delivered a stirring address to Congress in which he decried southern racism, arguing that the cause of African-Americans "must be our cause too. Because it is not just Negroes, but really it is all of us, who must overcome the crippling legacy of bigotry and injustice."[665] Johnson paused, before raising his arms and declaring "And we shall overcome!"[666]

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[662] David J. Garrow, *Protest at Selma: Martin Luther King, Jr., and the Voting Rights Act of 1965* (New Haven: Yale University Press, 1978).
[663] Garrow, 36.
[664] Garrow, 82.
[665] Lyndon B. Johnson: "Special Message to the Congress: The American Promise," March 15, 1965. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=26805.
[666] Johnson, "The American Promise."

Subsequently, the Johnson Administration threw its support behind a voting rights measure based out of years of Justice Department litigation in Alabama.[667] Working with Senate Minority Leader Everett Dirksen, the Administration prepared a bill that federalized large swaths of election procedures, leading to the automatic appointment of voting examiners in states where citizens complained of disenfranchisement.[668] The bill also required states with a history of disenfranchising African-Americans to have their voting procedures preapproved by the Justice Department.[669] However, all parties involved feared a lengthy southern filibuster that would jeopardize the carefully crafted measure.

Their fears, as it would turn out, were unfounded, as southerners folded in the subsequent legislative battle. Senator Sam Ervin of North Carolina, assuming leadership of the caucus from an ill Richard Russell, used the arsenal of arguments developed over the past thirty years against the Voting Rights Act of 1965. He attempted to gut the bill with an amendment to grant the power to appoint voting examiners to federal court districts instead of the Attorney General. Ervin justified his amendment by drawing upon reciprocity claims, arguing the bill was "unconstitutional, incompatible with a proper respect for the federal system of government, and inconsistent with the fundamental principles of fair play."[670] But the Senate rejected his amendment overwhelmingly, 25-64.[671] Subsequently, southern senators led by Allen Ellender, Ervin, and John Stennis attempted to offer weakening amendments to stall the final vote. Majority Leader Mike Mansfield (D-MT) broke their resistance, scheduling a cloture vote on

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[667] Brian K. Landsberg, *Free at Last to Vote: The Alabama Origins of the 1965 Voting Rights Act* (Lawrence: University Press of Kansas, 2007).
[668] Gary May, *Bending Toward Justice: The Voting Rights Act and the Transformation of American Democracy* (New York: Basic Books, 2013), 167.
[669] May, 167.
[670] 89 Cong. Record 9552 (1965).
[671] Robert Mann, *The Walls of Jericho: Lyndon Johnson, Hubert Humphrey, Richard Russell, and the Struggle for Civil Rights* (New York: Harcourt Brace and Company, 1996).

May 21st. The bill passed the Senate, 77-19, and after conference, passed again, 79-18. Joining the majority were six southerners, including George Smathers of Florida, one of Russell's regulars.

The final major fight over civil rights legislation occurred in 1968, but the seventy year old Russell had lost his enthusiasm for the fight, passing leadership of the unsuccessful effort to Ervin.[672] Georgia's senior senator experienced worsening health through 1968 and 1969, having undergone treatment for lung cancer, before passing away in early 1971.[673] His contemporaries remembered him for his guardianship of the Senate and his strong support for defense legislation.[674] Ultimately, Russell's legacy became wrapped up in his delay of civil rights legislation and his consistent opposition to civil rights legislation in the face of local tyranny in his beloved South.

Ultimately, this dissertation examines the evolution of southern arguments over time and in different contexts. In the process of filibustering civil rights bills, southerners deployed four types of arguments: claims based in decorum, or procedural objections to filibusters, locus of the irreparable claims, most commonly rooted in states' rights, scapegoating, tied to social movement groups, and reciprocity, tied to southern home rule. Over time, southerners struggled with balancing more moderate arguments, necessary on the national scale, with more radical ones required for home audiences, but these four met the necessary rhetorical burden for southerners until their undoing in 1964. In the following section, I explore each one in turn. I close the chapter by examining the fallout of southern resistance to civil rights legislation, and by

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[672] Mann, 492.
[673] Gilbert C. Fite, *Richard B Russell Jr., Senator from Georgia* (Chapel Hill: University of North Carolina Press, 1991), 486.
[674] Fite, 495.

providing some thoughts about what their battle tells us about institutional forces in opposition to social movements and to the Senate as an institution.

First, southerners utilized arguments based in decorum. Decorum, in this case corresponding to Robert Hariman's idea of the appropriate set of speaking conventions for the body, became a useful tool for southerners to stall legislation.[675] Southerners relied on Senate norms that reified debate to engage in what Keith Finley calls "strategic delay."[676] Strategic delay was the practical reason to use the filibuster; by stalling on the Senate floor, it was possible for southerners to hold off civil rights legislation merely by exhausting their opponents. In some cases, this meant peeling off votes against cloture, and in others, it meant physically exhausting proponents of the bill. Southerners justified strategic delay by relying on the role of the Senate as a safeguard against popular opinion.[677] They portrayed civil rights legislation as harmful, and in doing so, positioned themselves as the stalwart defenders of the Republic, holding off the barbaric forces of equal employment and voting rights. In doing so, southerners courted procedural conservatives, who opposed using the cloture rule to stop debate.[678] As that number dwindled, however, southerners found themselves without any tools to slow down civil rights senators, and they lost legislative battles.

Simultaneously, using the filibuster allowed southerners to build their arsenal of arguments against civil rights legislation, peeling off reluctant conservatives, appealing to voters at home, and constructing claims for future use. In his analysis of Senate debate, Bertram Gross argues that Senate debate allows for the development of broader campaigns or the groundwork

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[675] Robert Hariman, *Political Style: The artistry of power* (Chicago: University of Chicago Press, 1995).
[676] Keith Finley, *Delaying the Dream: Southern Senators and the Fight against Civil Rights, 1938-1965* (Baton Rouge: Louisiana State University Press, 2008).
[677] James Madison, "Federalist No. 63", *The Federalist Papers*, accessed September 15, 2016. http://www.gutenberg.org/files/1404/1404-h/1404-h.htm#link2H_4_0063
[678] This, in short, is Keith Finley's argument with regard to strategic delay. Finley, *Delaying the Dream*.

for future campaigns.[679] Southerners used other arguments in conjunction with procedural claims to keep the floor open, but also to build legitimate cases against civil rights bills. In 1938, for instance, southerners argued against the efficacy of anti-lynching legislation, with some success. Unfavorably comparing federal criminal laws to Prohibition while attacking the federal government's jurisdiction, southerners presented a comprehensive topical case that allowed them to deny their own racist behavior by pointing to local change. Civil rights senators failed to muster a simple majority for cloture, and the bill died in the Senate. Southerners suffered no political costs to the filibuster and bought themselves the time to turn public opinion against the bill.

What procedural arguments did for southerners was woo those on the fence; it bought them time to present those strong topical arguments that they had built in previous debates while laying the groundwork to appeal to their ideological allies in present and future battles. Debate, in other words, became a tool to bring conservatives home to defend the cloture rule, despite their support for civil rights. Claims about proper debate spoke to the core purpose of the Senate, appealing to those who saw their job as providing a safeguard against popular opinion.

Arguments from decorum were aided by the complete abandonment of debate by pro-civil rights forces. In 1938, northern and western Senators mustered no effective counterargument against southern claims that they had reduced lynching, in large part because support for Wagner-Van Nuys was not expressed on the floor. In 1946, Russell fought against a small group of motivated Senators who were generally disorganized, and the organized southern caucus easily outflanked them. In 1960, meanwhile, neither Senate Majority Leader Lyndon Johnson nor President Dwight D. Eisenhower wanted to fight for a comprehensive civil rights

[679] Bertram M. Gross, *The Legislative Struggle: A Study in Social Combat* (New York: McGraw Hill, 1953): 366-367.

package. Between passive leadership and Johnson's decision to ram the bill through the Senate, southerners used decorum arguments to outflank civil rights forces.

It was only in 1964, when civil rights forces gave southerners what they wanted, that the argument from decorum fell apart. Once faced with a shrewd floor leader in Hubert Humphrey, southerners struggled to come up with a good reason why they were being censored. Claims about circumventing the committee system or attacking cloture itself fell apart as the debate dragged on, and it became impossible to believe southerners that they were being censored after sixty days of debate. 1964 also signaled an end to southern claims to proper procedure; once they lost the requisite number of votes for cloture, procedural arguments were no longer available. Hence, civil rights forces easily mustered the votes for cloture in 1965 and 1968; southerners would be heard, but they would not obstruct.

The second set of southern arguments, claims based in the locus of the irreparable, fared better. These claims were largely missing from debates in 1938, because southerners had a substantive topical case rooted in reciprocity and jurisdictional arguments. Southerners could claim, with some credibility, that the South had acted to prevent lynching, and that federal involvement was unnecessary. As Russell took command of the caucus in the early 1940's, however, large swaths of the Jim Crow south fell under siege, and southerners retreated to locus claims to defend their beloved home. 1946, then, featured claims rooted in anti-communist fears, which allowed Russell to destroy the FEPC. In 1960, southerners could peel off enough votes by making similar appeals, but the topical case they presented looked more and more foolish, and once answered in 1964, the case fell apart completely.

The diminishing effectiveness of these arguments was, perhaps, predictable. Locus of the irreparable arguments, as J. Robert Cox tells us, are particularly salient in rendering

"inappropriate a strategy of incremental decision-making."[680] After all, the only appropriate course of action when faced with irreparable damage is to not cause any damage whatsoever; a plan of action in which only some damage is visited upon the subject is just as harmful. Locus of the irreparable claims fit incredibly well with southern tactics of strategic delay, especially in 1946, because southerners could claim that legislation did irreparable damage to their way of life. In turn, relying on locus of the irreparable arguments allowed southerners to take extraordinary measures, "actions which go beyond the usual, customary, or what most people would approve," because they were attempting to save their way of life.[681] Hence, the filibuster followed logically from claims of irreparability; what was a few more weeks of debate when compared to the survival of the United States?

However, over time, the arguments grew ineffective. First, as well as locus fit in 1938 and 1946, using it in 1960 to force a compromise cut against what the argument was intended to do. Russell's unwillingness to engage in filibuster to defeat the bill undercut the southern position and eroded the principles of strategic delay. Delay had to last indefinitely for the southerners to claim that civil rights bills would irreparably harm the south, and the southern caucus used this as a justification to explain their votes against compromise measures in 1957 and 1960. By compromising, Russell and his colleagues undercut claims that civil rights legislation was inherently harmful; after all, passage of bills in 1957 and 1960 did not destroy the nation. So there was little reason to think that passage of legislation in 1964 would either.

Second, the argument lost effectiveness over time because conditions in the south deteriorated. Despite southern protestations over federal involvement, it was clear that southern

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[680] J. Robert Cox, "The Die Is Cast: Topical and Ontological Dimensions of the Locus of the Irreprable," *Quarterly Journal of Speech* 68.3 (1982). 227-239. 234.
[681] Cox, 236.

home rule could not solve the issues faced by African-Americans in the south. What made anti-lynching argument so strong was a southern caucus armed with convincing evidence that their legislatures and local governments acted to stop lynching. Southerners in 1938 fudged the data a little, ignoring the rise in lynching deaths that occurred during the Great Depression, but on balance, they could point to a response to the violent murder of African-Americans in the south.

In subsequent years, however, southern arguments grew absurd, with border state senators insisting, with little to no evidence, that African Americans could vote down south if only they tried harder. Short of the Twenty-Fourth Amendment, opposed by many in the southern caucus, the south did little to protect the rights of African-Americans, and in fact amplified the abuse they faced. Meanwhile, southerners attempted to convince their northern colleagues that the true essence of America was at stake, while the Soviet Union and other hostile governments ran propaganda highlighting southern abuses. The arguments were discordant; how could things get much worse down south with the passage of civil rights legislation?

Third, southerners dealt with their civil rights movement proponents through scapegoating. One of the major rhetorical challenges facing southern senators was a motivated force of social movement activists from the NAACP and other prominent African-American community groups. Social movement pressure, as Robert Cathcart has told us, merits a response, a process known as dialectical enjoinment.[682] In the case of civil rights legislation, southerners hit back by blaming social movement groups for disruption, accusing them of being anti-American. While Theodore Windt has noted that institutional forces seek to discredit social movement forces by ascribing to them base motives, southerners went one step further, arguing

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[682] Robert S. Cathcart, "New Approaches to the Study of Movements: Defining Movements Rhetorically," *Western Speech* 36.2 (1972): 87.

that social movement activists were anti-American and sought not equal rights, but special treatment.[683] Civil rights battles were therefore fights over American values, but southerners claimed that protesters put American values under siege.

Much like with locus claims, the 1938 debate featured relatively little scapegoating, with mentions of radicals like the preacher Father Divine peppered throughout the debate by more racist members of the southern caucus. It was anti-communist propaganda in 1946 that began the scapegoating in force. By attempting to tie pro-civil rights forces writ-large to anti-communism, southerners marshalled American fears of the Soviet Union to help defeat civil rights legislation.[684] Windt notes that administrators at UC Berkley, in an attempt to railroad protesters, claimed the mantle of defenders of civil liberties, but southerners went one step further, claiming that civil rights advocates were anti-American supporters of communism.[685]

In 1960, southerners switched targets, attacking the Supreme Court and the National Association for the Advancement of Colored People. Here, the goal was to marginalize social movement forces while whipping up support among their constituents. Southerners did so by portraying the *Brown v. Board of Education* ruling as a betrayal of American values, dependent on the research of a Swedish socialist academic. The NAACP was complicit in this corruption of American values, and their colleagues who advocated for civil rights were duped by evil outsiders. Conveniently, these scapegoats allowed southerners to portray themselves as true American patriots, cloaking themselves in the veneer of patriotism to attack civil rights groups. In 1964, however, scapegoating became much less effective. The targets chosen by southerners,

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[683] Theodore Windt, "Administrative Rhetoric: An Undemocratic Response to Protest," *Communication Quarterly* 30 (1982): 245-250.
[684] This tactic grew more common as the Cold War accelerated in the 1950s. See George Lewis, *The White South and the Red Menace: Segregationists, Anticommunism and Massive Resistance, 1945-1965* (Gainesville: University Press of Florida, 2004).
[685] Windt, 249.

foremost among them Dr. Martin Luther King, Jr, and regional groups associated with the Congress of Racial Equality, looked reasonable in the face of southern violence. Southerners, forced to take allegations from regional groups to stain the reputation of the national organizations, could no longer effectively scapegoat.

Scapegoating was a useful strategy for southerners because it worked for both of their key audiences. Senators who sought to defeat civil rights legislation were caught between the Scylla and Charybdis of two very different audiences. On one side were extremist white supremacists, consisting of the most outspoken white supremacists and critical government officials in the South. These forces made compromise challenging for southern bloc forces. On the other side were moderate-to-conservative Democrats and Republicans on the national stage, who sympathized with southern positions on states' rights and cloture but felt compelled to act to grant rights to those who were marginalized in the South. Scapegoating helped to bridge this gap, allowing southerners to radicalize pro-social movement forces to rile up voters at home, while scaring moderates away from voting from civil rights bills, or at least away from supporting cloture.

Finally, southerners relied upon claims of reciprocity, relying on what Chaim Perelman would call the rule of justice, or what John Calhoun would call Republicanism.[686] Southern arguments rested on the premise that states were equal in rights and responsibilities, and that federal intervention on behalf of African-Americans was impermissible, as it violated the basic tenets upon which the United States had been founded. As a result, southerners argued that they effectively solved issues related to racial inequality while still upholding racial division. In 1938, this meant arguing against anti-lynching legislation by pointing at the ways in which the South

[686] Chaim Perelman, *Justice* (New York: Random House, 1967). John G. Grove, *John C. Calhoun's Theory of Republicanism* (Lawrence, Kansas: University Press of Kansas, 2016).

curtailed the murder of innocent African-Americans. These arguments were effective, because, despite the uptick in lynching deaths in the Great Depression, southerners had dedicated ample political energy to restoring law and order. Southerners could convincingly argue reciprocity because, as they argued, southern states had acted convincingly to curtail lynching. In the wake of state action, therefore, federal action was not only unnecessary, but punitive.

In 1946, however, claims of reciprocity changed, as southerners argued that federal intervention via the FEPC discriminated against the south and west. Southerners wanted to develop stronger bonds with ideological allies in the west and portrayed the FEPC as the first assault against free enterprise. Here, southerners portrayed their colleagues as ignoring the underlying fairness of a reciprocal system. If southern businesses were regulated by the Senate, next would be western businesses dependent on favorable freight rates. The core assumption was the same: states had individual rights, civil rights legislation violated those rights, and Senators had a responsibility to vote against civil rights legislation to prevent the erosion of state's rights.

Following a wave of wackier claims made by local southern politicians regarding the right of a state to nullify federal law or interpose itself between the federal government and its citizens, southern reciprocity claims grew more radical. Senators alleged that northern reforms destroyed any notion of state sovereignty, while arguing that their states protected African-Americans and their right to vote. Neither claim was true, and southerners were forced into the awkward position of claiming that civil rights legislation would lead to a state of affairs worse than Reconstruction. Reciprocity claims disappeared in 1964, largely because they were dependent on local action. In 1960, southerners trotted out George Smathers, who spearheaded the push for an anti-poll tax amendment two years later, to claim that southerners had stopped the most egregious voting rights violations. Over time, however, deteriorating conditions made it

harder to argue that southerners were capable of handling discrimination and violence rooted in white supremacy.

Reciprocity claims worked best when southerners could demonstrate that their states lived up to the ideals that Perelman outlines in his rule of justice. Perelman posits that reciprocity only exists between two entities that are essentially alike, as southerners argued states were.[687] However, Perelman clarifies that beings that are "essentially alike" have no essential differences, "that is, differences that matter and must be taken into account in the situation."[688] In 1938 and 1946, southerners demonstrated that their states were essentially alike all the others in the union. In 1938, this meant that southerners proved that they did something about lynching, a local crime issue, much as other states handled their own local crime issues. Simultaneously, carve-outs for organized crime in the Wagner-Van Nuys bill were included to protect Illinois from the ramifications of their specific brand of local crime. That amendment, the Dietrich Amendment, demonstrated that northerners were not operating in good faith and failed to recognize that individual states could handle their own local crime problems.

Likewise, in 1946, southerners drew a direct analogy from southern labor practices to western freight rates. By re-framing the FEPC as an economic regulator rather than an entity dedicated to civil rights, they could claim equal footing as western states. The FEPC existed only to regulate states and as a tool for the federal government to curtail certain behavior, thus eroding the equal rights among equal entities. Still, though, southerners made these claims without pointing to the treatment of African-Americans, glossing over violations of employment rights.

In 1960, however, it became more difficult to argue that New York and Georgia had no essential differences when it came to civil rights. Reciprocity was tied to local action; without

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[687] Perelman, *Justice*, 23.
[688] Perelman, *Justice*, 23.

shrewd local actors, no Senator would believe that the south could fix its racial issues. Instead, southern senators had to defend the collapse of law and order in the south and tried doing so by arguing over the extent of civil rights legislation. Note that in 1960, in seeking compromise, southerners implicitly argued that they were unequal when it came to civil rights. In 1964, then, Humphrey and Javits threw the door open, arguing that the south was so bad when it came to the treatment of African-Americans that they could not be considered to be equal to the other states, even those with problems of their own.

Ultimately, southern reciprocity arguments drew upon the relic of Calhounian republicanism and the idea of fifty separate states with their own powers. But without the constitutional support for that sense of states' rights,[689] and with clear evidence that southern states did not behave equally with respect to the rights of African-Americans, southerners could not make convincing reciprocity claims. This meant that when Sam Ervin attempted to use reciprocity claims to stop the Voting Rights Act of 1965, his colleagues were reluctant to believe him because he possessed no evidence to prove southern states behaved equally to others with respect to the rights of African-Americans.

The four critical southern arguments, therefore, were decorum, locus of the irreparable, scapegoating, and reciprocity. Each argument evolved over time and in different contexts, with southerners relying on different claims depending on their given circumstances. Eventually, though, civil rights senators answered each one in turn and adapted their arguments to address their southern colleagues' concerns. The collapse of the southern filibuster was, at least in part, a result of their failure to adapt to the new argumentative landscape, and to find new ways to justify Jim Crow.

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[689] The question of state sovereignty was settled by the Civil War.

Implications

The overarching goal of this dissertation has been to examine how anti-civil rights forces in the U.S. Senate forestalled civil rights legislation on a national stage. In the introduction, I set out to explain how segregationist senators did so, with a specific emphasis on both the rhetoric of institutional responses to social movements and the rhetoric of the Senate itself. In the following section, I revisit those themes, first exploring the ramifications of the southern caucus's strategy to court Senate conservatives, before turning to an explanation of what the dissertation tells rhetoricians about how rhetoric works in the Senate.

First, the anti-civil rights senators made a lasting impact on the conservative movement. Russell's gambit in the 1964 debate, to win compromise by preying on the racism of northern whites, payed dividends, but not in the way he thought. Barry Goldwater, one of six Republicans to vote against the Civil Rights Act of 1964 courted southern whites in his unsuccessful bid for the Presidency in 1964, condemning the Supreme Court's decision in *Brown* and touting his vote against the Civil Rights Act of 1964.[690] Goldwater's strategy backfired so badly that he won a mere six states, but he did manage to win in the deep South. It was Richard Nixon, Dwight D. Eisenhower's vice president, and a Republican leader on civil rights, who capitalized on southern discontent, running a campaign based around dogwhistle issues like school busing and crime, the new battlegrounds of civil rights legislation. In 1966, while campaigning for the 1968 presidential nomination, Nixon blamed leaders like Hubert Humphrey for "coddling" violent groups responsible for riots.[691] Two years later, he secured the Republican presidential

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[690] Rick Perlstein, *Before the Storm: Barry Goldwater and the Unmaking of the American Consensus* (New York: Hill and Wang, 2001). 364-365.
[691] Rick Perlstein, *Nixonland*: *The Rise of a President and the Fracturing of America* (New York: Simon and Schuster, 2008), 120.

nomination by striking a deal with South Carolina Senator Strom Thurmond over the nomination of conservative judges who would avoid further attacks on the South.[692]

While Keith Finley argues that the ramifications of the southern caucus's choice to utilize strategic delay was to ignore local officials, declining to bring "their considerable influence to bear on the state level by encouraging minor electoral reforms and helping rectify the worst discrepancies in the "separate but equal doctrine," the larger ramifications of their discourse changed the face of American politics for generations. Their choice to use arguments designed to appeal to Senate conservatives built an alliance among deep South politicians and the rising conservative movement, allowing resistance to civil rights to live on in the Party of Lincoln. Thirty years of arguments over the impact of civil rights on individual liberty had finally taken their toll, and former conservative champions of civil rights like Barry Goldwater[693] turned on their former beliefs. In doing so, they pulled claims of reciprocity and scapegoating out of the southern arsenal, repurposing them to their own ends.

First, conservatives attempted to dissociate themselves from the more racist claims of their new southern voters, picking apart pieces that appealed to southerners while still simultaneously fitting within an ideological framework adherent to movement conservatism. That meant using reciprocity arguments favored by local activists and politicians who deployed legally baseless strategies like interposition and nullification. In *Conscience of A Conservative*, for instance, Goldwater attempted to dissociate racism from states' rights, claiming that the right to vote was a protected right because it was a legal right enumerated in the Fourteenth Amendment, while education, not listed at all in the Constitution, was not a power granted to the

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[692] Rick Perlstein, *Nixonland*, 284.
[693] In 1960, Goldwater sponsored Eisenhower's civil rights legislation, which included provisions making it a federal crime to interfere with federal school desegregation orders and empowering the Justice Department to inspect local voting records. Mann, 243-244.

federal government. Hence, the "federal Constitution does not require the States to maintain racially mixed schools."[694] Despite the fact that Goldwater was "in agreement with the objectives of the Supreme Court as stated in the Brown decision," he would not "impose that judgment… on the people of Mississippi or South Carolina," because it was their business. States' rights claims, founded in reciprocity, appealed to conservatives and southerners, and regional control became a staple of the busing issue in the late 1960s and early 1970s.[695]

Meanwhile, conservatives after Goldwater incorporated scapegoating into their rhetorical strategies. As the 1960s grew progressively bloodier, politicians like Goldwater and Nixon drew upon tropes related to "subversives" that drove violence in the streets. Goldwater argued in his 1964 acceptance speech at the Republican National Convention that "nothing prepares the way for tyranny more than the failure of public officials to keep the streets from bullies and marauders."[696] In 1968, Nixon doubled down, arguing that violence in the streets needed to end, and "the first civil right of every American is to be free from domestic violence, and that right must be guaranteed in this country."[697] The anti-disorder dogwhistle became a staple of conservative rhetoric for the next several decades, and southerners saw it as a nod to civil rights protesters.

Second, this dissertation engages in a long-term longitudinal study of rhetoric in the U.S. Senate. By and large, the existing rhetorical literature on the Senate focuses on single moments of debate in the context of the body, in between disparaging remarks about the confusing and

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[694] Barry Goldwater, *Conscience of A Conservative* (Blacksburg, VA: Wilder Publications, 2009): 19-20.
[695] Matthew F. Delmont, *Why Busing Failed: Race, Media, and the National Resistance to School Desegregation* (Oakland: University of California Press, 2016).
[696] Goldwater, "Acceptance Speech."
[697] Richard Nixon: "Address Accepting the Presidential Nomination at the Republican National Convention in Miami Beach, Florida," August 8, 1968. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project.* http://www.presidency.ucsb.edu/ws/?pid=25968.

byzantine nature of Senate debate.[698]As I noted in the introduction, however, I reject this interpretation, favoring instead arguments by Theodore Sheckels that argue that Senate debate is complex and multifaceted.[699] Here, at the end of this dissertation, I find it important to again reflect on the purpose of the Senate as outlined by James Madison. The Senate exists to provide an element of stability to the legislative branch; it exists to provide a branch that understands and knows laws and codes even as they change over time.[700] The way in which the Senate expresses that knowledge and deliberates on the appropriate changes to national laws is through debate.[701] In turn, that means that Senate debate is a repository of public deliberation. The body is, ideally, the place in which the most well-educated and experienced politicians debate legislation. Those debates are complex; they are, as both Sheckels and Robert Asen note, multifaceted and polysemic.[702]

As Asen notes, public policy debate is where the members of a community "come together… to formalize agreed-upon rights, responsibilities, and obligations," allowing for "new understandings of these areas to emerge."[703] To better grasp these understandings, especially in a body as multifaceted and complicated as the U.S. Senate, a large-scale longitudinal study is critical. Rather than viewing rhetorical struggle as occurring in single, discrete moments,

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698 Theodore F. Sheckels, *When Congress Debates: A Bakhtinian Paradigm* (Westport: Praeger, 2000). John R. Fitzpatrick, "Congressional Debating," *Quarterly Journal of Speech* 27.2 (1941): 251. Jerry Voorhis, "Effective Speaking in Congress, *Quarterly Journal of Speech* 34 (1948): 463. Earl R. Cain, "A Method for Rhetorical Analysis of Congressional Debate," *Western Speech* 18 (1954): 91-95. Earl R. Cain, "Is Senate Debate Significant," *Today's Speech* 3 (1955): 10-12, 26-27.
699 Sheckels, *When Congress Debates*.
700 James Madison, "Federalist No. 62", *The Federalist Papers*, accessed September 15, 2016. http://www.gutenberg.org/files/1404/1404-h/1404-h.htm#link2H_4_0062
701 Neil MacNeil and Richard A. Baker, *The American Senate: An Insider's History* (New York: Oxford University Press, 2015). George E. Reedy, *The U.S. Senate: Paralysis or a Search for Consensus?* (New York: Crown Publishers, 1986).
702 Sheckels. Robert Asen, *Invoking the Invisible Hand: Social Security and the Privatization Debates* (East Lansing: Michigan State University Press, 2009).
703 Robert Asen, *Visions of Poverty: Welfare Policy and Political Imagination* (East Lansing: Michigan State University Press, 2002).

viewing persuasion as something that happens over time allows rhetoricians the ability to see how those rights, responsibilities, and obligations evolve over a long period of time.

Practically, what this means is tracing broader themes throughout Congressional rhetoric. Tracing the large thematic strokes allows rhetoricians to see how debates unravel, and how different policy decisions unfold over time. Stephen Skowronik has explored how, as presidential leadership moves through political time, political power ebbs and flows.[704] Examining the Congressional Record allows rhetoricians to see how political winds shift, and how arguments that might work in one context fail to work in others. Southern civil rights filibusters are an excellent case study for this because they feature several key arguments that do change over time, and, ultimately, are an effective case study for what policy failure looks like.[705]

While studying Congress allows us to understand how policy debate occurs over long periods of time, the Congressional Record itself is still an object worth studying. Congressional debate matters because, at moments where Congress acts appropriately, it is the fullest record of an argument on a given policy proposal; it provides a blueprint for understanding every single facet of a given debate over rights or responsibilities or laws at any given time in American history. Rhetoricians and historians have dismissed the rhetoric because of the “buncome” found within; long-winded speeches by self-interested members of Congress. What this study demonstrates, however, is that the Congressional Record is an arsenal for members of Congress to use in ideological fights. Russell frequently pointed to the Congressional Record when defending his record to constituents, encouraging them to read it, or referring them to copies at

[704] Stephen Skownek, The Politics Presidents Make: Leadership from John Adams to George Bush (Cambridge: Harvard University Press, 1993).
[705] Rhetoricians have done some work on presidential failure, but not policy failure writ large. Mary Stuckey, *Strategic Failures in the Modern Presidency* (Cresskill, NJ: Hampton Press, 1997).

their local libraries.[706] The Record, especially in contentious debates, is a critical rhetorical document that deserves analysis in full, despite the challenges it provides.

This dissertation has explored some of the worst rhetoric to grace the United States Senate. The objects of research in the previous pages used their power to subjugate African Americans, depriving of their rights to be safe from harm and to choose their elected representatives. Richard Russell's actions undoubtedly led to the continuation of the Jim Crow south and the oppression of an afflicted people. Yet from their rhetoric, we can learn a great deal about debate in the Senate, long-term policy debates held on multiple levels, and the rhetoric of racism. Ultimately, to paraphrase Kenneth Burke, southern Senators found a snake oil that would appeal to the most subtle strains of racism, and they were helpful enough to put their cards face up on the table. Let us, then, for God's sake, examine them.[707]

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[706] Russell frequently referred to the Record in letters to constituents, encouraging them to seek it out at local libraries to see the southern arguments for themselves. The Senator from Georgia clearly intended the Record to be consumed by members of the public.
[707] Kenneth Burke, "The Rhetoric of Hitler's Battle," in *Philosophy and Literary Form: Studies of Symbolic Action* (New York: Vintage, 1941). 164-165.

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