

The Erosion of the First Civil Rights Era: Congress and the Redemption of the White South, 1877-1891

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With the Compromise of 1877, Reconstruction, as the Radical Republicans had designed it a decade earlier, had effectively ended. On this point, most historians are in agreement. But to assume that the GOP's desire to contest the Democrats for control of the South had abated would be incorrect. The common view that a Jim Crow State and one-party Democratic system took hold immediately after Reconstruction and operated largely outside of the (more) democratic, two-party system that otherwise functioned in the country through the 1950s and 1960s (until civil and voting rights reforms were finally instituted) ignores a somewhat brief period that extended from the late-1870s through the early-1890s, when both parties vied for control of the South. While the Democrats clearly had the upper hand during this period, the GOP made a real (although not always consistent) effort, in a variety of ways, to prevent the South from becoming truly "solid" for the Democrats. This paper recounts that story, with a particular emphasis on how events played out in Congress. To guide the analysis, we break the paper into four sections: (1) the 45th and 46th Congresses, when black voters in the South face continued violence and intimidation in elections, even as President Hayes sought to build a new Southern GOP around Whig-leaning white voters, and the Democrats sought to repeal the Reconstruction-era Enforcement Acts and dared Hayes to stop them; (2) the 48th Congress, when a black GOP House member, James O'Hara of North Carolina, tacked an anti-discrimination amendment onto an interstate commerce bill, which caused a lengthy battle over the concept of "equal accommodations" in interstate passenger travel; (3) the 48th, 49th, 50th, and 51st Congresses, when Republican Senator Henry W. Blair of New Hampshire sought to create a program of federal education, which would raise up the poor classes in the South (including blacks) and threaten the caste system and governing hierarchy; and (4) the 51st Congress, when the Republicans, led by Representative Henry Cabot Lodge of Massachusetts, sought to leverage their control of the House, Senate, and presidency to pursue a new federal election law to protect blacks' voting rights.

Introduction

Historians of the late-19th century typically consider 1877 to be the final year of Congress's Reconstruction experiment in the former-Confederate South. Congressional Reconstruction originated in 1867, after a brief period of "Presidential Reconstruction," wherein President Andrew Johnson attempted to welcome back the former Rebel states on moderate (some would say "lenient") terms. Johnson's conditions would have largely allowed the former white slaveholding interests to redesign Southern institutions to their benefit in the post-13th Amendment world.¹ The Radical Republicans in Congress had other ideas, however, and used their supermajorities to block Southern states from reentering the Union under Johnson's plan and to wrest control of the design of Reconstruction from the executive branch. Radical Reconstruction would be both punitive and revolutionary, as the Radicals sought to punish the white South and to elevate the former slaves (the "Freedmen") to equal civil and political status in Southern society. Over the next few years, the South was divided into military zones and several important laws and constitutional amendments were adopted and implemented to guarantee the Freedmen equal protection of the laws, voting rights, and equal treatment in public accommodations and transportation.

The Radicals' strategy bore fruit. The Republicans flourished in the Reconstructed South, and more importantly, the Freedmen played a key role in the party's success. Newly enfranchised, they took to the polls and used their suffrage in earnest. And while scalawags (white Southerners) and carpetbaggers (whites formerly of the North) often held positions of power within the Southern GOP hierarchy, the Freedmen also shared in the top offices. More

¹ On Presidential Reconstruction, see Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: HarperCollins, 1988), 176-227. An example of such institutional design was the Black Codes, which were state laws that tied the Freedmen (in a draconian fashion) to plantation labor.

than 600 blacks were elected to Southern state legislatures during Reconstruction, fourteen to the U.S. House, and two to the U.S. Senate.²

But all was not well in Dixie. White Southern Democrats resented the Radicals' heavy-handed approach and worked to undermine GOP electoral efforts wherever possible. Often this took the form of fraud, intimidation, and violence, with blacks especially targeted and threatened with harm. Slowly but surely, the Democrats gained in strength and began taking back – or “redeeming” – state governments in the South. By 1873, five of the former-Confederate states (Georgia, North Carolina, Tennessee, Texas, and Virginia) had been moved back into the Democratic column. Two more (Alabama and Arkansas) would follow a year later. And this “retreat” from Reconstruction would carry over to the national level, as the Democrats wrested majority control of the U.S. House away from the Republicans in the midterm elections of 1874, as the GOP was blamed for a depression in the Mid-Atlantic and Midwest following the Panic of 1873. A general “fatigue” among the northern public with Reconstruction, thanks to countless news stories reporting the violent and sordid politics in the South, and systemic corruption within the Grant administration also likely cost the Republican Party votes in 1874.³

Thus, as Ulysses S. Grant's second presidential term was winding down, the Republicans' foothold in the South was growing more tenuous. The Radicals' vision of a truly reconstructed Southern society eroded in the face of white Southern intransigence and increasing Northern apathy. And the South would take center stage once again in the Presidential Election of 1876,

² Foner, *Reconstruction*, 352-55.

³ Foner, *Reconstruction*, 522-25; Richard H. Abbott, *The Republican Party and the South, 1855-1877* (Chapel Hill: University of North Carolina Press, 1986), 214-18; Nicolas Barreyre, “The Politics of Economic Crises: The Panic of 1873, the End of Reconstruction, and the Realignment of American Politics,” *The Journal of the Gilded Age and Progressive Era* 10 (2011): 403-23.

as the resurgent Democrats set their sites on the White House.⁴ The contest would pit two reform-minded governors – Rutherford Hayes of Ohio and Samuel Tilden of New York – against one another, and when the election was over, the result appeared to favor Tilden. But the electoral votes of three yet-to-be-redeemed Southern states (Florida, Louisiana, and South Carolina) were called into question,⁵ with ballot fraud at the heart of the dispute.⁶ In time, GOP-controlled election commissions threw out a sufficient number of Democratic votes (based on fraudulent ballot design) to award the electoral votes of Florida, Louisiana, and South Carolina to Hayes. With these electoral votes in hand, Hayes had a one-vote majority. Democrats cried foul, and rival political actors in the three Southern states moved to certify results that would award the disputed electoral votes to Tilden. To settle the crisis, Congress set up a 15-member Electoral Commission to investigate and render a decision – with the eventual outcome favoring Hayes on an 8-7 vote.

Underlying the dispute-settlement process was a range of backdoor politicking, which culminated in the (presumed) Compromise of 1877. The negotiations underlying the compromise were secret, but ultimately the Democrats agreed to give up their leverage – for example, the Democratically-controlled House needed to validate the Electoral Commission's decision, and the minority Democrats in the Senate could have pursued a filibuster – and acquiesce to Hayes's election, in exchange for assurances from the Republicans that (among other things) they would no longer use the army to prop up GOP governments in the three remaining unredeemed states – and instead allow “home rule” to operate.⁷ And subsequent

⁴ See Keith Ian Polakoff, *The Politics of Inertia: The Election of 1876 and the End of Reconstruction* (Baton Rouge: Louisiana State University Press, 1973); Michael F. Holt, *By One Vote: The Disputed Presidential Election of 1876* (Lawrence: University Press of Kansas, 2008).

⁵ One electoral vote in Oregon was contested as well.

⁶ Mississippi had been the seventh former-Confederate state taken back by the Democrats in early 1876.

⁷ The standard account of the Compromise of 1877 is C. Vann Woodward, *Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction* (Boston: Little, Brown, 1966).

behavior by Grant (who withdrew the army in Florida) and Hayes (who refused to support the entrenched, but under-fire, governors in Louisiana and South Carolina, and directed the army back to their barracks – thus nudging them into giving up their office claims and stepping aside) was consistent with GOP leaders keeping up their end of the deal.

Thus, the 45th Congress (1877-79) opened with the Democrats controlling the House, the Republicans controlling the Senate and presidency, and all eleven states of the former Confederacy having been “redeemed.” Reconstruction, as the Radicals had designed it a decade earlier, had effectively ended. On this point, most historians are in agreement. But to assume that the GOP’s desire to contest the Democrats for control of the South had abated would be incorrect. The common view that a Jim Crow State and one-party Democratic system took hold immediately after Reconstruction and operated largely outside of the (more) democratic, two-party system that otherwise functioned in the country through the 1950s and 1960s (until civil and voting rights reforms were finally instituted) ignores a somewhat brief period that extended from the late-1870s through the early-1890s, when both parties vied for control of the South. While the Democrats clearly had the upper hand during this period, the GOP made a real (although not always consistent) effort, in a variety of ways, to prevent the South from becoming truly “solid” for the Democrats.⁸ This paper recounts that story, with a particular emphasis on how events played out in Congress.

The period between the late-1870s and early-1890s was a dynamic one, as the country struggled with becoming an economic powerhouse in a rapidly industrializing world of

⁸ For a general discussion of the Republican Party’s strategy vis-à-vis the South in the post-Reconstruction era, see Vincent De Santis, *Republicans Face the Southern Question: The New Departure Years, 1877–1897* (Baltimore: Johns Hopkins University Press, 1959); Stanley Hirshson, *Farewell to the Bloody Shirt: Northern Republicans and the Southern Negro, 1877–1893* (Bloomington: Indiana University Press, 1962); Xi Wang, *The Trial of Democracy: Black Suffrage and Northern Republicans, 1860–1910* (Athens, GA: The University of Georgia Press, 1997); Charles W. Calhoun, *Conceiving a New Republic: The Republican Party and the Southern Question, 1869–1900* (Lawrence: University Press of Kansas, 2006).

increasingly interdependent nations. Domestically, currency issues (soft vs. hard money), transportation and internal improvements (railroads and their byproducts), and tariff levels (protectionism vs. free(er) trade) tested the nation's political economy, while labor issues, civil service reform, and military pensions also demanded attention from (and divided) the parties. Civil rights for blacks continued to garner attention, with some Republican politicians advocating on moral/ethical grounds and others behaving more instrumentally. In the latter case, the infringement of blacks' civil rights was often used as a "sword" by Republicans who saw value in "waving the bloody shirt" – and thus indicting the Democrats for their rear-guard efforts to effectively reverse the outcome of the Civil War through fraud and violence – for electoral gain. At the same time, Republican presidents (Hayes, Chester Arthur, and Benjamin Harrison) and other key party leaders during this era all downplayed black civil rights at various points, in an attempt to build up a Southern GOP by reaching out to disaffected white Democrats. That said, a true reprisal of Reconstruction would be fought in the 51st Congress (1889-91), as fraud and violence perpetrated by white Southern Democrats throughout the 1880s would be confronted with unified Republican government and a seeming (and active) will to protect blacks' voting rights once again. In many ways, this would be the Radicals' last stand.

Our analysis focuses on the seven Congresses that spanned the 1877-1891 era: the 45th (1877-79) through 51st (1889-91) Congresses. In detailing the civil-rights-related initiatives (or lack thereof) during this time, we examine the congressional proceedings, individual roll-call votes, and eventual legislative outcomes. To guide the analysis, we break the remainder of the paper into four sections: (1) the 45th and 46th Congresses, when black voters in the South face continued violence and intimidation in elections, even as President Hayes sought to build a new Southern GOP around Whig-leaning white voters, and the Democrats sought to repeal the

Reconstruction-era Enforcement Acts and dared Hayes to stop them; (2) the 48th Congress, when a black Republican House member, James O’Hara of North Carolina, tacked an anti-discrimination amendment onto an interstate commerce bill, which caused a lengthy battle over the concept of “equal accommodations” in interstate passenger travel; (3) the 48th, 49th, 50th, and 51st Congresses, when Republican Senator Henry W. Blair of New Hampshire sought to create a program of federal education, which would raise up the poor classes in the South (including blacks) and threaten the caste system and governing hierarchy; and (4) the 51st Congress, when the Republicans, led by Representative Henry Cabot Lodge of Massachusetts, sought to leverage their control of the House, Senate, and presidency to pursue a new federal election law to protect blacks’ voting rights.

Rutherford Hayes and the Battle to Preserve Enforcement

Rutherford Hayes entered the White House in the spring of 1877, with firm plans for rebuilding the Republican Party in the South. In the months before his inaugural, he had shared his views with many in and outside of his party, and received a range of different advice on what to do and how to accomplish it. Hayes had settled on a strategy of “conciliation,” whereby he would end the vestiges of military-designed Reconstruction (in keeping with supposed promises that were at the heart of the Compromise of 1877) and instead pursue a “new departure” with the white South.⁹ As Vincent De Santis contends: “[Hayes] dreamed of building a strong Republican party in the South that would no longer depend upon the Negro for its main strength and that could command the esteem and support of southern whites.”¹⁰ Hayes believed that the Radicals’ draconian impulses, whereby Southern society would be forcibly remade at the point

⁹ On Hayes’s New Departure strategy generally, see De Santis, *Republicans Face the Southern Question*; Hirshson, *Farewell to the Bloody Shirt*; Wang, *The Trial of Democracy*; Calhoun, *Conceiving a New Republic*.

¹⁰ De Santis, *Republicans Face the Southern Question*, 66.

of a bayonet, imposed an overt racial frame to Reconstruction and forced Southern whites as a group into resisting. But Southern whites were a heterogeneous group, and Hayes believed that once the racial angle was removed, they could be split on economic grounds. In effect, Hayes and his supporters imagined that the Whiggish elements in the white South – industrial interests and businessmen principally, but also many yeoman farmers – were prime targets for the Republican message, and that their current alliance with former slaveholders and other Southern leaders of the pre-Civil War era (i.e., the Bourbon Democrats) was a matter of short-term convenience (or necessity, in response to the Radicals' Reconstruction design) rather than long-term interest. Stated simply, Hayes felt that the material for a new, revitalized Republican Party in the South was very much present within the local white population.

Hayes believed the key to driving an economic wedge in the Southern white population was through federal support of internal improvements in the South.¹¹ In order to industrialize the region, better connections between farms, manufacturers, ports, and other centers of economic activity were needed. Such economic plans appealed to Southerners, and a range of plans for tunnels, canals, and railroads were floated. But bringing such plans to fruition would take time, and in the short term, Hayes sought to communicate his “good faith” to the white South and monetize his New Departure strategy through patronage appointments.¹² He began with the construction of a pro-Southern cabinet, appointing David Key (a Tennessee Democrat and former Confederate general) as postmaster general, William Evarts (former attorney general under Johnson) as secretary of state, and Carl Schurz (a liberal Republican, and former Liberal Republican) as secretary of the interior. All three had been opposed to the Radicals’ military-

¹¹ On Hayes's internal improvements idea, see De Santis, *Republicans Face the Southern Question*, 87-89. According to De Santis, Hayes would retreat somewhat from this idea, due to concerns about corruption (along the lines of the Credit Mobilier scandal).

¹² De Santis, *Republicans Face the Southern Question*, 73-78; Hirshson, *Farewell to the Bloody Shirt*, 27-28; Calhoun, *Conceiving a New Republic*, 138-39.

style Reconstruction plan. And Key, in particular, would be in control of vast patronage, which could be distributed to the “right” (read: Whiggish) element within the Southern Democracy. The pro-Reconstruction element within the Republican Party was shocked by this turn of events, but Hayes would not be deterred – and all three were confirmed in the Senate thanks to the support of Southern Democrats. More generally, Southern Republicans (blacks and carpetbaggers) would be passed over for a number of lower-level appointments, as Hayes sought to broaden Republican respectability through patronage “buy ins” among Southern whites. As Stanley Hirshson writes: “One-third of the Southern appointees during the first five months of the Hayes administration were [Democrats].”¹³

But while Hayes had a new plan in mind, he still held strongly to the idea that black rights in the South (equal protection of the laws and voting rights) should be protected. His hope was that the “better elements” in white Southern society would respond to his support for withdrawing the remaining troops and restoring home rule by ensuring that the rights of the Freedmen would be maintained.¹⁴ Hope, however, would give way fairly quickly to disappointment. The first inkling was the state elections in Fall 1877, when Republican vote totals in Virginia and Mississippi would drop precipitously relative to 1876: from 40 to 4.1 percent in Virginia and from 30 to 1.2 percent in Mississippi.¹⁵ Charges of violence and intimidation permeated these elections, and similar allegations were raised in the run-up to the federal midterms during the Fall of 1878. There, the Republicans’ fall from grace would be driven home, as the number of GOP House seats in the former Confederacy would drop from 10 (at the start of the 45th Congress) to 3. Worse yet, the Republicans lost majority control of the

¹³ Hirshson, *Farewell to the Bloody Shirt*, 36.

¹⁴ And, in this regard, he secured the promise of the incoming governors of Louisiana and South Carolina prior to the troop removals. See Calhoun, *Conceiving a New Republic*, 140-42.

¹⁵ Calhoun, *Conceiving a New Republic*, 150.

Senate, and thus would face a 46th Congress (1879-81) in which Democrats controlled both chambers. Hayes was outraged that white elites in the South did not follow through on their promises, especially in Louisiana and South Carolina where some of the most extreme charges of voting rights' infringements occurred. He still believed in his general policy – that the white South would need to be split if the GOP were to be rebuilt – but was sobered by the current reality.

Fresh from their electoral victories, the Democrats pressed their advantage. As the 45th Congress was winding down, Democrats in the House worked to add amendments to the annual appropriations bills for the Army and the Executive, Legislative, and Judicial Expenses of the Government that would repeal elements of the Enforcement Acts – specifically eliminating troop presence at the polls (the revised Army bill) and prohibiting the appointment of federal marshals and their deputies to supervise (watch) elections (the revised Expenses bill). Once passed, they were sent to the Senate, where the Republican majority removed the amendments. Conference committees were appointed (twice regarding the Expenses bill), but conferees could not produce a new agreement. Thus, the lame-duck session ended without these appropriations being made for fiscal year 1880, which would begin on July 1, 1879.

The Democrats pursued the “rider” strategy – i.e., tacking a substantive amendment onto an unrelated bill – initially as a stalling technique. As Xie Wang notes: “The purpose of the delays [at the end of the 45th] was to disable the enforcement laws in the next Congress.”¹⁶ As the Democrats would be the majority party in both the House and Senate in the 46th Congress (1879-81), their only obstacle would be a Republican (Hayes) in the White House. Their rider strategy applied to appropriations bills specifically was strategic: the Democrats believed that Hayes was more likely to accept the legislation in this case, as vetoes of appropriations – and a

¹⁶ Wang, *The Trial of Democracy*, 165.

subsequent deadlock – would result in important elements of the government not being funded.

Riders on appropriations bills were nothing new,¹⁷ as the Republicans under Grant had made use of them – for example, to authorize the president to establish a commission to draft rules for civil service exams (1871) and to provide federal circuit court judges with the power to appoint marshals to supervise elections (1872). However, the Democrats' gambit had taken the strategy to a new level. As Leonard White states: “now for the first time a congressional majority asserted its right to stop supplies unless ‘redress of grievances’ was secured by executive acceptance of an obnoxious proviso.”¹⁸

Hayes called for a special (extra) session of the 46th Congress to begin on March 18, 1879 – as the normal first session would not commence until December 1, 1879 – in order to enact the needed appropriations and prevent important segments of the government from going unfunded (beginning on July 1). Republican members of Congress – sometimes divided in recent years on the “correct” Southern policy – were up in arms, outraged at the Democrats’ bald-faced power play. Hayes also recognized the Democrats’ strategy and vowed not to be coerced into supporting it:

The Senate and House in the Forty-sixth Congress being both Democratic will insist on the right to repeal the election laws, and, in case of my refusal, will put the repeal [as riders] on the appropriation bills. They will ... block the wheels of government, if I do not yield my convictions in favor of the election laws. It will be a severe, perhaps a long contest. I do not fear it. I do not even dread it. The people will not allow this revolutionary course to triumph.¹⁹

¹⁷ According to Edward Campbell Mason: “The practice of attaching riders to appropriations bills and other important measures began in 1820, when the bill for admission of Missouri was ‘tacked’ to the bill for the admission of Maine.” See Edward Campbell Mason, *The Veto Power: Its Origin, Development, and Function in the Government of the United States (1789-1889)* (Boston: Ginn & Company, 1891), 48, fn. 1. And according to Horace Davis (citing a statement by John Reagan of Texas): “between 1862 and 1875, 387 measures of general legislation had been passed as provisos upon appropriations bills.” See Horace Davis, *American Constitutions: The Relations of the Three Departments as Adjusted by a Century* (San Francisco: [s. n.], 1884), 34.

¹⁸ Leonard D. White, *The Republican Era: 1869-1901* (New York: The Macmillan Company, 1958), 35.

¹⁹ Rutherford Birchard Hayes (1822–1893), *Diary and Letters of Rutherford Birchard Hayes: Nineteenth President of the United States*, vol. III, p. 529, ed. Charles Richard Williams, The Ohio State Archaeological and Historical Society, 5 vols. (1922-1926), Diary (9 March 1879).

And over the next year, the Democrats would come at Hayes time and time again, relentless in their goal of freeing Southern elections from federal interference. Riders would be their main vehicle, but supplemental appropriations (via free-standing bills) would be tried too. And Hayes would stand resolute in the face-off, refusing to be cowed by the prospect of a government shutdown. In all, Hayes would veto seven bills during the enforcement battle, and the Democratically-controlled House would fail on five different occasions to override.²⁰ The details of these legislative dynamics will be discussed below; to guide the discussion, Tables 1 and 2 provide the vote breakdowns by party in the House and Senate, respectively, on the seven key votes, while Table 3 provides a similar breakdown of the five failed override attempts.

[Tables 1, 2, and 3 about here]

Hayes would not need to wait long before the first challenge was upon him. A little more than a month after the opening of the special session, a new Army Appropriations bill (H.R. 1) was placed on his desk, having made its way through the House and Senate on strict party-line votes. In the bill was language that sought to strike out a provision in federal legislation that was adopted on February 25, 1865 (Section 2002 of the *Revised Statutes*), when the Civil War was still raging. The provision in question was:

No military or naval officer, or other person engaged in the civil, military, or naval service of the United States, shall order, bring, keep, or have under his authority or control, any troops or armed men at the place where any general or special election is held in any State, unless it be necessary to repel the armed enemies of the United States, or to keep the peace at the polls.²¹

If enacted, H.R. 1 would strike out the last eight words: “or to keep the peace at the polls.”

²⁰ Detailed descriptions of the “enforcement war” between Hayes and the Democratically-controlled Congress can be found in Ari Hoogenboom, *The Presidency of Rutherford B. Hayes* (Lawrence: University Press of Kansas, 1988), 74-78, 195-97; Wang, *The Trial of Democracy*, 165-79; Calhoun, *Conceiving a New Republic*, 161-66, 171-75.

²¹ See *Revised Statutes of the United States*, Second Edition. Title XXVI. The Elective Franchise, Section 2002 (Washington: Government Printing Office, 1878), 352.

Republicans criticized the ploy in the strongest terms. They believed the Southern-led Democrats were trying to undo the Northern victory in the late war, and to allow them unfettered control over elections in the region would invite calamity. Moreover, they believed Northern Democrats were eager to help, in order to get the army out of the equation above the Mason-Dixon line, where densely populated areas in states like New York were prime territory for electoral shenanigans and vote stealing.²² Hayes himself was not a proponent of using the army as a police force – but he also felt that calling in the troops was a necessary mechanism when civilian authorities required and requested assistance in elections. Moreover, he believed the rider strategy employed by the Democrats was dangerous and unconstitutional, arguing that “the House could, by withholding appropriations, force the Senate and president to agree to any legislation that the House saw fit to attach to an appropriations bill.”²³ Of course, in the current context, the House and Senate agreed on the course of action; in this case, Hayes noted that the president specifically would be forced to submit to the will of a bare majority in Congress and abdicate his constitutionally-provided role in the legislative process, lest portions of the government shut down because of lack of funding.²⁴ Thus, on April 29, Hayes vetoed the measure.²⁵ Two days later, the Democrats in the House attempted to override Hayes’s veto, but could not achieve the necessary two-thirds, with all participating Democrats opposing all participating Republicans.

Less than a week later, the Democrats would try to side-step Hayes’s constitutional arguments by passing a free-standing bill (H.R. 1382) that would serve the same purpose

²² On the application of federal election laws in Northern cities in the 1870s, 1880s, and early 1890s, see Albie Burke, “Federal Regulation of Congressional Elections in Northern Cities, 1871-94,” *The American Journal of Legal History* 14 (1970): 17-34.

²³ Hoogenboom, *The Presidency of Rutherford B. Hayes*, 75.

²⁴ Calhoun, *Conceiving a New Republic*, 163-64.

²⁵ Veto message can be found in *Congressional Record*, 46th Congress, 1st session (April 29, 1879), 993-95.

(barring troops from the polls). Hayes would veto this as well,²⁶ reiterating his position that while he disagreed with the notion of using the military as a police presence, he did believe troops were a vital part of the enforcement process – especially if civilian institutions and forces in states deemed them necessary to ensure the sanctity of elections in specific cases. The House Democrats again tried an override, but once more fell short of reaching two-thirds (with perfect party voting on both sides).

The Democrats then moved from army enforcement to civilian enforcement, by adding a rider to the Appropriation for Legislative, Executive, and Judicial Expenses bill (H.R. 2). In effect, the Democrats sought to neuter the supervisory election authority of federal marshals and their deputies, by limiting their powers to make arrests, investigate voting records, determine voter eligibility, and participate in the counting of ballots, as well as hampering their ability to register voters, get paid, and pursue enforcement in rural areas.²⁷ Again, pure-party line voting in both chambers led to the bill being placed on Hayes's desk, where he promptly vetoed it on May 29, on the grounds that its limitations and prohibitions effectively prevented the federal government from performing its supervisory role in elections.²⁸ And, once again, House Democrats failed in their attempt to override.

In the face of these three defeats, and with the Republicans appearing to be winning the public relations war, the Democrats sought to regroup. By mid-June, just weeks away from the beginning of the new fiscal year, they had agreed to adopt the Army and Legislative, Executive, and Judicial Expenses Appropriations bills, largely without political restrictions – but did stipulate that the army was not to be used for a policing role in elections in the former bill (something that Hayes never supported anyway), while excluding certain judicial expenses,

²⁶ Veto message can be found in *Congressional Record*, 46th Congress, 1st session (May 12, 1879), 1267-68.

²⁷ See Wang, *The Trial of Democracy*, 171-72.

²⁸ Veto message can be found in *Congressional Record*, 46th Congress, 1st session (May 29, 1879), 1709-10.

relating to the pay of marshals, in the latter bill. Hayes agreed to each, and the immediate funding crisis was over.²⁹

However, additional appropriations were still needed. The Democrats continued their rider strategy in a supplemental Judicial Expenses bill (H.R. 2252), which provided money for salaries and fees for a range of judicial employees; it also included a stipulation denying payment to general and deputy marshals for their work on election day. If the Democrats could not repeal the laws themselves, they now tried to prevent the key enforcement agents from getting paid. This scenario followed the now-expected path: party-line votes in each chamber, a Hayes veto³⁰ – once again, predicated on the would-be law preventing the federal government from being able to supervise elections – and the House Democrats failing again (for the fourth time) in their override attempt. The Democrats then produced a new Judicial Expenses bill (H.R. 2381) on May 30, the last day of the fiscal year, which included no stipulation for the payment of marshals, but prohibited race-based discrimination on juries and eliminated test oaths for jurors.³¹ Hayes saw nothing objectionable – believing that the test-oath ban was a relic of Reconstruction that should be removed – and signed this bill.³²

This left only the issue of payment for election supervision. The Democrats extracted the provision from the previous rider (in H.R. 2252) and produced a stand-alone bill for the payment of U.S. marshals and their general deputies. The bill (H.R. 2382) provided an appropriation of \$600,000, but prohibited any of this money from being used on deputies (and their prescribed activities) on election day.³³ As before, the bill passed in both chambers with all participating

²⁹ The Army Appropriations bill was enacted on June 23, 1879 (21 Stat. 30), while the Legislative, Executive, and Judicial Expenses Bill was enacted on June 21, 1879 (21 Stat. 23).

³⁰ Veto message can be found in *Congressional Record*, 46th Congress, 1st session (June 23, 1879), 2291-92.

³¹ Hoogenboom suggests that the stipulations in this new bill were constructed in consultation with Hayes, given the tight timeframe. See Hoogenboom, *The Presidency of Rutherford B. Hayes*, 77-78.

³² The new Judicial Expenses bill was enacted on June 30, 1879 (21 Stat. 43).

³³ See *Congressional Record*, 46th Congress, 1st session (June 27, 1879), 2392.

Democrats approving and all participating Republicans objecting. Not surprisingly, Hayes vetoed this bill – along now familiar lines, that the legislation would prevent the federal government from performing its job in overseeing elections – and the House Democrats failed, once again, in a last-minute override attempt.³⁴

Thus, the first session of the 46th Congress (and the fiscal year ending June 30, 1879) ended with Hayes having preserved the enforcement laws, but U.S. marshals and their deputies not receiving their appropriation. Attorney General Charles Devens expressed his concern and unhappiness with this turn of events, and instructed the marshals and deputies to continue with their supervision duties until their requisite appropriation could be generated.³⁵ Overall, though, Hayes had done his job, vetoing five bills and watching the Democrats fail in their five attempts to override. The Democrats’ erosion of the GOP’s Reconstruction-era gains and institutions had been stopped for the moment, and Republican Party cohesion around “bloody shirt” rhetoric had been produced in advance of the 1879 elections in the North – which went very well for the GOP – and the general election of 1880. Hayes himself would not be seeking reelection, but he was doing his part to help his party – even as his “New Departure” strategy vis-à-vis the South had proven to be a failure.

The battle between Hayes and the Democratically-controlled Congress would be taken up again in the second session of the 46th Congress. As Republican politicking for the presidential nomination was shifting into high gear, and shortly after the Supreme Court upheld the constitutionality of the Enforcement Acts (including those sections that dealt with election supervision) in *Ex parte Siebold*, the Democrats tried a different tack in their attempt to scuttle enforcement. In late March 1880, the House Democrats attached a rider to a \$8 million special

³⁴ Veto message can be found in in *Congressional Record*, 46th Congress, 1st session (June 30, 1879), 2442.

³⁵ Wang, *The Trial of Democracy*, 174-75; Calhoun, *Conceiving a New Republic*, 164. Devens would make an urgent request for this appropriation when Congress reconvened for their second session on December 1, 1879.

deficiency appropriations bill (for payment of expenses for the fiscal year ending June 30, 1880), which would have taken the appointment of special deputy marshals (who were added at election time, to help marshals and their general deputies) away from federal district marshals and given to the federal circuit court (or the federal district court, if the circuit court was not in session). Compensation (\$5 a day) for special deputy marshals was also included, as well as a stipulation to insure that the allocation of such special deputies would be divided equally between the parties. The intention of this rider was clear; as Hoogenboom writes: “The object was to divide and undermine the authority, responsibility, and effectiveness of federal officers who supervised elections.”³⁶ The special deficiency appropriations bill (H.R. 4924), with the rider attached, was passed in both chambers by party line votes (with only sporadic defections in the House) and sent to Hayes for his signature. On May 4, Hayes vetoed the bill, once again citing the unconstitutionality (in his mind) and blatant coercion of attaching riders to appropriations bills.³⁷

The Democrats would not attempt to override Hayes, but rather tried a different ploy. Two days after Hayes’s veto, they would attempt an end run around Hayes’s constitutional argument by passing a free-standing bill (in much the same way that they tried with military interference in the first session). This bill (S. 1726) was effectively identical to the deficiency appropriations bill rider, with the thrust being that, once again, special deputy marshals would be court-appointed rather than marshal-appointed, which (from the GOP’s perspective) would hamper election supervision. The Democrats jammed it through both chambers and presented it to Hayes near the end of the second session. On June 15, he promptly vetoed it, asserting that the disjunction between federal marshals and their special deputies – which the bill would have

³⁶ Hoogenboom, *The Presidency of Rutherford B. Hayes*, 196.

³⁷ Veto message can be found in *Congressional Record*, 46th Congress, 2nd session (May 4, 1880), 2987-88.

created – would adversely affect the government’s ability to perform its job in supervising elections.³⁸ Once again, the Democrats chose not to pursue an override.

With these seven vetoes, Hayes had effectively stymied the Democrats in their attempts to undermine the enforcement of elections. Admittedly, he did have to make a concession to keep the general government going, and on June 16 (the last day of the session, with the end of the fiscal year two weeks off), he signed a special deficiency appropriations bill and a sundry civil appropriations bill.³⁹ The deficiency bill – shorn of the Democrats’ rider and any pay for special deputies – provided back pay for marshals (for the fiscal year ending June 30, 1880), but prohibited payment for marshals’ (and deputy marshals’) services rendered at any election.⁴⁰ The sundry appropriations bill provided \$650,000 for marshals and their general deputies (for fiscal year ending June 30, 1881), but prohibited payment for services rendered at elections.⁴¹ But from Hayes’s perspective, the Enforcement Acts were preserved. And the Republicans would perform well in the 1880 elections, winning the presidency and House and gaining a measure of control of the Senate (which they would solidify at the convening of the 47th Congress, with the help of Virginia Readjuster William Mahone). Perhaps because of this GOP momentum, as Burke A. Hinsdale notes, “The Democrats now abandoned the [enforcement-repeal] contest.”⁴² Specifically, in the third session, Hayes would sign into law a new special deficiency appropriations bill (for the fiscal year ending June 30, 1881)⁴³ and a new sundry civil

³⁸ Veto message referred to in *Congressional Record*, 46th Congress, 2nd session (June 16, 1880), 4612. For full veto message, see “Killing a Partisan Bill,” *New York Times*, June 16, 1880, p. 2.

³⁹ For the politics behind these bills, see “Congress To-Day,” *Washington Post*, June 16, 1880, p. 1; “The Veto,” *Washington Post*, June 16, 1880, p. 2; “Crooked Ways,” *Washington Post*, June 17, 1880, p. 2.

⁴⁰ See 21 *Stat.* 238. Key provision is on p. 250.

⁴¹ See 21 *Stat.* 259. Key provision is on p. 278.

⁴² James A. Garfield, *The Works of James Abram Garfield*, Vol. II, ed., Burke A. Hinsdale (Boston: James R. Osgood and Company, 1883), 733. More generally, see 731-33 of this work for a review of the spring 1880 enforcement-battle politics.

⁴³ See 21 *Stat.* 414. Key provision providing back pay for marshals is on p. 429.

appropriations bill (for fiscal year ending June 30, 1882),⁴⁴ neither of which would include the elections restrictions that were part of previous versions.

Overall, Hayes's battle with the Democratically-controlled Congress was meaningful, at least viewed contemporaneously. By keeping the Enforcement Acts on the books, Hayes provided the Attorney General with the capacity to pursue criminal prosecutions and thereby ensure a fair ballot and a fair count in Southern elections. And as Xi Wang shows, the momentum generated by Hayes's steadfastness seemed to carry over into Justice Department activity.⁴⁵ The number of enforcement cases in the South in 1881 more than tripled over that of 1880, and remained at a high level for the next four years (during Chester Arthur's administration).⁴⁶ Still, convictions were difficult, given the Southern composition of courts, and the bite of enforcement never reached the level of the early Reconstruction era (1871-73). But in refusing to be coerced by Southern Democrats in Congress, Hayes allowed for the possibility of criminal enforcement – something that could be a powerful tool, if the GOP ever reemerged as a serious presence in the South.⁴⁷

Discrimination in Interstate Travel

Despite having control of the federal government in the 47th Congress (1881-83), the Republican leadership did little to protect and promote the rights of blacks in the South. While the Justice Department was more active than in the recent past (as noted in the previous section), no new legislation in Congress was pursued. Attempts *were* made, however, to buttress the party

⁴⁴ See 21 *Stat.* 259. Key provision providing \$600,000 for marshals and their deputies (with no conditional language) is on p. 278.

⁴⁵ See Wang, *The Trial of Democracy*, Appendix Seven, 300-01.

⁴⁶ The number of cases (convictions) was 53 (0) in 1880, 177 (95) in 1881, 154 (23) in 1882, 201 (12) in 1883, 160 (17) in 1884, and 107 (1) in 1885. Wang, *The Trial of Democracy*, 300.

⁴⁷ For a general history of the enforcement of voting rights in the South during the timeframe of this paper, see Robert M. Goldman, "*A Free Ballot and a Fair Count*": *The Department of Justice and the Enforcement of Voting Rights in the South, 1877-1893* (New York: Fordham University Press, 2001).

as a whole. For example, House Republicans pursued contested (disputed) election cases, mostly as a way to add seats and give themselves (as they otherwise had a bare majority) a bit more wiggle room to govern – in all, five Southern seats were “flipped” from Democrat to Republican via election contests.⁴⁸ And President Arthur followed up on Hayes’s strategy of seeking a new vehicle for a Southern GOP – not by courting Democrats with Whiggish tastes, but by negotiating with Independents with economically radical leanings.⁴⁹ In effect, a wave of populism had swept across the South, with disaffected whites blanching at the rule of the Bourbons. Arthur pinned his hope on fusion arrangements with these types, chief among them the Readjusters in Virginia (led by William Mahone). Mahone proved receptive, and was willing to align with the GOP in the Senate (thereby giving the Republicans marginal control of the chamber) in exchange for control of patronage. These fusion arrangements paid dividends in the 1882 midterms, as the Republicans saw their (ostensible) share of Southern seats nearly double. All of these gains were wiped out two years later, however, as the Bourbons regrouped and consolidated their power.

While organized Republican efforts in Congress to support black rights were absent in the Arthur years – the lack of GOP initiatives in the 47th Congress carried over into the 48th, when the Republicans were once again the minority party in the House – an individual initiative was attempted, which created significant distress for the Democrats. In December 1884, during the lame-duck session of the 47th Congress, the House was considering the matter of regulating interstate commerce. The bill (proposed by John Reagan, Democrat of Texas) would place a

⁴⁸ See Jeffery A. Jenkins, “Partisanship and Contested Election Cases in the U.S. House, 1789-2002,” *Studies in American Political Development* 18 (2004): 112-35; Jeffery A. Jenkins, “The First ‘Southern Strategy’: The Republican Party and Contested Election Cases in the Late-Nineteenth Century House.” In David W. Brady and Mathew D. McCubbins, eds., *Party, Process, and Political Change in Congress, Volume 2: Further New Perspectives on the History of Congress* (Stanford: Stanford University Press, 2007).

⁴⁹ On Arthur’s strategy vis-à-vis the Independents, and its consequences, see De Santis, *Republicans Face the Southern Question*, 133-81; Justus D. Doenecke, *The Presidencies of James A. Garfield and Chester A. Arthur* (Lawrence: University Press of Kansas, 1981), 105-24.

number of limits on railroads, as a way of reducing monopolistic practices, and was thus controversial.⁵⁰ On December 16, as the proceedings were winding down and a vote on the Reagan bill was close, James O'Hara, a black freshman Republican from North Carolina, sought to add an amendment, the text of which read: "And any person or persons having purchased a ticket to be conveyed from one State to another, or paid the required fare, shall receive the same treatment and afforded equal facilities and accommodations as are furnished all others persons holding tickets of the same class without discrimination."⁵¹

In proposing his amendment, O'Hara was responding, in part, to the recent Supreme Court decision in the *Civil Rights Cases* (1883), which deemed the Civil Rights Act of 1875 – which provided that "all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude"⁵² – to be unconstitutional. The Court ruled that Congress did not possess the constitutional authority under the enforcement provisions of the Fourteenth Amendment to outlaw racial discrimination by *private individuals and organizations* – which would be necessary, given the provisions and language of the 1875 Act.⁵³

Earlier in the 47th Congress, during the 1st session, O'Hara introduced a joint resolution (H. Res. 92) proposing a constitutional amendment that would have legally established black

⁵⁰ For a discussion of the railroad-regulation provisions, and the history of actions in Congress during this era, see Lewis H. Haney, *A Congressional History of Railways in the United States*, Vol. II (Madison, WI: Democrat Printing Co., 1910).

⁵¹ *Congressional Record*, 48th Congress, 1st session (December 16, 1884), 296-97.

⁵² See 18 Stat. 335.

⁵³ Rather, per the Court's ruling, the enforcement provisions of the 14th Amendment applied only to discriminatory behavior undertaken by state and local governments.

civil rights (and reinstated the 1875 Act, safely insulated from Court challenge),⁵⁴ but once referred to the Judiciary Committee, the House took no further action on it. Recognizing that his chief goal was beyond reach, O’Hara sought a second-best solution, through his amendment to the Reagan bill. It would not reestablish the provisions of the 1875 Act, but would chart a course that would be immune from Court challenge. That is, O’Hara was using the power granted to Congress to regulate interstate commerce, which was provided in Article 1, Section 8 of the Constitution. Thus, the language of his amendment was tailored to address discriminatory treatment in accommodations for fares purchased for travel *between* states. It was thus considerably more narrow than the 1875 Act, as it did not apply to discrimination in accommodations for travel *within* states. That said, O’Hara sought to accomplish what was feasible with congressional legislation, and his amendment threatened to drive a racial wedge in the otherwise easy road ahead for the Reagan bill.⁵⁵

Having introduced his amendment, O’Hara went on to defend it. After discussing its clear constitutionality, per the Commerce Clause, he then laid out the issue as he saw it:

Now an evil exists, and none will deny that discriminations are made unjustly, and to a great disadvantage, between persons holding the same class of tickets who are compelled to travel on business from one State to another, and perchance across several States, *en route* to their destination in another State. I therefore hold it to be not only within the power but the imperative duty of Congress to abate the evil and protect all classes of citizens from discrimination in any and every form.⁵⁶

That said, O’Hara took pains to frame the issue broadly:

Mr. Speaker, this is not class legislation. I do not nor would I ask such. It is not a race question, nor is it a political action. It rises far above all these. It is plain,

⁵⁴ See *Congressional Record*, 48th Congress, 1st session (January 8, 1884), 282.

⁵⁵ For a description of the proceedings surrounding the O’Hara amendment, see Maurine Christopher, *America’s Black Congressmen* (New York: Thomas W. Crowell Company, 1971), 153-59; Lawrence Grossman, *The Democratic Party and the Negro: Northern and National Politics, 1868-92* (Urbana: University of Illinois Press, 1976), 110-12; Eric Anderson, *Race and Politics in North Carolina, 1872-1901: The Black Second* (Baton Rouge: Louisiana State University Press, 1981), 120-23;

⁵⁶ *Congressional Record*, 48th Congress, 2nd session (December 16, 1884), 297.

healthy legislation, strictly in keeping with enlightened sentiment and spirit of the age in which we live; it is legislation looking to and guarding the rights of every citizen of this great Republic, however humble his station in our social scale.⁵⁷

The Democrats, on the verge of pushing through the Reagan bill, were taken by surprise. As the *Chicago Tribune* reported: “The amendment and speech [by O’Hara] seemed to paralyze Reagan.”⁵⁸ Regaining his composure, Reagan noted that his bill was designed to regulate commerce, and that “the subject of transportation of persons” was never considered by his committee.⁵⁹ As such, he hoped the House would not enlarge the bill to include that subject at such a late date. His hopes would be dashed, however, as the O’Hara amendment would pass 134-97. Vote totals for this and subsequent roll calls appear in Table 4. Republicans voted as a bloc in support of the O’Hara amendment, Southern Democrats voted as a group against (with only two defections),⁶⁰ while – critically – a majority of Northern Democrats supported the amendment. Confusion and panic then set in. James H. Blount (D-GA) moved quickly to reconsider the vote by which the amendment was agreed to, and O’Hara responded by moving to lay Blount’s motion on the table. At the same time, Reagan gained the floor and moved to adjourn, which was granted.⁶¹

[Table 4 about here]

Reagan’s adjournment motion was strategic, as he and his supporters needed to regroup. The O’Hara amendment put the entire interstate commerce bill at risk, and Reagan sought advice from seasoned co-partisans William Holman (D-IN) and William Morrison (D-IL) on how to proceed when the House reconvened. In the meantime, the Republicans – who opposed the

⁵⁷ *Congressional Record*, 48th Congress, 2nd session (December 16, 1884), 297.

⁵⁸ “The National Capital,” *Chicago Tribune*, December 17, 1884, p. 6.

⁵⁹ *Congressional Record*, 48th Congress, 2nd session (December 16, 1884), 297.

⁶⁰ One Democratic defection was James H. Blount (GA), who changed his vote from “nay” to “yea,” so that he could offer a motion to reconsider. The other was George Dargan, a freshman from South Carolina.

⁶¹ *Congressional Record*, 48th Congress, 2nd session (December 16, 1884), 297-98.

interstate commerce legislation – reveled in the sectional rift created by O’Hara’s amendment. When asked by a *Washington Post* reporter what the likely effect of the O’Hara amendment would be, Thomas B. Reed (R-ME) replied: “I think it will result in [the Reagan bill’s] defeat. It is simply another case of ‘Rum, Romanism, and Rebellion.’ Except for the drawing of the color line, the bill would have passed. Now it is not likely.”⁶²

When the House reconvened the following day, December 17, 1884, after some housekeeping matters were dispensed with, the pending question (O’Hara’s motion to table Blount’s motion to reconsider) on the Reagan bill was taken – and it passed 149-121. Once again, Republicans and Southern Democrats voted as blocs against one another. And this time, a small majority of Northern Democrats voted with their Southern brethren in opposing the tabling motion. But a large minority aligned with the Republicans, and that was enough to defeat reconsideration.

Unable to reconsider the vote on the O’Hara amendment, the Democrats proceeded to try to sanitize the amendment’s content. Charles Crisp (D-GA) was recognized and sought to tack on an amendment to the end of O’Hara’s amendment: “Nothing in his act contained shall be construed as to prevent any railroad company from providing separate accommodations for white and colored persons.” Crisp went on to defend his amendment, stating that the federal court in Georgia had upheld separate accommodations under a rule of equality. Moreover, he argued that his amendment would not require companies to provide separate accommodations, but rather left that to their discretion (which they might pursue based on public sentiment). He concluded by asking: “Why agitate anew this question? The law is well settled. The rights of the colored man are absolutely protected. Nobody wants to interfere with his rights. He has the same accommodations, the same kind of cars as the white man when he pays the same fare.”

⁶² “Inter-State Commerce,” *Washington Post*, December 17, 1884, p. 5.

Roberts Smalls, a black Republican from South Carolina, responded directly to Crisp: “we have no objection to riding in a separate car when the car is of the same character as that provided for the white people to ride in. But I state here to the House that colored men and women do have trouble in riding through the State of Georgia.” He went on to describe how blacks traveling across states were, once in Georgia, routinely forced into second-class “Jim Crow cars.”⁶³

After additional comments by Hilary Herbert (D-AL), claiming that the O’Hara amendment was offered simply as ruse to kill the Reagan bill, and O’Hara, claiming that his amendment was meant to protect all Americans, regardless of race or class, William Breckenridge (D-AR) was recognized and offered a substitute to Crisp’s amendment: “But nothing in this act shall be construed to deny to railroads the right to classify passengers as they may deem best for the public comfort and safety, or to relate to transportation between points wholly within the limits of one State.” As Maurine Christopher notes: “[Breckinridge’s amendment] was designed to retain discrimination in a somewhat more mannerly, less blatant fashion [than Crisp’s amendment].”⁶⁴ In defending his amendment, Breckenridge argued that corporations (railroads) must be free to “assort passengers” from the standpoint of “public convenience and public safety,” and that O’Hara’s amendment would inject a social question into a matter of commerce (and, in doing so, impose social equality in society).⁶⁵

In response to Breckenridge, Thomas Reed gained the floor and shared with the House an example of his sardonic wit:

Mr. Speaker, I must say that I rejoice to see this question lifted by the last suggestion from a mere question of politics or of color. I did not propose to discuss it in that light. I thought it very desirable that we should have a vote on the main question without bringing up questions of color or stirring up feelings of

⁶³ For quotes by Crisp and Smalls, see *Congressional Record*, 48th Congress, 2nd session (December 17, 1884), 316.

⁶⁴ Christopher, *America’s Black Congressmen*, 154.

⁶⁵ Here, Breckenridge harkened back to the Court-repudiated Civil Right Act of 1875, which Southerners often called the social-equality bill.

race or partisanship. Let wisdom be justified of her children. So I am very much pleased, indeed, to see this amendment of the gentleman from Arkansas. This at once ceases to be a question of politics or color, and has now become a question of assortment [laughter]; and now, this House, which is determined to pursue these “robber barons,” has before it the plain question whether it will not merely leave to them the privilege of assorting us, but whether it will absolutely confer upon them the privilege of assortment by direct enactment on the part of Congress. [Renewed laughter.]

Now I appeal to this House, engaged as it is in the pursuit of wicked monopolists, if it intends to confer upon them a privilege of assortment without rights of law? Why, surely we must have some Treasury regulations as to the method of assortment. [Laughter.] Are we to be assorted on the grounds of size? [Great laughter.] Am I to be put into one car because of my size and the gentleman from Arkansas into another because of his? [Renewed laughter and applause.] Is this to be done on account of our unfortunate difference of measurement? Or are we to be assorted on the moustache grounds? Are we to be assorted on the question of complexion, or are we to be assorted on the beard basis?

If not any of these, what basis of assortment are we to have? For my part I object to having these “robber barons” overlook and assort us on any whimsical basis they undertake to set up. [Laughter.]

Why, surely, Mr. Speaker, this House, engaged as it is in putting down discriminations against good men, can not tolerate an amendment of this character for an instant. [Applause.]⁶⁶

Reagan responded by referring to Reed as “facetious,” and argued that railroad conductors by “universal practice” possessed the power to assort people, so as, for example, to keep a “drunken man or a rowdy or a desperado” out of “a lady’s car.” Further, he asked: “Now, does the gentleman insist on his humor in getting up a laugh about assorting people, or does he wish to pile all sorts of people and all classes into the same car?” Moreover, Reagan argued that he attached “no importance to [O’Hara’s amendment],” as “it simply reaffirms the common law and the law and the practice in every Southern State in this Union.”⁶⁷

A short but spirited debate then ensued as to what the intent and consequences of the O’Hara amendment actually were. Crisp suggested the amendment’s purpose was “to prevent a separation of the colors” (or to desegregate accommodations in interstate travel). Barclay

⁶⁶ *Congressional Record*, 48th Congress, 2nd session (December 17, 1884), 317.

⁶⁷ *Congressional Record*, 48th Congress, 2nd session (December 17, 1884), 317-18.

Henley (D-CA) remarked that he was not sure as to O’Hara’s intent, but believed that the “the introduction of this race question, this social question, … was seized upon by the other side and taken up for the purpose … of defeating [the Reagan bill], a bill designed to relieve the people of this great Republic against the exactions and aggressions of the railroad companies.” Ethelbert Barksdale (D-MS) asserted that he would vote for the Reagan bill, even encumbered with the O’Hara amendment, as he felt that the amendment’s provisions “[do] not prevent railroad companies from providing separate accommodations for persons, provided they are equally comfortable.” Thomas Browne (R-IN) spoke more broadly, arguing that “[e]mancipation, citizenship, and enfranchisement have come, and the social relations between races continue, as they were, a matter of personal choice,”⁶⁸ but that the current question was *not* a social question but rather one of commerce: “It is a question between common carriers, engaged in transportation of passengers for hire and exacting particular fare in return of particular accommodations agreed to be furnished by them and the passenger. That is the contract.”⁶⁹

Finally, the question of adopting the Breckenridge substitute (in lieu of the Crisp amendment) was before the House. It was defeated on an 80-111 division vote, after which Holman demanded the yeas and nays.⁷⁰ After some parliamentary back-and-forth, the yeas and nays were called, and the Breckenridge substitute was adopted 137-127. Most Northern Democrats joined with almost all Southern Democrats to oppose and defeat the mass of Republicans. The House then moved to consider the Breckenridge substitute as an amendment

⁶⁸ Browne went on to tweak the Democrats regarding their fear of race-based social-equality laws: “Gentlemen do not seem to know that this question of social life is not, never was, and never can be regulated by law. It is a question of individual tastes. I associate with gentlemen because I believe them to be my social equals. I decline to associate with other gentlemen, whether they be white or black, because I do not so regard them. If this was a statute to make a colored Republican equal to a white Democrat I should vote against it. I would not vote for it. It could not be possible either to reduce the one or to elevate the other by an act of Congress. [Laughter.]” See *Congressional Record*, 48th Congress, 2nd session (December 17, 1884), 320.

⁶⁹ For quotes by Crisp, Henley, Barksdale, and Browne, see *Congressional Record*, 48th Congress, 2nd session (December 17, 1884), 318-20.

⁷⁰ *Congressional Record*, 48th Congress, 2nd session (December 17, 1884), 320.

to the O’Hara amendment, and it passed – first on a 148-117 division vote and then on a 137-131 roll call (after Reed demanded the yeas and nays).⁷¹ Again, most Northern Democrats joined with all Southern Democrats to defeat a unified bloc of Republicans.

Thus, the Democrats had succeeded in shifting the anti-discriminatory language of the O’Hara amendment in the direction of granting railroads discretion “to classify passengers” as they deemed fit. This was a clear victory, but if Democratic leaders felt that they were out of the woods, they were mistaken – as Nathan Goff (R-WV) was recognized and sought to add the following to the end of the Breckenridge substitute: “*Provided*, That no discrimination is made on account of race or color.”⁷² A roll call was then had, and the Goff amendment passed 141-102. A small majority of Northern Democrats now joined with all Republicans to defeat a near-unified group of Southern Democrats. Goff then moved to reconsider the move, and also to lay the motion to reconsider on the table – but Reagan pushed for adjournment, which was granted.⁷³ As was the case from the day before, Reagan needed to regroup – as his interstate commerce bill (now with Goff’s amendment attached) was once again in precarious straits.

The following day, December 18, 1884, Goff’s tabling motion was considered and passed – first on an 87-77 division vote and then on a 140-108 roll call (after Reagan demanded the yeas and nays).⁷⁴ All Republicans joined with a minority of Northern Democrats to defeat a near-unified group of Southern Democrats. Thus, the motion to reconsider the vote on the Goff amendment was laid on the table. The pro-discrimination Democrats now turned to negating the impact of the Goff amendment. Here, Barksdale reentered the fray by moving an amendment to the Goff amendment, which would add the following words (as a clause) after the word “color”:

⁷¹ *Congressional Record*, 48th Congress, 2nd session (December 17, 1884), 321-22.

⁷² *Congressional Record*, 48th Congress, 2nd session (December 17, 1884), 323.

⁷³ *Congressional Record*, 48th Congress, 2nd session (December 17, 1884), 323.

⁷⁴ *Congressional Record*, 48th Congress, 2nd session (December 18, 1884), 332.

“And that furnishing separate accommodations, with equal facilities and equal comfort, at the same charges, shall not be considered a discrimination.”⁷⁵ Barksdale’s amendment passed – first 112-81 on a division vote and then 132-124 on a roll call (after Republican Roswell Horr of Michigan demanded the yeas and nays).⁷⁶ Barksdale then moved to reconsider the vote by which his amendment was adopted, and to lay the motion to reconsider on the table – and it was agreed to. The anti-discrimination forces would make one last push, as Horr moved an amendment to the Barksdale amendment, which would add the following words (as a clause) after the word “discrimination”: “*Provided*, That such separation shall note be made on the basis of race or color.”⁷⁷ Horr’s amendment failed 114-121 on a roll call, with a larger proportion of Northern Democrats (than on previous votes) joining with all Southern Democrats to oppose all Republicans.

With the defeat of the Horr amendment, the matter of race, discrimination, and accommodations in interstate travel was settled in the 48th House. Additional amendments would be had on the Reagan bill, but they would pertain to economic regulations. Eventually, on January 8, 1885, the House would pass the Reagan bill, 161-75. However, the Senate would not agree – passing instead a bill endorsed by Senator Shelby Cullom (R-IL), which called for a regulatory commission (and thus was similar to a bill that Reagan had earlier pushed aside in the House). Eventually, a bill was agreed to (in conference) in the 49th Congress (1885-87), which included both a commission (a demand of Cullom’s) and an anti-pooling provision (a demand of Reagan’s), among other compromises, and it was enacted into law on February 4, 1887, during

⁷⁵ *Congressional Record*, 48th Congress, 2nd session (December 18, 1884), 332.

⁷⁶ *Congressional Record*, 48th Congress, 2nd session (December 18, 1884), 332-33.

⁷⁷ *Congressional Record*, 48th Congress, 2nd session (December 18, 1884), 339.

the lame-duck session.⁷⁸ The Interstate Commerce Act made no specific mention of color, but rather included (in Section 3) somewhat ambiguous language regarding what constituted discriminatory behavior by railroads:

It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

For this, O’Hara no doubt deserves credit, as there was no attempt to speak to the nature of personal accommodations in interstate commerce before he offered his amendment in late-1884. And the Section 3 provision would form the foundation of anti-discrimination rulings – in response to acts of racial segregation in train and bus service, in keeping with state code – by the Supreme Court decades later: in *Mitchell v. United States* (1941), *Morgan v. Virginia* (1946), *Henderson v. United States* (1950), *Keys v. Carolina Coach Co.* (1955), and *Boyton v. Virginia* (1960).⁷⁹ In 1961, the Interstate Commerce Commission (ICC), at the behest of Attorney General Robert Kennedy, would require all interstate bus companies to display the following message in all their buses: “Seating aboard this vehicle is without regard to race, color, creed, or national origin, by order of the Interstate Commerce Commission.”

Finally, the question of Republicans’ political intent deserves consideration. Was their support of the O’Hara amendment in 1884 sincere, or was it a strategic attempt to kill a bill (the Regan bill) to which they were opposed? And if such an attempt was strategic, commentators at

⁷⁸ 24 Stat. 379. For a discussion of these political dynamics, see Ben H. Proctor, *Not Without Honor: The Life of John H. Reagan* (Austin: University of Texas Press, 1962), 255-60.

⁷⁹ The Court’s rulings in the *Mitchell* and *Henderson* cases overturned initial ICC decisions that favored the interstate carriers.

the time, in thinly veiled racist terms, wondered whether O’Hara himself was capable of designing the anti-discriminatory rider. More likely, per these commentators, O’Hara was the willing dupe of Thomas Reed or, perhaps, the presidents or attorneys of the railroads.⁸⁰ Of course, O’Hara introduced civil rights legislation in the 48th Congress both *before and after* offering his amendment in December 1884. And on the general matter of sincere vs. strategic behavior on the part of the GOP, the evidence is unclear – as explaining Republicans’ votes is confounded by “observational equivalence” (i.e., sincere and strategic behavior are both consistent with – or predict – the same thing, opposition to discrimination).

The Blair Education Bill(s)

In 1876 the “revolution came,” writes W.E.B. Dubois in *The Souls of Black Folk*, and “left the half-free serf weary, wondering, but still inspired.”⁸¹ From Dubois’ perspective, as white redeemers worked to erode the political power black southerners earned during Reconstruction, the “dream of political power” was replaced with “the ideal of ‘book learning.’” “Here at last,” he argued, “seemed to have been discovered the mountain path to Canaan; longer than the highway of Emancipation and law, steep and rugged, but straight, leading to heights high enough to overlook life.”⁸² Education proved no substitute for political power. But by skillfully describing the emergence of education as a Redemption Era political project, *The Souls of Black Folk* contextualizes the effort mounted by New Hampshire’s Republican Senator Henry Blair to pass legislation providing federal aid to public schools.

First elected by to the House of Representatives in 1875, Blair almost immediately demonstrated interest in the American education system. Even before winning the Republican

⁸⁰ See Anderson, *Race and Politics in North Carolina*, 123.

⁸¹ W.E.B Dubois, *The Souls of Black Folk*, eds. Henry Louis Gates Jr. and Terry Hume Oliver (New York: W.W. Norton and Company, 1999), 3.

⁸² Dubois, *The Souls of Black Folk*, 13.

nomination, he wrote to William E. Chandler – then a powerful GOP newspaperman in New Hampshire – to request “some data showing the present condition of the cause of education in the south and the means of showing the work accomplished there by the Republican Party among both whites and blacks.”⁸³ Once the 44th Congress (1875-77) convened, Blair quickly announced his support for three pending education bills. The first, introduced by George F. Hoar (R-MA), would have established a federally funded national system of education. The second and third, introduced by Legrand Perce (R-MS) and Gilbert Walker (R-VA), aimed to fund public education using money earned through the sale of public lands.⁸⁴ Speaking on behalf of Walker’s bill in 1876, Blair proclaimed his view that “we are rapidly nearing the time when the American people will vote directly upon the question, ‘Shall the common-school system, which is under God the source and defense of American liberty, continue to exist?’”⁸⁵

The House passed Perce’s bill in 1872 – prior to Blair’s election – but the Senate never took up the measure. Moreover, by 1880, Republican legislators had introduced 12 bills designed to provide federal aid to America’s “common schools” but none of these sparked meaningful debate or stood much chance of being enacted into law.⁸⁶ It took Blair’s election to the Senate in 1878, and his decision to push a federal aid package in 1881, to instigate the protracted battle over federal education funding.

Blair introduced Senate bill 151 – “to aid in the establishment and temporary support of common schools” – in December 1881.⁸⁷ As written, the bill called for \$105 million in federal appropriations distributed over ten years to each state based on the number of “illiterates” living

⁸³ Quoted in Gordon B. McKinney, *Henry W. Blair’s Campaign to Reform America: From the Civil War to the U.S. Senate*. (Lexington, KY: University Press of Kentucky, 2013), 54.

⁸⁴ Allen J. Going, “The South and the Blair Education Bill,” *The Mississippi Valley Historical Review* 44 (1957): 271-272.

⁸⁵ Blair quoted in Daniel W. Crofts, “The Black Response to the Blair Education Bill,” *The Journal of Southern History* 37 (1971): 47.

⁸⁶ Going, “The South and the Blair Education Bill,” 272.

⁸⁷ *Congressional Record*, 47th Congress, 1st session (December 6, 1881), 21.

within its borders. In its first year, the bill would allot \$15 million and would then decrease the amount appropriated by \$1 million each year. Blair structured the bill in this way under the assumption that the money would allow each state to develop a self-sustaining education system so that permanent federal intervention would not be necessary.⁸⁸ Between 1881 and 1891, the Senate would pass amended versions of Blair's proposal on four separate occasions. Yet the bill never came up for a vote in the House. As described below, Blair's education bill could not overcome GOP infighting. In fact, Blair's co-partisans emerged as pivotal *opponents* of the bill. The reasons for their opposition ranged from perceived unfairness in the geographic distribution of funds, to claims that the bill was unconstitutional, to the view that the GOP should simply give up its effort to retain a foothold in the South. To the extent that federal aid to education stands as one of the last civil rights bills of the "first civil rights era," its failure attests to the GOP's movement away from its historical commitment to black citizens.

Blair's Proposal and the Broader Political Context

In the years immediately following Reconstruction, the internal dynamics of both parties were particularly unsettled. Once the GOP decided to withdraw federal troops from the previously occupied southern states, its political position began to quickly erode. Newly empowered Democrats immediately worked to reestablish their political supremacy through violence, fraud, and intimidation. As a consequence, Republicans found themselves confronting two related questions: did it make sense to commit time and resources to Southern states in which the GOP was wildly unpopular? If yes, what was the best strategy to shore up the party's support in southern states? Republican presidents Hayes, Garfield/Arthur, and Harrison put varying amounts of effort into increasing the party's fortunes in the south, and they implemented

⁸⁸ *Congressional Record*, 47th Congress, 1st session (December 20, 1881), 226-228.

different strategies for doing so. Their decisions exacerbated internal party tensions which, in turn, help to explain the fate of the Blair bill.

Democrats, too, faced internal tensions. As a consequence of the Panic of 1873 and the economic austerity supported by some Redeemer governors, a number of Democratic Party splinter groups emerged to challenge party solidarity.⁸⁹ Self-styled “Greenbackers,” “Independents,” and “Readjusters,” reflected internal debates over monetary policy, taxation, federal aid for internal improvements and payment of state debts incurred during the Civil War. Held together by the war and then Reconstruction, argues Woodward (1951), “the disaffected partners could scarcely wait until Redemption was achieved to air their grievances and fall upon the leaders of the dominant element of Redeemers.”⁹⁰ Federal aid to public education – and the Blair bill, specifically – emerged as one of the wedge issues dividing Democrats. Recognizing the fault lines within the Democratic Party, Republican presidents turned federal education as a mechanism for splitting the Democrats and then winning the support of dissenters. Republicans skeptical of this strategy used its ultimate failure as justification for opposing Blair’s education proposal.

Taking office in 1877, President Rutherford B. Hayes was the first Republican to confront the dilemma generated by the newly redeemed southern states. Unwilling to give up on the South, Hayes believed that continued Republican success there hinged on a dual program of internal improvements and patronage. According to Woodward (1951), Hayes immediately began filling patronage positions with “ex-Confederates, old-line Whigs, Douglas Democrats,

⁸⁹ Nicolas Barreyre, “The Politics of Economic Crises: The Panic of 1873, the End of Reconstruction, and the Realignment of American Politics,” *The Journal of the Gilded Age and Progressive Era* 10 (2011): 403-23.

⁹⁰ C. Vann Woodward, *Origins of the New South 1877-1913* (Baton Rouge, LA: Louisiana State University Press, 1951), 76.

and plain Democrats.”⁹¹ Discussing this approach in his diary, Hayes notes that it alone would “secure North Carolina, with a fair chance in Maryland, Virginia, Tennessee, and Arkansas,” and maybe even “Louisiana, South Carolina and Florida.”⁹²

In tandem with his patronage policy, Hayes was also promising a program of federal aid to southern states. In his inaugural address, the newly elected president acknowledged that the war had “arrested [the] material development,” of the region and, as a consequence, the former Confederacy needed “the considerate care of the national government within the just limits prescribed by the Constitution and wise public economy.”⁹³ To the press, he “expressed himself in very decided terms in favor of a system of internal improvements calculated to benefit and develop the South.”⁹⁴ Notably, Hayes’s discussion of internal improvements included an explicit reference to the nation’s education system. “Liberal and permanent provision should be made for the support of free schools by the state governments,” he argued, “and, if need be, supplemented by legitimate aid from national authority.”⁹⁵

Hayes’s decision to link internal improvements/federal aid with education funding illustrates how Blair’s proposal was a vehicle for Republicans to pursue both policy reform and political advantage. First, Blair’s education bill won southern support from those who recognized that state funds were insufficient relative to what the region needed. Southern states simply did not have the money to pay for “common” schools. Education advocates in these states were also limited by “traditions of local autonomy and low taxation valued by native whites, Republicans as well as Democrat.”⁹⁶ Together, the relative poverty of the south and skepticism toward

⁹¹ Woodward, *Origins of the New South*, 45-46.

⁹² Woodward, *Origins of the New South*, 45-46. Also see: Vincent P. De Santis, “President Hayes’s Southern Policy,” *The Journal of Southern History* 21 (1955): 476-494.

⁹³ Hayes’s Inaugural Address can be read here: <http://millercenter.org/president/hayes/speeches/speech-3558>

⁹⁴ Woodward, *Origins of the New South*, 45.

⁹⁵ Hayes, Inaugural Address

⁹⁶ Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877* (New York: HarperCollins, 1988), 366.

“intervention” handicapped state education systems. As Blair would point out repeatedly over the course of the debate on his proposal, “[t]he nation as such abolished slavery as a legal institution; but ignorance is slavery, and no matter what is written in your constitutions and your laws slavery will continue until intelligence, the handmaid of liberty, shall have illuminated the whole land.”⁹⁷ In this case, he was responding to the fact that 4.7 million out of a total of 6.2 million “illiterates” documented by the U.S. Census lived in the south. Yet these states collectively spent less than five times what non-southern states spent on education in 1880.⁹⁸

The unwillingness of Redeemer-led governors to fund education reflects what Woodward describes as a commitment to “retrenchment.” Many Redeemer governors portrayed themselves as enabling the “rule of the taxpayer” by “constituting themselves as champions of the property owner against the propertyless.”⁹⁹ From their perspective, public education was an extravagance foisted on the states by Northern carpetbaggers. Historian William C. Harris validates this claim by illustrating the central role that education played in the minds of northern reformers. One Vermont native who traveled to Mississippi and became active in the public school movement there declared education to be the “energizing agent of modern civilization” as well as an “answer to the race problem in southern society.”¹⁰⁰ Education held the potential to “enlighten the white masses” and thereby erode their anti-black prejudices.¹⁰¹ The plans hatched by liberal reformers proved expensive, however, and as the troops withdrew so did the momentum for their implementation. Redeemer-led state houses abolished boards of education, cut state and local property taxes, and “all but dismantled the education systems established during

⁹⁷ *Congressional Record*, 47th Congress, 1st session (June 13, 1882), 4831.

⁹⁸ Going, “The South and the Blair Education Bill,” 268; Daniel Wallace Crofts, “The Blair Bill and the Elections Bill: The Congressional Aftermath to Reconstruction,” (Unpublished Dissertation, 1968), 28.

⁹⁹ Woodward, *Origins of the New South*, 59.

¹⁰⁰ William C. Harris, “The Creed of the Carpetbaggers: The Case of Mississippi,” *The Journal of Southern History* 40 (1974): 209.

¹⁰¹ Harris, “The Creed of the Carpetbaggers,” 209.

Reconstruction.”¹⁰² State funds appropriated for public education were frequently used to pay interest on state debt and teachers frequently went without pay.¹⁰³ So dire was the threat to southern schools, argued one reformer, that “the little that has been done [already] [...] far surpasses anything that the friends of education can or will do in the South for the next twenty years if they are compelled to rely upon their own resources.”¹⁰⁴

Despite opposition from many Democrats, federal aid for public schools did have some important advocates among southern blacks and dissident Democrats. Black citizens in particular viewed a commitment to education as central to their political and material advancement. According to Eric Foner, they were even willing to overcome their skepticism of segregated facilities out of their belief that separate schools were an improvement over no schools.¹⁰⁵ Daniel Crofts goes further by arguing that the Blair bill represented “the one politically promising piece of national legislation which offered something blacks wanted.”¹⁰⁶ Black newspapers editorialized in favor of the bill, black historian George W. Williams called it “the grandest measure of our times,” and in September 1883 the Colored National Convention endorsed Blair’s proposal.¹⁰⁷ Among whites, support came from the agrarian wing of the Democratic Party, which, in the early 1880s, was gaining steam throughout the south. For example, after the Readjusters won seats in Virginia, they immediately moved to reopen the state’s public schools for black and whites alike.¹⁰⁸ These one-time Democrats broke with the party in their effort to “readjust” state

¹⁰² According to Foner (1988, 58), “Texas began charging statewide fees in its schools, while Mississippi and Alabama abolished statewide school taxes, placing the entire burden of funding on local communities. Louisiana spent so little on education that it became the only state in the Union in which the percentage of native whites unable to read or write actually rose between 1880 and 1900. School enrollment in Arkansas did not regain Reconstruction levels until the 1890s.”

¹⁰³ Foner, *Reconstruction*, 366.

¹⁰⁴ Quoted in Harris, “The Creed of the Carpetbaggers,” 211.

¹⁰⁵ Foner, *Reconstruction*, 367.

¹⁰⁶ Crofts, “The Black Response,” 44-45.

¹⁰⁷ Crofts, “The Black Response,” 45; McKinney, *Henry W. Blair’s Campaign to Reform America*, 91.

¹⁰⁸ McKinney, *Henry Blair’s Campaign to Reform America*, 86.

financial liabilities so that more money could be spent on the economically distressed. Readjuster economic policy departed from the views of most Republicans, Blair included, but he campaigned for Readjuster candidates prior to the 1882 election because of their position on education.

The support voiced for public education funding by Democratic dissidents proved particularly important because President James Garfield – elected in 1880 – fully embraced a “split the Democrats” political strategy. Under the advice of New Hampshire’s William E. Chandler, Garfield promoted southern candidates affiliated with various Democratic Party splinter groups. Following Garfield’s assassination, President Chester Arthur followed suit by working to “unite Republicans, Re-adjusters, Greenbackers, Independents, and ‘Liberals’” in order to displace the Redeemer-led state governments.¹⁰⁹ Chandler gave voice to this strategy in a letter to Republican stalwart James G. Blaine. “Our straight Republican, carpet-bag, Negro governments [...] have been destroyed and cannot be revived,” he writes, “without these coalitions or support from Independents we cannot carry enough southern votes to save the House from Bourbon Democratic control, and carry the next presidential fight.”¹¹⁰

Arthur’s effort to ally the Republican party with Democratic dissidents is important for two reasons. First, it alienated “traditional” Republicans. In seeking the support of free silver advocates and anti-debt campaigners, Arthur and his supporters pulled the party away from its historic commitment to a “hard money,” pro-business agenda. Indeed, Chandler’s letter to Blaine was a response to opposition mounted by the northeastern wing of the party to Arthur’s “split the Democrats” strategy.

¹⁰⁹ Woodward, *Origins of the New South*, 81.

¹¹⁰ Chandler quoted in De Santis, “President Arthur and the Independent Movement,” 350.

Arthur's approach also proved important because it failed. Following the 1880 election, Republicans controlled the White House and all of Congress. In the House, they held a twenty-three seat advantage. In the Senate they retained majority status thanks to the support of Virginia Readjuster William Mahone and Vice President Chester A. Arthur's tie-breaking vote. In the 1882 midterms, however, they lost control of the House, and faced a seventy-nine seat disadvantage in the 48th Congress. While Republicans retained control of the Senate, they would not regain majority status in the House until the 1888 elections. In the meantime, Democrat Grover Cleveland would be elected president. By the 51st Congress, therefore, GOP leaders in Congress were skeptical that either a coalition with disaffected Democrats, or support for black voters would allow them to reclaim lost ground in the South. This skepticism would play an important role in deciding the fate of the Blair bill. In the early 1880s, however, Blair remained confident that he could put together a coalition of Republicans and southern Democrats to get his bill passed. The story of Blair's bill, therefore, begins here.

The Blair Bill: Early Action

Senator Blair introduced the first version of his education bill on December 6, 1881, yet he did not speak on behalf of the proposal until June 13, 1882. In the interim, he put together a three-hour long demonstration of the "actual condition of popular education in this country," which he combined with an argument about the "nature and extent of the powers and obligations of the national government to assist in the education of the people."¹¹¹ From Blair's perspective, republican government would only survive if the public could read and write. Accordingly, he argued, the opportunity for learning to do both must "be provided at the public charge."¹¹² Commenting on the south, Blair posted universal education as "part of the [Civil] War" insofar

¹¹¹ *Congressional Record*, 47th Congress, 1st session (June 13, 1882), 4820-4833.

¹¹² *Congressional Record*, 47th Congress, 1st session (June 13, 1882), 4824.

as north and south were now combating the “forces of ignorance” which put the survival of the nation in jeopardy.”¹¹³

Blair’s bill (S. 151) proposed committing \$105 million over ten years in federal money to the cause of universal education. For the first year after enactment, \$15 million would be dispersed to the states, and for each year thereafter the total allotment would decline by \$1 million. The amount of money received by a given state would be based on its illiteracy rate among those over 10 years old. This provision guaranteed that most of the federal money distributed would go to the south. In order to ensure that the funds would be spent wisely, the bill created a federal supervisor for each state who was empowered to recommend a rescission of funds as punishment for fraud or misuse. Importantly, the bill also stipulated that “nothing herein shall deprive children of different races, living in the same community but attending separate schools, from receiving the benefits of this act, the same as though the attendance therein were without distinction of race.”¹¹⁴

Congress took no action on Blair’s proposal prior to adjournment in August. In between August and January 1883 – when Congress reconvened – President Arthur, the American Social Science Association, and the National Education Assembly endorsed the proposal.¹¹⁵ The Interstate Education Alliance – a coalition of white, southern educators – also called on Congress to enact the proposal. In addition, “swarms” of petitions in support of the bill, mostly from black southerners, awaited members’ return to Washington, D.C.¹¹⁶ Responding to these demonstrations of support, Blair moved quickly to procure a special order that would bring his bill up for debate. Here he ran into the first instance of Republican opposition. For Illinois’

¹¹³ *Congressional Record*, 47th Congress, 1st session (June 13, 1882), 4831.

¹¹⁴ *Congressional Record*, 47th Congress, 1st session (June 13, 1882), 4833.

¹¹⁵ McKinney, *Henry Blair’s Campaign to Reform America*, 91.

¹¹⁶ McKinney, *Henry Blair’s Campaign to Reform America*, 91.

Republican Senator John Logan had authored his own education proposal, which he did not want to see set aside. Whereas the Blair bill aimed to fund education through general revenue, Logan's aimed to *raise* education funds through a new tax on whiskey.¹¹⁷ Logan also opposed the Blair bill's "allotment by illiteracy" approach. Speaking on the floor, Logan argued "that the proposition to distribute this money according to illiteracy is a proposition to ask a certain number of states to pay taxes to educate others. I do not think the country is in favor of any such proposition."¹¹⁸ The basis of Logan's opposition – sectional rivalry – would consistently handicap Blair's efforts. In 1883, however, Republican infighting simply led the Senate to table both education bills until the meeting of the next Congress.¹¹⁹

When the 48th Congress convened in December 1883, Blair immediately reintroduced his bill.¹²⁰ By this time, of course, the political environment had shifted considerably, as Republicans no longer had control of the House. With a Republican president and a two-vote majority in the Senate, the GOP retained significant political influence. Yet the new political context further convinced Blair that for his bill to pass, Southern Democrats must be on board. This fact largely explains the substantive differences between S. 151 and the newly introduced bill, S. 398. Highly suspicious of federal intervention into state functions, Southern Democrats opposed the supervisor position written into S. 151. In an August 1883 speech before the National Education Assembly, Blair announced his willingness to drop that section of the proposal and instead allow for state administration of funds.¹²¹ Federal supervision would not be the only area in which Blair would concede in order to manage a fragile, bipartisan coalition.

¹¹⁷ Crofts, "The Blair Bill and the Elections Bill," 55.

¹¹⁸ *Congressional Record*, 47th Congress, 2nd session (January 9, 1883), 1015.

¹¹⁹ Crofts, "The Blair Bill and the Elections Bill," 55.

¹²⁰ *Congressional Record*, 48th Congress, 1st Session (December 5, 1883), 36.

¹²¹ McKinney, *Henry Blair's Campaign to Reform America*, 92.

Debate on Blair's new proposal began in March 1884. Once again, he began the discussion with a long floor speech built upon a foundation of education statistics culled from the 1880 census. In order to meet the nation's educational need, S. 398 proposed to distribute \$105 million over ten years. In addition, the bill called for funds to be allocated to states based on the illiteracy rate, required states to match one-third of federal funds appropriated over the first five years after enactment and dollar-for-dollar during the last five years, and allowed states – rather than a federal authority – to oversee the expenditures.¹²² In yet another important concession to Southern Democrats, S. 398 very clearly allowed for – some would argue it validated – the system of segregated schooling. More specifically, the bill called for an equal distribution of money between white and black schools, thus constructing a “separate but equal” system of public schooling. Recognizing this dilemma, Blair spent a significant amount of time defending this provision. His defense boiled down to the following argument: “the distribution shall be made in such a way as to equalize the money that goes to each child per capita throughout the state [...] to produce an equalization of school privileges throughout the state. I do not think that anything could be more just.”¹²³

Senate consideration of Blair's proposal ran through March and into April 1884. Over the course of these four weeks, Blair was “surprised” by the objections raised by fellow Republicans. For example, John Ingalls (KS) made his explicit his doubt that “we are under any obligation to educate the blacks of the south.”¹²⁴ Similarly, Joseph Dolph (OR) argued that the states outside the south had no obligation to provide funds so that ex-Confederate states could pay to educate poor white citizens or poor black citizens.¹²⁵ Further testifying to the strength of Republican

¹²² McKinney, *Henry Blair's Campaign to Reform America*, 93.

¹²³ *Congressional Record*, 48th Congress, 1st Session (April 7, 1884), 2715.

¹²⁴ Ingalls quoted in Crofts, “The Blair Bill and the Elections Bill,” 64.

¹²⁵ *Congressional Record*, 48th Congress, 1st Session (March 26, 1884), 2285.

opposition, a March 1884 article in the *Washington Post* argued that should the bill fail, only Republican “sectional conspirators” would be to blame.¹²⁶ Democrats, on the other hand, tended to object of “constitutional” reasons. From their perspective, the federal government lacked the constitutional authority to guarantee all citizens a public education.

In order to agree on a compromise measure, Senate Republicans met as a caucus and established a nine-member committee charged with developing a consensus approach to federal funding.¹²⁷ Their revised measure called for an appropriation of \$77 million distributed over 8 years, stipulated that states would not receive more money from the federal government than they spent on education at the state/local level, required that black and white schools receive equal funding, and mandated that states submit annual reports to the federal government detailing how they spent the money they received.¹²⁸

On April 7, 1884, the Senate passed Blair’s bill. As Table 5 illustrates, both Republicans and Southern Democrats supported the bill by wide margins, while Northern Democrats opposed it by a margin of 1-4.¹²⁹ Despite the lopsided Republican vote, support from the GOP was weaker than the numbers suggest. Eleven Republicans – including many of the bill’s most outspoken opponents – recognized the political liabilities incurred by voting against the measure, so they opted to absent themselves instead of voting “no.”¹³⁰ The important support provided by Southern Democrats would also prove weaker than the vote suggests. As sectional tensions increased during the latter half of the decade, it would be harder for Blair to keep this part of the coalition in line. In short, Blair’s political coalition was broad but very fragile, and this fragility would prove to be the bill’s undoing.

¹²⁶ “Why the Blair Bill is Opposed,” *Washington Post*, March 26, 1884.

¹²⁷ Crofts, “The Blair Bill and the Elections Bill,” 67; *New York Times*, April 1, 1884

¹²⁸ Crofts, “The Blair Bill and the Elections Bill,” 95

¹²⁹ *Congressional Record*, 48th Congress, 1st Session (April 7, 1884), 2724.

¹³⁰ Crofts, “The Blair Bill and the Elections Bill,” 71.

[Table 5 about here]

Of course Senate passage was just the first stop for Blair and his supporters. Next, they needed to get a similar bill through the House, where Democrats were in control. As McKinney reports, Speaker John C. Carlisle – a Kentucky Democrat – was an outspoken opponent of the measure.¹³¹ Leveraging the power of his position, Carlisle prevented the House from taking up the measure prior to adjournment in early fall 1884. This delay would prove particularly important because in November 1884, Democrat Grover Cleveland defeated James G. Blaine in the presidential election. As a consequence, “many Republicans who felt comfortable with a Republican president overseeing the Southern Democrats administration of the program were much less enthusiastic about having a Democratic administration in charge.”¹³²

The Blair Bill: Later Efforts and Defeat

The 48th Congress took no additional action on Blair’s proposal so he reintroduced the bill in early January 1886. Prior to congressional debate on the measure, Blair wrote President Cleveland in an attempt to win his support. “Should the bill become law,” he argued, “that administration which should carry its provisions into execution would become illustrious in the annals of America and of mankind.”¹³³ Blair also worked hard to convince skeptical Republicans that the Democratic president could be trusted to administer the program. While Cleveland chose not to take a stand on the bill, Senate Republicans did once again vote overwhelmingly to support a version of the bill identical to the one passed in 1884 (see Table 5 below).¹³⁴

Here again, however, the vote tally obscures Republican opposition to Blair’s proposal. Repeating many of the objections heard in 1884, Senator Ingalls inveighed against the bill

¹³¹ McKinney, *Henry Blair’s Campaign to Reform America*, 97.

¹³² McKinney, *Henry Blair’s Campaign to Reform America*, 97.

¹³³ Blair quoted in Crofts, “The Blair Bill and the Elections Bill,” 106.

¹³⁴ *Congressional Record*, 49th Congress, 2nd Session (March 5, 1886), 2105.

because of its lopsided distribution of funds to southern states. Ingalls then introduced an amendment mandating that the federal government distribute aid based on the number of school age children living in a given state instead of on the number of illiterates. If adopted, this amendment would have significantly reduced the money committed to the South and, thereby, put at risk the support of Southern Democrats.¹³⁵ The amendment lost 24-19 but it garnered the support of 13 Republicans.

The next Republican challenge came from Iowa's Senator William B. Allison. Allison's amendment proposed to change the bill's distribution provision by stipulating that funding would be based on the "proportion that the illiteracy of white and colored persons [...] had to each other."¹³⁶ If passed, this amendment would have required southern states to devote significantly more money to black schools than to white schools. Consequently, it also put at risk support from Southern Democrats. Allison's amendment also failed, but it split the Republican Party – 17 Republicans voted for the measure and 17 against.¹³⁷ Despite the defeat of both amendments, the support they received from Republicans suggests that a significant number of GOP senators were looking for a politically palatable way to kill Blair's bill.

Once again, however, the House proved to be the graveyard for Blair's proposal. Democrats who saw federal expenditures for education as a strategy for drawing down federal surpluses (and thereby staving off tariff reform) simply refused to allow the bill to move forward. In order to kill the bill, the Democratic leadership packed the House Education Committee with members who opposed the proposal. According to a March 1886 report in the *Washington Post*, "the committee intended to kill the bill."¹³⁸ Recognizing committee opposition, House

¹³⁵ Crofts, "The Blair Bill and the Elections Bill," 113.

¹³⁶ Crofts, "The Blair Bill and the Elections Bill," 113.

¹³⁷ Crofts, "The Blair Bill and the Elections Bill," 119.

¹³⁸ *Washington Post*, March 13, 1886; McKinney, *Henry Blair's Campaign to Reform America*, 123.

Republicans successfully had the bill moved to House Labor Committee because they believed this to be a friendlier venue. The committee change did not lead to a different outcome. Instead, the Labor Committee replaced the illiteracy-based funding provision with language that would have assured all states an equal amount of federal aid.¹³⁹ This change was unpalatable to Blair's supporters, but House leadership would not allow a vote on any legislation with language identical to the Blair bill. In the end, the House did not consider any federal aid proposals, so Blair would once again be forced to reintroduce and oversee passage of the bill for a third time in 1888.

In early 1888, the Senate once again passed Blair's bill, but as Table 5 illustrates, the number of Republicans opposing the bill grew significantly (from 5 to 12) in just two years. The bill once again died in the House, but Blair remained optimistic because the election of 1888 allowed him an "opportunity to go directly to the people to secure backing for the bill."¹⁴⁰ Blair's optimism was not without justification. The Republican Platform in 1888 explicitly stated "that the State or Nation, or both combined, should support free institutions of learning sufficient to afford every child growing up in the land the opportunity of a good common school education."¹⁴¹ In addition, Benjamin Harrison – the 1888 GOP nominee – had supported Blair's bill while serving as a senator from Indiana. Most importantly, the election turned into a GOP rout, as the Republicans gained control of all three branches of government for the first time since 1880. Despite an increasing amount of criticism from Northerners who opposed funding

¹³⁹ Crofts, "The Blair Bill and the Elections Bill," 126.

¹⁴⁰ McKinney, *Henry Blair's Campaign to Reform America*, 124.

¹⁴¹ The Republican Party's 1888 Platform can be read here: <http://www.presidency.ucsb.edu/ws/index.php?pid=29627>

southern schools, Blair believed that the time had come for his bill. According to McKinney, Blair attributed GOP successes to support for his bill.¹⁴²

Yet because Blair's bill relied so much on the support of Southern Democrats, the Republican landslide generated a new political problem. Sectional tensions were on the rise and Democrats in the South "awaited the Republican rule with growing suspicion." By 1889-90, racial violence had increased and, according to Albion Tourgee – a long-time advocate for black rights in the south – the year 1890 represented "the most dangerous epoch [for blacks] since 1860."¹⁴³ As a consequence, Southern Democrats proved more skeptical of all Republican-initiated federal programs.¹⁴⁴ Republicans, too, did not interpret their victory as a mandate to implement Blair's education bill. Instead, the GOP now believed conciliation to be unnecessary and unjustifiable. Moreover, according to Stanley Hirshson, the election of 1888 had caused a rift between those who wanted to "play down the Negro question and emphasize the tariff issue," and those who were unwilling to sacrifice the party's long-standing commitment to black southerners.¹⁴⁵ President Harrison himself sent an ominous signal at the outset of the 51st Congress when he failed to immediately announce his support for the bill's enactment.¹⁴⁶

Debate on Blair's proposal began for the final time on February 5, 1890. By this time the arguments for and against the bill were so well-known that few members lingered in the chamber to hear Blair once again recount the justifications for passing his bill. According to one contemporaneous account, "when Mr. Blair began his speech there was a general exodus of senators on both sides of the chamber, and of the eighty-two senators, only five remained while

¹⁴² McKinney, *Henry Blair's Campaign to Reform America*, 124, 125.

¹⁴³ Tourgee quoted in "The Blair Bill and the Elections Bill," 235.

¹⁴⁴ Crofts, "The Blair Bill and the Elections Bill," 181.

¹⁴⁵ Hirshon, *Farewell to the Bloody Shirt*, 143-167.

¹⁴⁶ Crofts, "The Blair Bill and the Elections Bill," 197.

Blair was talking. The press gallery also vacated.”¹⁴⁷ Republicans did not just physically turn their backs on Blair. For what distinguishes this iteration of the debate from those preceding it was, according to Blair, the fact that “several leading Republicans who had always supported the bill [...] would do so no longer.”¹⁴⁸ Perhaps most importantly, when Republicans called for a final vote on the measure in March 1890, President Harrison did not call on Republicans to vote “yea.”¹⁴⁹ The final vote shows the significance of the GOP’s reversal on this issue, with slightly more than 40 percent of Republicans now opposing the measure (see Table 5). Also, testifying to the new sectional tensions, a majority of Southern Democrats opposed the bill for the first time.

Historians have not agreed on a consensus explanation for why Republicans turned against the proposal. McKinney suggests that midwestern Republicans believed economic issues to be more of a priority than the education bill, while Crofts suggests that sectional tensions generated a belief among Republicans that Blair’s bill was too conciliatory.¹⁵⁰ Whatever the reasons for GOP opposition, it proved enough to bring the bill down. For as Table 5 illustrates, if Republican support for the bill remained consistent, it would have passed in the Senate. The bill had passed in that chamber on three prior occasions so there was no guarantee that Senate passage portended enactment. Yet with significant Republican majorities in the House and President Harrison in the White House, there is reason to believe that this was Blair’s best opportunity. By 1890, however, the GOP looked askance at Blair’s bill. The party now set its sights on economic reforms and, for a brief time, a new federal elections bill.

The Federal Elections Bill

¹⁴⁷ This account quoted in McKinney, *Henry Blair’s Campaign to Reform America*, 127.

¹⁴⁸ Crofts, “The Blair Bill and the Elections Bill,” 198.

¹⁴⁹ McKinney, *Henry Blair’s Campaign to Reform America*, 129.

¹⁵⁰ McKinney, *Henry Blair’s Campaign to Reform America*, 126; Crofts, “The Blair Bill and the Elections Bill,” 209.

The 1888 Republican party platform stipulated the GOPs commitment to “the supreme and sovereign right of every lawful citizen [...] to cast one free ballot in public elections, and to have that ballot duly counted,” as well as to “support free institutions of learning sufficient to afford every child growing up in the land the opportunity of a good common school education.”¹⁵¹ As we demonstrate in the previous section, legislators ostensibly committed to universal common schooling helped to defeat Henry Blair’s education funding bill. During the 51st Congress (1889-91), intra-party fighting would also bring down legislation that would have provided the federal government with new powers to oversee elections. The Federal Elections Bill – dubbed the “Force Bill” by its opponents – addressed the epidemic of fraud plaguing elections in southern states. Politically, it also reflected an acknowledgement by Republicans that their effort to win southern votes through conciliation had failed. More specifically, Republican support for this bill suggests that many in the party had turned their back on the “southern strategies” implemented by Presidents Hayes and Arthur.¹⁵² For this reason, the battle over the Federal Elections bill not only stands as the final political confrontation during the “first civil rights era,” it also demonstrates the power of a pivotal bloc of Republicans who thought that the party should prioritize economic over civil rights issues. In short, this late 19th century “conservative coalition” – like the one that would emerge some 60 years later – skillfully prevented the enactment of federal civil rights legislation.

Accepting the Republican nomination in 1888, Benjamin Harrison wrote of his belief in the “right of every qualified elector to cast one free ballot and to have it honestly counted.”¹⁵³ Here Harrison appealed to an argument commonly invoked by Republicans stipulating that “the

¹⁵¹ The 1888 Platform can be read here: <http://www.presidency.ucsb.edu/ws/index.php?pid=29627>

¹⁵² Vincent P. De Santis, “Benjamin Harrison and the Republican Party in the South, 1889-1893,” *Indiana Magazine of History* 51 (1955): 279-302.

¹⁵³ Quoted in De Santis, “Benjamin Harrison and the Republican Party,” 283.

Democratic majority in Congress owe their existence to the suppression of the ballot by a criminal nullification of Constitution and the laws of the United States.”¹⁵⁴ Indeed, by the late 1880s, the GOP’s inability to generate support in the South led many to believe that the losses were a result of cheating instead of simple unpopularity. Republican leaders had some justification for this position. As Richard Vallely notes, one-third of southern congressional districts at the time housed a majority of African Americans, and the party’s long-standing ties to black voters led these leaders to believe that they were being “cheated” out of approximately 15-19 seats per Congress.¹⁵⁵ This view led William Chandler – then advising Harrison – to write that “there is no southern question except the question whether the 15th Amendment of the Constitution shall be obeyed.”¹⁵⁶ Ensuring a free and fair vote became a new political and policy priority for the Republicans. And with control of all three branches of government, many in the GOP saw the 51st Congress as a clear opportunity for new legislation to root out election fraud in the South.

As chairman of the Committee on Privileges and Elections, Senator George Frisbie Hoar (R-MA) had long been interested in electoral reform. In an 1884 speech to the Commonwealth Club of Boston, for example, Hoar declared his commitment to a system of “laws, institutions, and administration under which [...] millions of men will represent the black race in the mankind and citizenship of the republic.”¹⁵⁷ Additionally, in an 1889 article for *The North American Review*, Hoar posited the “absolute freedom and purity of elections” as one of six “essential

¹⁵⁴ 1888 Republican Party Platform

¹⁵⁵ Richard M. Vallely, “Partisan Entrepreneurship and Policy Windows: George Frisbie Hoar and the 1890 Federal Elections Bill,” in *Formative Acts: American Politics in the Making*, eds. Stephen Skowronek and Matthew Glassman (Pennsylvania: University of Pennsylvania Press, 2007), 139, 142.

¹⁵⁶ Chandler quoted in Wang, *Trial of Democracy*, 230.

¹⁵⁷ Hoar quoted in Vallely, “Partisan Entrepreneurship,” 136.

propositions” that underlay the GOP’s governing philosophy.¹⁵⁸ And, during the 50th Congress (1887-89), Hoar led an investigation into the lynching of three black men in Texas during the 1886 election campaign. His committee’s report on these murders called for a revision of “the existing laws relating to elections of members of Congress, with a view of providing for the more complete protection of the exercise of the elective franchise.”¹⁵⁹ Accordingly, it was Hoar’s bill – S. 3652 – introduced on April 24, 1890 for the purpose of “amend[ing] and supplement[ing] the elections laws” while “provid[ing] for the more efficient enforcement of such laws” that initiated the debate over new federal election authority.¹⁶⁰

Hoar’s bill – written with John Coit Spooner (R-MD) – proposed to authorize the appointment of 100 “federal supervisors” to any congressional district if at least 100 voters signed a petition requesting their presence. Additionally, two supervisors – one from each party – would be assigned to every voting precinct to observe registration, balloting, and vote counting. Once voting had finished, three “federal canvassers” – appointed by federal circuit court judges – would certify the winner in those congressional districts needing supervision. As the only officers empowered to certify ballots, these canvassers would possess authority to “supersede [that] of state governors.”¹⁶¹ By raising once again the specter of federal intervention into the South, Hoar provoked an immediate and strident response from Alabama Democrat James L. Pugh. “The minority regard this bill as revolutionary in its character,” Pugh argued immediately following its introduction. “[I]f the bill becomes a law,” he went on, “its execution will insure the shedding of blood and the destruction of the peace and good order of this country.”¹⁶²

¹⁵⁸ George F. Hoar, “Are the Republicans in to Stay?” *The North American Review* 149 (1889): 623.

¹⁵⁹ Quoted in Vallely, “Partisan Entrepreneurship,” 136-137.

¹⁶⁰ *Congressional Record*, 51st Congress, 1st Session (April 24, 1890), 3760.

¹⁶¹ Crofts, “The Blair Bill and the Elections Bill,” 251.

¹⁶² *Congressional Record*, 51st Congress, 1st Session (April 24, 1890), 3760.

Importantly, Senator Hoar was not the only Republican committed to electoral reform. At the outset of the 51st Congress, House Republicans organized a special committee – led by Henry Cabot Lodge (MA) – to draft a federal elections bill. Believing that “the country does not want a force bill or anything resembling it,” Lodge aimed to write a “nonpartisan” reform bill.¹⁶³ Accordingly, he proposed to “nationalize the Australian ballot” in any congressional district with 500 or more voters willing to sign a petition requesting its introduction. Lodge also argued that federal judges should be empowered to appoint “registrars and inspectors” and to certify election results.¹⁶⁴ According to historian Xie Wang, Lodge’s approach reflected a belief that “Republicans had to treat [election reform law] as a long-term national policy to perpetuate an orderly practice of political democracy rather than as a temporary, expedient measure for obtaining immediate gains.”¹⁶⁵ Hoar’s bill – introduced without the consent or knowledge of House Republicans – departed from this “non-partisan” approach. Lodge responded by arguing that that because any electoral reform bill would directly impact members of the House only – as the 17th Amendment would not be ratified until 1913 – the House should take the lead in writing the bill. Accordingly, the two Massachusetts lawmakers worked out a compromise: Hoar would report the House bill in the Senate, as the House version incorporated aspects of his original proposal.¹⁶⁶

Lodge introduced the first iteration of his reform bill in March 1890, and he immediately confronted opposition from fellow Republicans who argued that the bill did not go far enough.¹⁶⁷ For example Jonathan Rowell (IL) – chairman of the House Committee on Elections – backed a

¹⁶³ Wang, *The Trial of Democracy*, 235.

¹⁶⁴ Crofts, “The Blair Bill and the Elections Bill,” 253.

¹⁶⁵ Wang, *The Trial of Democracy*, 235.

¹⁶⁶ Richard E. Welch, “The Federal Elections Bill of 1890: Postscripts and Prelude,” *The Journal of American History* 52 (1965): 513.

¹⁶⁷ *Congressional Record*, 51st Congress, 1st Session (March 15, 1890), 2285.

“slightly modified version of the Hoar bill.”¹⁶⁸ Rowell took the position that any reform measure should prioritize federal supervision of registration, counting and certification. Additionally, Harrison Kelley’s (KS) offered a proposal that “instructed the federal government to ‘take entire control’” of elections. If enacted, the Kelley bill would have mandated the construction of voting districts with approximately equal populations, and would have empowered Congress – rather than state legislatures – to construct these districts. It also would have granted federal supervisors the authority to run every aspect of the election process “from registration through certification.”¹⁶⁹ Thus, before confronting Democrats who were threatening to spill blood in response to any new federal oversight of elections, Lodge had to first convince Republicans to adopt his approach.

According to contemporaneous news accounts, Speaker Thomas Reed – “one of the most anxious of all the Republicans to have a ‘force’ bill of some sort put on the books” – requested that Lodge and Rowell develop a compromise.¹⁷⁰ The bill they crafted called for a “chief” electoral supervisor to be appointed to each of the country’s judicial circuits. In addition, three federal supervisors – not more than two from a single party – would be posted to each registration office and polling station. These supervisors would be asked to “observe and report on registration, to watch the reception of the votes, to participate in the count, and to make their own returns.” Such supervision would be activated by a petition signed by one hundred legal voters in a given congressional district or city of 20,000 or more inhabitants. It could also go into effect through a petition signed by “fifty citizens in in any section forming only part of a congressional district.” Finally, the bill created a board of canvassers charted with making judgments about the legitimacy of the votes transmitted by state officials and federal supervisors.

¹⁶⁸ Crofts, “The Blair Bill and the Elections Bill,” 253.

¹⁶⁹ Crofts, “The Blair Bill and the Elections Bill,” 254.

¹⁷⁰ “Party Rule Above Right: The South to Suffer For Republican Party Needs,” *New York Times*, June 12, 1890.

As long as the canvassing board and state officials agreed on the victor, that candidate would be declared the winner. If the board and state officials disagreed, however, a majority of the board would determine the winner. These judgments were, in turn, subject to appeal to federal circuit courts. Consequently, federal judges became the final arbiters in cases of contested elections.¹⁷¹

Taken as a whole, the Lodge bill sought to “deter the intimidation and corruption of voters” through the creation of layered system of federal supervision.¹⁷²

On June 25, 1890, the House Rules Committee reported the Lodge bill (H.R. 11045) under the stipulation that it receive a vote within one week.¹⁷³ The following day, Lodge took the floor to introduce the measure and begin debate. “The first principle in this bill,” he argued, “is to secure the absolute publicity in regard to everything connected with the election of a member of Congress. The second is to make sure that every man who is entitled to vote has an opportunity to cast his vote freely and have it counted.”¹⁷⁴ He then went on to detail the extent and severity of electoral fraud present in congressional districts around the country, before concluding with a direct message to southern members and citizens. “The first step [...] toward the settlement of the negro problem [...] is to take it out of national party politics,” he claimed (without irony), and “this can be done in but one way. The United States must extend to every citizen equal rights [...] If all is fair and honest and free in southern elections this law will interfere with no one, but will demonstrate the fact to the people of the United States.”¹⁷⁵

Not surprisingly, House Democrats immediately condemned H.R. 11045. John Hemphill (SC) was the first to mount a formal opposition to the bill, and his argument touched on all the typical arguments against federal intervention into southern politics. The Lodge bill, he claimed,

¹⁷¹ All quotes above taken from De Santis, “Benjamin Harrison and the Republican Party,” 286.

¹⁷² Welch, “The Federal Elections Bill,” 514.

¹⁷³ *Congressional Record*, 51st Congress, 1st Session (June 25, 1890), 6505-6511.

¹⁷⁴ *Congressional Record*, 51st Congress, 1st Session (June 26, 1890), 6538.

¹⁷⁵ *Congressional Record*, 51st Congress, 1st Session (June 26, 1890), 6544.

infringes on states rights, it “rob[s] the people of the states of the dearest rights of American citizenship, and it aims to put “the colored man [...] again in control of the government of the southern states.”¹⁷⁶ Democrats would repackage and repeat these charges over the course of the week-long debate on Lodge’s bill, but they were not the only ones with objections. Southern Republicans, in particular, inveighed against the bill for being too weak.¹⁷⁷ Indeed, one North Carolina Republican official published a formal condemnation of the bill on these grounds in *The North American Review*:

Suppose for illustration that the president, teller, cashier, and other officers of a great national bank in New York should enter into a conspiracy to rob the vaults, falsify the books, destroy the records, and perpetuate themselves in office and power: what would the directors do when they detected the crime? Would they create a duplicate set of officers, under duplicate salaries, and set them in supervision over the rogues, to reduce subsequent crimes to a minimum?¹⁷⁸

More extreme was the argument of Kansas Republican Harrison Kelley, whose call for a stronger bill came with a jarring prediction. Any effort by southern officials to “nullify” a strong electoral reform measure “will surely bring on a conflict in this country [...] blood would flow and flow freely, but better rivers of it should flow and liberty survive than that the conditions that have existed in many places in the south for a quarter of a century should remain.”¹⁷⁹

Despite the condemnations from both Democrats and Republicans, Lodge’s bill passed on July 2, 1890 by a vote of 155-149. As Table 6 demonstrates, the bill passed on a largely party line vote (two Republicans opposed the measure and no Democrats supported it). This outcome signaled to the bill’s supporters in the Senate that they would need uniform Republican support if they hoped to see the bill enacted. Unfortunately for them, a pivotal group of “silver

¹⁷⁶ *Congressional Record*, 51st Congress, 1st Session (June 26, 1890), 6549-6553.

¹⁷⁷ For a summary of southern Republican opposition see Crofts, “The Blair Bill and the Elections Bill,” 265.

¹⁷⁸ A.W. Schaffer, “A Southern Republican on the Lodge Bill,” *The North American Review* 151 (1890): 602.

¹⁷⁹ *Congressional Record*, 51st Congress, 1st Session (June 26, 1890), 6883.

Republicans” would turn against the bill at a critical moment, thereby ending any hope that it would ever be passed.

[Table 6 about here]

Despite its obvious importance, Senate Republicans did not see the House-passed Lodge bill as their top priority during the summer of 1890. Instead, they were embroiled in a debate over the tariff and the coinage of silver. By 1889 the “silver question” [...] was forcing a considerable and growing amount of attention, and had found advocates in most of the senators west of the Mississippi.”¹⁸⁰ More specifically, Republican senators from Colorado, Nevada, California, Idaho, Minnesota, and Kansas worked together to push for the free coinage of both gold and silver. Known as the “silver Republicans,” this group comprised a pivotal bloc of senators that, during the 51st Congress, was operating with maximum effectiveness.¹⁸¹

At the same time that the Silver Republicans were pushing their agenda, eastern Republicans were seeking enactment of the McKinley Tariff. According to Welch, this tariff bill was of the utmost importance and the most “ardent Republican protectionists” worried that opening debate on Lodge’s measure would jeopardize it. Accordingly, on August 18, 1890, Pennsylvania’s Matthew Quay – one such protectionist – introduced a resolution declaring that for the remainder of the first session, the Senate’s top priority would be the tariff proposal.¹⁸² In order to get the McKinley Tariff through the Senate, the protectionists needed the support of silver Republicans. To that end, they traded votes on the tariff measure for votes on the Sherman Silver Purchase Act, at the expense of any discussion of the elections bill.¹⁸³ Neither group was particularly invested in the elections bill. Western Republicans opposed it because they were

¹⁸⁰ Fred Wellborn, “The Influence of the Silver-Republican Senators, 1889-1891,” *The Mississippi Valley Historical Review* 14 (1928): 462.

¹⁸¹ Wellborn, “The Influence of the Silver-Republican Senators,” 462.

¹⁸² *Congressional Record*, 51st Congress, 1st Session (August 18, 1890), 8724.

¹⁸³ Welch, “The Federal Elections Bill,” 516-518.

“not concerned with the old issue of inequality of representation between North and South,” just as they were unconcerned with the significant number of illiterate citizens living in ex-Confederate states.¹⁸⁴ Eastern Republicans, meanwhile, worried that any election reform proposal threatened to “disturb” the “community of commercial interests” that was developing between North and South.¹⁸⁵

Senator Hoar was, of course, displeased by the move to forego action on the Lodge bill. On August 20, 1890, he took the floor in order to discuss the specifics of the elections bill and to oppose Quay’s resolution. Asking rhetorically what was motivating Quay and his supporters, Hoar answered this way: “It is this and only this: that the national election bill [...] shall be slain.”¹⁸⁶ Hoar’s prolonged appeal led to an evening meeting among Republicans at the home of Michigan Senator James McMillan. According to Welch, this meeting led to a unanimous agreement among the participants to postpone action on the Lodge bill until Congress reconvened in December so that the Senate could act on the tariff bill without delay. In return for agreeing to the delay, Hoar was assured that when Congress reconvened, the Lodge bill would be granted “undisputed and continuous priority.” Hoar even went so far as to convince all Republican senators but one to agree – in writing – to this deal. Every Silver Republican signed the letter.¹⁸⁷

When Congress reconvened in December, Republicans held to their promise. For the first full month of the new session, the Senate focused only on the Lodge bill. The debate echoed many of the same themes raised in the House, with Republicans appealing to the “non-partisan” nature of their proposal and Democrats raising the specter of armed confrontation. As December

¹⁸⁴ Wellborn, “The Influence of the Silver-Republican Senators,” 472.

¹⁸⁵ This quote comes from Pennsylvania Senator J. Donald Cameron and appears in De Santis, Benjamin Harrison and the Republican Party,” 289.

¹⁸⁶ *Congressional Record*, 51st Congress, 1st Session (August 20, 1890), 8847.

¹⁸⁷ Welch, “The Federal Elections Bill,” 518.

gave way to January, however, Silver Republicans started to grow weary. More specifically, they had begun to express dissatisfaction with the Sherman Silver Purchase Act, and they argued that more silver legislation was needed. The time spent debating the Lodge bill, they argued, came at the expense of new currency legislation.¹⁸⁸ By the end of December they were giving speeches declaring their intent to oppose the Lodge bill.¹⁸⁹ Finally, on January 5, 1891, the Silver Republicans dropped all pretenses by explicitly reneging on their agreement with Hoar. Working in conjunction with Senate Democrats, they successfully pushed through a procedural motion that set aside the elections bill in order to begin debate on a new currency proposal. Table 6 provides a breakdown of how the parties voted on this motion. The Republican “yea” votes all came from Silver Republicans.

Working together, Senators Hoar, Spooner (R-MD), and Aldrich (R-NH) made one more concerted effort to save the Lodge bill. On January 16, 1891, they successfully pushed through a procedural motion that once again made H.R. 11045 the order of business in the Senate. For this move they needed Vice President Levi P. Morton to cast the tie-breaking vote.¹⁹⁰ With debate now reopened, Hoar announced that the Senate would remain in session until the proposal received a vote. According to the *New York Times*, Republicans “undertook to leave all the talking to the Democrats,” during this 36 hour marathon session in hopes that opponents would exhaust themselves and relent.¹⁹¹ Instead, on January 17, Senator Aldrich announced that the Senate would adjourn but that when it reconvened on the following Tuesday, he would “ask the Senate to consider the gag rule.”¹⁹² Democrats skillfully blocked all of Aldrich’s attempts to

¹⁸⁸ Welch, “The Federal Elections Bill,” 519-520.

¹⁸⁹ Wellborn, “The Influence of the Silver-Republican Senators,” 472.

¹⁹⁰ Crofts, “The Blair Bill and the Elections Bill,” 327; “Thirty Hours in Session: Senator Hoar’s Force Bill is Not Passed Yet,” *New York Times*, January 18, 1891.

¹⁹¹ “Thirty Hours in Session: Senator Hoar’s Force Bill is Not Passed Yet,” *New York Times*, January 17, 1891.

¹⁹² “Nothing to Brag About: Little Cause for Hoar and the Radicals to Rejoice,” *New York Times*, January 18, 1891.

consider his motion to end debate until January 26. That day, Silver Republicans once again moved against Lodge bill advocates. Senator Edward Wolcott (R-CO) surprised his co-partisans by requesting that the Senate begin debate on a pending apportionment bill. Joseph Dolph (R-OR) then moved to lay Wolcott's motion on the table, triggering a roll call vote. Despite their best efforts, advocates for the federal elections bill lost this vote 35-34 (see Table 6 below). Republicans could not muster the votes to reverse this decision and, as a consequence, the Lodge bill died in the Senate.

Conclusion

The demise of the Lodge bill in 1891 officially signaled the end of the “first civil rights era,” as forces inside and outside of Congress converged to work against the rights and freedoms of black Americans. For example, at same time the Lodge bill was being debated, the white Southern establishment was looking for different means to entrench White Supremacy and fend off current and future GOP attacks. The plan that was adopted, first in Mississippi in 1890, was to adopt constitutional mechanisms that could be used to legally disenfranchise black voters. Thus, the white South – provoked by the Lodge bill and earlier GOP efforts – increasingly saw their contemporaneous techniques (fraud, intimidation, and violence) as inefficient for the goal at hand. State-level legal remedies – devoid of any specific racial qualities – offered more security, and limited what could be done to help blacks at the federal level. Thus, as Robert Goldman notes: “Beginning in Mississippi in 1890, southern states adopted a wide variety of legal means aimed at restricting black suffrage, and by 1910 every southern state had such measures.”¹⁹³ The state-level disfranchisement efforts, along with state-level segregation laws, would form the basis of Jim Crow society for the next three generations. In addition, taking no chances, the

¹⁹³ The Democrats were also helped in establishing this strategy by the Supreme Court, which in *Williams v. Mississippi* (1898) upheld the constitutionality of the Mississippi constitution.

Democrats once in control of unified government in the 53rd Congress (1893-95) – for the first time in more than three decades – repealed most elements of the 1870-71 Enforcement Acts (notably the clauses pertaining to the federal supervision of elections) and placed such supervisory authority directly in the states. When the Republicans returned to power in the 1894-96 elections, they no longer had an appetite for fighting for a meaningful change in the South; satisfied they were competitive-to-dominant in every other region of the country (which became clear with McKinley’s reelection in 1900), the GOP no longer saw much reason – politically or strategically – to reestablish a meaningful foothold in the South.

Thus, the fourteen-year period of intra- and inter-party contestation over the status of black citizens, which we examine in this paper, helps to contextualize the emergence and perpetuation of the Jim Crow system. For as we demonstrate, by 1891 neither political party would reliably or successfully advocate for the rights of black citizens. Dissident Democrats who proved more willing than their “Redeemer” co-partisans disappeared, and their disappearance allowed the party to embrace Jim Crow. Republicans, on the other hand, did not sever their ties to black southerners without a fight. The battles they waged to defend the Enforcement Acts and to end discrimination in interstate travel testify to the party’s unwillingness to completely abandon black citizens. Yet in the later years of the Redemption era, an increasing number of Republicans proved willing to sacrifice the party’s long-standing support for black civil rights in order to push a pro-business economic agenda. While members of the GOP were less virulently racist than Democrats, a pivotal bloc of Republican legislators made common cause with Democrats at critical moments to defeat Blair’s education bill and Lodge’s federal elections bill.

The congressional debates that we explore thus help to illuminate how “solid south” came into existence. Democratic party strength in the ex-Confederacy did not go uncontested

immediately following the end of Reconstruction. Instead, Republicans attempted to win support in southern states and their efforts frequently included advocacy for civil rights. As it became clear to GOP leaders that the party lacked the political strength to compete in the South, however, legislators proved willing to abandon black citizens. As a consequence of this decision, ex-slaves and their children would be subjected to new forms of violence, intimidation, and brutality. Politically abandoned, black citizens would be victimized by Jim Crow until the election of Franklin Roosevelt and the beginning of the “second Reconstruction.” Importantly, the pattern we have described above wherein Republicans strategically and opportunistically work with Democrats to form a “conservative coalition” would reemerge during the 20th century. In this way, the “first civil rights” era serves as a preview of future civil rights battles in Congress.

Table 1. House Votes on the Hayes-Congress Enforcement Battle, 46th Congress

	To Pass <u>H.R. 1:</u> Army Appropriations Bill		To Pass <u>H.R. 1382:</u> Military Interference Bill		To Pass <u>H.R. 2:</u> Appropriation for Legislative, Executive, and Judicial Expenses		To Pass Conference Report on <u>H.R. 2252:</u> Appropriations for Judicial Expenses	
Party	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	61	0	48	0	58	0	42	0
Southern Democrat	70	0	59	0	69	0	52	0
Republican	0	120	1	90	0	118	0	81
Greenbackers	10	2	11	0	8	2	1	0
Independent Dem.	7	0	6	0	6	0	4	0
Total	148	122	125	90	141	120	102	81

Source: *Congressional Record*, 46th Congress, 1st Session, (April 5, 1879): 270; (May 6, 1879): 1094-95; (April 26, 1879): 960; (June 19, 1879): 2185-86.

	To Pass <u>H.R. 2382:</u> Compensation for Federal Marshals & Deputies		To Pass <u>H.R. 4924:</u> Special Deficiency Appropriations Bill		To Pass <u>S. 1726:</u> Regulating Pay and Appointment of Special Deputy Marshals	
Party	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	36	0	46	2	44	1
Southern Democrat	49	0	54	6	53	2
Republican	0	68	1	91	3	82
Greenbackers	1	1	6	4	5	0
Independent Dem.	4	0	4	1	5	0
Total	90	69	111	104	110	85

Source: *Congressional Record*, 46th Congress, 1st Session, (June 27, 1879): 2397-98; 2nd Session, (March 19, 1880): 1716; (June 11, 1880): 4452.

Table 2. Senate Votes on the Hayes-Congress Enforcement Battle, 46th Congress

	To Pass <u>H.R. 1:</u> Army Appropriations Bill		To Pass <u>H.R. 1382:</u> Military Interference Bill		To Pass <u>H.R. 2:</u> Appropriation for Legislative, Executive, and Judicial Expenses		To Pass Conference Report on <u>H.R. 2252:</u> Appropriations for Judicial Expenses	
Party	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	18	0	15	0	17	0	14	0
Southern Democrat	22	0	18	0	20	0	15	0
Republican	0	30	0	23	0	27	0	17
Independent	1	0	0	0	6	0	1	0
Total	41	30	33	23	37	27	30	17

Source: *Congressional Record*, 46th Congress, 1st Session, (April 25, 1879): 913; (May 9, 1879): 1189; (May 20, 1879): 1484-85; (June 21 1879): 2257.

	To Pass <u>H.R. 2382:</u> Compensation for Federal Marshals & Deputies		To Pass <u>H.R. 4924:</u> Special Deficiency Appropriations Bill		To Pass <u>S. 1726:</u> Regulating Pay and Appointment of Special Deputy Marshals	
Party	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	11	0	16	0	11	0
Southern Democrat	15	0	19	0	16	0
Republican	0	15	0	21	0	17
Independent	0	0	0	0	1	0
Total	26	15	35	21	28	17

Source: *Congressional Record*, 46th Congress, 1st Session, (June 28, 1879): 2413; 2nd Session, (April 1, 1880): 2027; (May 21, 1880): 3607.

Table 3. Failed House Override Votes on Enforcement, 46th Congress

	H.R. 1		H.R. 1382		H.R. 2		H.R. 2252		H.R. 2382	
Party	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	48	0	53	0	45	0	43	0	35	0
Southern Democrat	63	0	61	0	62	0	55	0	46	0
Republican	0	102	0	97	0	91	0	78	0	62
Greenbackers	3	8	10	0	2	2	0	0	0	1
Independent Dem.	7	0	4	0	5	0	4	0	4	0
Total	121	110	128	97	114	93	102	78	85	63

Source: *Congressional Record*, 46th Congress, 1st Session, (May 1, 1879): 1014-15; (May 13, 1879): 1298; (May 29, 1879): 1711; (June 23, 1879): 2292; (June 30, 1879): 2442-43.

Table 4. Discrimination and Accommodations in Interstate Travel, 48th Congress

	To Amend H.R. 5461: Prohibit discrimination (O'Hara Amendment)		To Table a Motion to Reconsider O'Hara Amendment		To Substitute Breckenridge Amendment for Crisp Amendment		To Agree to Breckenridge Substitute ("Railroad discretion")	
Party	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	46	30	44	49	67	22	66	25
Southern Democrat	2	65	1	71	67	4	70	0
Republican	84	0	98	0	1	97	0	101
Readjuster	1	0	1	0	0	1	0	1
Greenbacker	0	1	2	0	1	1	0	2
Independent	1	1	3	1	1	2	1	2
Total	134	97	149	121	137	127	137	131

Source: *Congressional Record*, 48th Congress, 2nd Session, (December 16, 1884): 297; (December 17, 1884): 315-16; (December 17, 1884): 320-21; (December 17, 1884): 321-22.

	To Amend Breckenridge <u>Substitute</u> : No discrimination as to race or color (Goff Amendment)		To Table a Motion to Reconsider Goff Amendment		To Amend <u>Goff Amendment</u> : Separate accommodations w/ equal facilities is not discrimination (Barksdale Amendment)		To Amend <u>Barksdale Amendment</u> : Separate and equal facilities shall not be related to race or color	
Party	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	41	35	37	41	62	21	19	56
Southern Democrat	2	66	2	66	68	1	0	63
Republican	93	0	96	0	0	98	92	0
Readjuster	1	0	1	0	0	1	1	0
Greenbacker	2	0	2	0	0	2	2	0
Independent	2	1	2	1	2	1	0	2
Total	141	102	140	108	132	124	114	121

Source: *Congressional Record*, 48th Congress, 2nd Session, (December 17, 1884): 323; (December 18, 1884): 332; (December 18, 1884): 332-33; (December 18, 1884): 343.

Table 5. Senate Votes on the Blair Bill, 48th-51st Congresses

	48th Congress		49th Congress		50th Congress		51st Congress	
Party	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	1	4	3	3	2	9	1	11
Southern Democrat	12	5	13	3	14	8	7	9
Republican	19	2	20	5	23	12	23	17
Readjuster	1	0	-	-	-	-	-	-
Total	33	11	36	11	39	29	31	37

Source: *Congressional Record*, 48th Congress, 1st Session, (April 7, 1884): 2724; 49th Congress, 1st Session, (March 5, 1886): 2105; 50th Congress, 1st Session, (February 15, 1888): 1223; 51st Congress, 1st Session, (March 20, 1890): 2436.

Table 6. Senate and House Votes on the Lodge Bill, 51st Congress

	To Pass H.R. 11045 (Lodge Bill)		To Begin Debate on Currency Bill (End Discussion of Lodge Bill in Senate)		To Begin Debate on Apportionment Bill (End Discussion of Lodge Bill in Senate)	
Party	Yea	Nay	Yea	Nay	Yea	Nay
Northern Democrat	0	67	7	0	10	0
Southern Democrat	0	80	19	0	19	0
Republican	154	2	8	29	6	34
Union Labor	1	0	-	-	-	-
Total	155	149	34	29	35	34

Source: *Congressional Record*, 51st Congress, 1st Session (July 2, 1890): 6940-41; 2nd Session (January 5, 1891): 912-13; 2nd Session (January 26, 1891): 1739