

“The Miracle of 1957”

*Southern senators and the making of the 1957
Civil Rights Act*

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Abstract

In August 1957 Congress enacted the first civil rights law in modern U.S. history. The Civil Rights Act of 1957 was passed despite the determined resistance from the Senate's powerful Southern bloc, a coalition of Democratic senators from the eleven racially segregated former Confederate states. This thesis discusses why the Senate's Southern bloc, perhaps at the height of its power, accepted the passage of the first civil rights law in the United States since the end of Reconstruction, without attempting to filibuster the bill. Based on the Congressional Record's transcripts from the Senate civil rights debate in 1956 and 1957, I discuss how the southern senators approached the proposed civil rights law, what they sought to achieve and how they perceived the civil rights issue in a broader political context. I find that despite their low numbers, the eighteen southern segregationists organized in the Senate's Southern caucus, managed to build majority-coalitions that passed substantial amendments to the legislation. Both their ability to gain the initiative and frame the debate in the Senate chamber, and back-room horse-trading, were key to their legislative accomplishments. Several factors contributed to the southerners not obstructing the amended bill through filibusters. Their success at passing amendments played a significant part, as did fear that obstructionist tactics might provoke renewed attempts to change the Senate's filibuster rules. I also find that electoral considerations likely influenced the southern strategy, as southern power in the Senate's standing committees was conditioned on the Democrats keeping their Senate majority.

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Olav Magnus Linge

Oslo, May 7 2017.

Contents

Abstract	5
Acknowledgements	6
Contents	7
Tables	9
Abbreviations	10
Chapter 1. Introduction	11
1.1 <i>Sources and methodology</i>	15
1.2 <i>A note on terminology</i>	18
Chapter 2. Theory and literature	19
2.1. <i>Literature on civil rights legislation</i>	19
2.2. <i>Literature on the Senate and senators</i>	20
2.3. <i>Literature on the political context</i>	22
2.4. <i>Ambition theory</i>	24
Chapter 3. “The South’s unending revenge upon the North for Gettysburg”	27
3.1. <i>“An irresistible force”</i>	27
3.2. <i>“Master of precedence”</i>	30
3.3. <i>“The world’s greatest deliberative body”</i>	31
3.4 <i>“The southern bloc”</i>	32
3.5. <i>“With a wink and a nod”</i>	33
3.6 <i>“The trail of inquiry leads to the Negro”</i>	34
3.7. <i>“Inadequate civil rights statutes”</i>	35
3.8. <i>“An idea whose time had come”</i>	38
3.9. <i>“Continued to be ruled from Birmingham”</i>	39
Chapter 4. “Abandon hope all ye who enter here”	41
4.1 <i>“A program to advance the efforts of Government”</i>	41
4.2. <i>“The Southern Manifesto”</i>	43
4.3. <i>“The Brownell bill”</i>	43
4.4. <i>“A moderate bill”</i>	45

4.5. “The jig’s up”.....	47
4.6. “Let us pretend I am a senator”.....	49
Chapter 5. “The Miracle of 1957”.....	54
5.1 “If we were bad boys”.....	54
5.2. “So that it may go on the Senate calendar”.....	59
5.3. “The pending business of the Senate”.....	65
5.4. “The high dam”.....	68
5.5. “Constructed to deceive the American people”.....	71
5.6. “The misnamed civil-rights bill”.....	74
5.7. “Power to call out the troops”.....	79
5.8. “An impressive victory”.....	82
5.9. “A signal they believe negroes should be showed to the back”.....	84
5.10. “A vote against the right to vote.”.....	86
5.11. “Effective and enforceable legislation”.....	91
5.12. “Lead us not to temptation”.....	93
Chapter 6. “Compelled to recognize the facts of legislative life”.....	98
6.1. “My sweetest victory”.....	99
6.2. “A soup made of the shadow of a crow which has starved to death”.....	102
6.3. “We liberals are a divided group”.....	108
6.4. “We’re going to make that man elected President”.....	110
6.5. “Our ass is in a crack”.....	115
6.6. “Swapping the known devil for the suspected one”.....	117
Chapter 7. “We could get other bills passed”.....	124
Sources.....	129
Literature.....	131

Tables

Table 1.	Senate vote on Johnson-motion to table Anderson-motion	56
Table 2.	Senate vote on the Aiken-Anderson-amendment	83
Table 3	Senate vote on the Kefauver-O'Mahoney-Church-amendment	87
Table 4	Senate vote on H.R. 6127	90
Table 5	Final Senate vote on H.R. 6127	94

Abbreviations

ADA	Americans for Democratic Action
CR	Congressional Record
GOP	Grand Old Party (Republican Party)
H.R.	House Resolution
NAACP	National Association for the Advancement of Colored People
S.R.	Senate Resolution

Chapter 1. Introduction

*“Neither Sumners nor Stevens in the persecution of the South in the twelve tragic years of reconstruction, ever cooked up any such devil’s broth as is proposed in this misnamed civil-rights bill.”*¹

RICHARD B. RUSSELL, U.S SENATOR

On August 29th 1957 the United States Senate approved H.R. 6127 *An act to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States*. The final Senate vote, 60 to 15 in favor of the bill, ended one of the longest legislative battles of the 1950s. Throughout the 18 month-debate, the Senate had witnessed both principled and profane speeches, procedural fights and some of the most creative parliamentarian maneuvers registered in the Congressional Record. And the longest filibuster by any individual senator; a 24 hour and 18 minute talkathon by South Carolina segregationist Strom Thurmond.² When it was over, the United States Congress had approved the first federal civil rights law since Union troops left the southern states at the end of Reconstruction³, setting Congress on the legislative track that would lead to the end of segregation a short decade later. This thesis is about how that law came into being. And the men resisting it.

It all was something of a miracle⁴. Not that any fair observer would deny that the United States *needed* new federal civil rights laws. In eleven states - not incidentally the same eleven southern states that in 1861 rebelled against the Union to defend the right to enslave their black population - races were still segregated, and white supremacy a

¹ “The 15th Amendment of the U.S. Constitution,” *National Constitution Center – The 15th Amendment of the U.S. Constitution*, accessed April 15, 2017, <https://constitutioncenter.org/interactive-constitution/amendments/amendment-xv>.

² United States Congress, *Congressional Record Vol. 103, Part 12*, 1957.

³ The term Reconstruction refers to the period after the end of the Civil War, when Union troops remained in the occupied south and Congress dictated terms which the defeated rebel states had to comply with to gain re-entrance to the Union. These terms included the acceptance the 13th, 14th and 15th amendment to the Constitution ending slavery and protecting civil rights of all citizens in the United States regardless of race or color.

⁴ I have, as will be noted in chapter 2, stolen both this *phrase* and the *title* of my thesis from Rowland Novak and Robert Evans, contemporary reporters and later Lyndon B. Johnsons biographers. Evans. Rowland / Novak Robert Evans, *Lyndon B. Johnson: The Exercise of Power*, First Printing edition (New American Library, 1968).

matter of pride. Millions of citizens of color were still being deprived basic civil rights, like the right to vote, the right to enforce contracts, serve on juries and participate in political organizations without fearing for their own security and life.⁵

Nor did any serious observer doubt that the times were changing. By the mid-1950s the primitive racism and racial segregation South in America was well underway to becoming a cause for national embarrassment for the United States - as well as a source of amusement for Soviet propagandists. When the Supreme Court ordered school segregation ended in 1954, polls suggested broad majorities of the American public supported that decision.⁶ The violence and extremism of white supremacists intensifying their defense of segregation, did little to divert attention from racial inequalities in the South.⁷ In march 1956 President Eisenhower's administration sent to the Congress a comprehensive legislative program seeking to address the situation by enhancing the federal government's ability to intervene on behalf of citizens being deprived of their constitutional rights.⁸

Still the passage of a civil rights bill in 1957 was something of a sensation.

For civil right bills had been introduced to Congress many times before. Willing as many American leaders was to accept the misfortune of its black population, by the middle of the twentieth century, there had for a long time been elected members of Congress, even Presidents, troubled by the existence of racial apartheid in the nation portraying itself the leader of the free world. And such leaders had for decades introduced to the Congress laws that sought to redress the suffering, and establish the equality and freedom promised by the American Constitution to all its citizens.⁹ By one account no less than *fourteen* major civil rights programs were introduced to the Congress in the twenty years preceding the 1957 Civil Rights Act.¹⁰ Some addressed the widespread lynching's of black citizens in the south, others sought to enforce equality in

⁵ For an excellent overview of the civil rights situation in the United States see Richard Kluger's monumental *Simple Justice: The History of Brown V. Board of Education and Black America's Struggle for Equality*, Vintage Books ed. edition (New York: Vintage, 2004), 27–51.

⁶ George H. Gallup, *The Gallup Poll-Public Opinion-Volume Two* (Random House, 1972).

⁷ Numan V. Bartley, *New South, 1945-1980: A History of the South, Volume XI Series Edition* (Baton Rouge: Louisiana State University Press, 1995), 204.

⁸For an overview of the proposed legislation that will be discussed in the following chapters see "Eisenhower Presidential Library," accessed May 7, 2017, https://eisenhower.archives.gov/research/online_documents/civil_rights_act.html.

⁹ L. I. I. Staff, "15th Amendment," *LII / Legal Information Institute*, November 12, 2009, <https://www.law.cornell.edu/constitution/amendmentxv>.

¹⁰ United States Congress, *Congressional Record Volume 103, 85th Congress, 1st Session*, n.d., 13891.

the labor-market in the war-time economy. By the 1950s voting rights became the focus of legislative civil rights programs.¹¹

But these programs had two things in common; they had all failed at the same place, and at the hand of the same men.

By 1957 debate over civil right in Congress had developed into something of a ritual: A proposal would be introduced by a Congressman or senator, or sent to Congress by the President. The proposal would pass the House of Representatives with comfortable margins. Then it would – slowly and most times silently - be squeezed to death in the Senate. Sometimes it would be forgotten. Most times it would be buried deep in a committee, never scheduled for debate and far less a vote in the Senate plenum. And if such civil rights legislation somehow managed to find a way to the Senate chamber, there would invariably rise a senator, explaining in a friendly – but determined - tone that no such bill could pass without “*an extended debate to educate the American people*”. If that point was not taken – and it usually would be – other senators would rise to demonstrate what “extended debate” and “education” meant. Days, and if need be nights, these senators would relentlessly pursue their educational mission. Occupying the Senate floor, they would start speaking. And they would never stop. Their speeches would last for hours. When they were done reading what they had written themselves, they would start reading other things. Laws, court-rulings, newspaper-articles, even entire books if need be. And when one such speaker was too tired to continue, another would rise with a rested voice. They would keep speaking, reading – and sometimes ranting - until the rest of the Senate had enough. And the others would always have enough. Not only because of boredom, but because these speeches prevented not only voting on the civil rights bill in question, but stopped all legislative work in the Senate. As long as the Senate floor was taken by “educators” opposing civil rights, no other questions could be considered, no other bill’s debate, no money appropriated and no legislation - no matter how urgent - could pass.

These relentless speakers, *filibusters* as they would be known to the world, would have one thing in common also. They would, almost invariably, speak with that long, slow southern *drawl* that distinguished a gentleman from the states below the Mason-Dixon line.

¹¹ Keith M. Finley, *Delaying the Dream: Southern Senators and the Fight Against Civil Rights, 1938-1965*, Reprint edition (Baton Rouge: Louisiana State University Press, 2010), 100.

For the crux of the problem for civil rights advocates was that the American Senate was in a way a very *southern* institution.¹² “The only place,” as New York Times reporter William S White wrote, “where the South did *not* lose the civil war.”¹³ A powerhouse of states, and their rights. An institution guided not by majoritarian principles, as the House of representatives, but by consensus, courtesy and the rights of – legislative – minorities. With its arcane rules and proceedings, the Senate was the ideal stronghold for a well-organized political minority bent on resisting social change.

And as well-organized political minorities go, there has perhaps been none so formidable in the entire history of the United States Congress, as the Senate’s “Southern bloc,” a remarkably cohesive caucus of eighteen Dixie senators. Most were old, many aristocratic and the majority consistently conservative in their political views.¹⁴ And all were members of the Democratic Party. While the crudeness of their racism did vary, their caucus was united by a common desire to protect segregation and white supremacy in the South. In the mid-1950s the Southern bloc was perhaps at the heights of its power in Congress, turning the Senate into what William White labeled “the South’s unending revenge upon the North for Gettysburg.”¹⁵

My story will be about this legislative coalition, and how it confronted its greatest challenge to date: the legislation poised to become the Civil Rights Act of 1957.

I admit, perhaps foolishly, that I write this not because of any deep knowledge of the tormented history of race in the United States. While the brave men and women who fought for racial justice in the 1950s played a defining role in shaping modern American society, they will perform only a secondary, and always passive, part in this story. In a perverse way, they will be the scene on which other, distinctly less heroic, characters play.

This discussion will be about a legislative process, about parliamentarians and about political institutions. Almost without exception my thesis will center on the Senate, and its main chamber. Drawing on the detailed account noted in the *Congressional Record*, I seek to understand how the Senate Southern bloc approached the 1957 civil rights act, and why the previously unyielding southern caucus let this bill pass.

¹² William S. White, *Citadel* (Harper & Brothers, 1957), 71.

¹³ *Ibid.*, 69.

¹⁴ Ira Katznelson, Kim Geiger, and Daniel Kryder, “Limiting Liberalism: The Southern Veto in Congress, 1933-1950,” *Political Science Quarterly* 108, no. 2 (1993): 283–306, doi:10.2307/2152013.

¹⁵ White, *Citadel*, 71.

At the heart of this discussion, there is a puzzle. If the Southern bloc was at the pinnacle of its power in the Senate, why did it allow a civil rights bill to pass in 1957, when they had so successfully obstructed any such legislation for decades?

To answer that question, I shall proceed in the following way: After discussing existing literature and theories in chapter 2, and elaborating on composition of the Southern bloc and what made them such a powerful coalition in the Senate in chapter 3, I shall divide my discussion of the legislative process in three. In chapter 4 I track events in 1956 when the civil rights law was first drafted and introduced to Congress, focusing on how southern senators successfully buried the bill before the end of the 84th Congress. In chapter 5 I will, in much greater detail, discuss the legislative development in 1957, focusing on January when the Senate debated rules central to southern power, and the period from mid-June to late August when the civil rights bill was the main legislation before the Senate. With chapter 5 providing the descriptive details necessary for analysis, I return to the pending question of *how* the southerners perceived the civil rights issue, trying to provide answers as to why they allowed, or felt compelled to allow, the passage of the legislation in chapter 6. In the seventh chapter I wrap up the discussion and offer a few concluding perspectives.

1.1 Sources and methodology

With its dark red, almost brown, cover and golden side inscription the *Congressional Record* meet the expectations for a protocol preserving the words and deeds of an institution perceiving itself to be the “greatest deliberative body in the world.” Heavy and voluminous, the *Record* contains over 16 000 pages recording the debates in the House and Senate in 1957 alone. Including every speech, every parliamentary inquiry, point of order as well as lists of amendments, bills and resolutions, the Records provide the natural primary source for a discussion of a legislative process in the United States Senate. It is the main source on which this thesis builds. Sweetening the deal for the historian, the *Record* also include hosts of newspaper-articles, editorials, letters from experts and speeches made by leading politicians outside Capitol Hill, all inserted by senators keen to demonstrate the support and evidence behind their particular point of view. Several of these insertions has tipped me off to additional sources, most notably contemporary newspaper articles, about which I have more to say below.

However, beside the hassle of reading records from an institution where scheduling is often described as something akin to “fortune telling,”¹⁶ the *Congressional Record* as a source for historians come with one important caveat. Senators and congressmen have the opportunity to “revise and extend” their remarks after a debate is over, allowing not only errors to be corrected, but the material content of a speech or debate to be tempered with. Worse, this post-fact editing leaves no trace for the reader. One needs little fantasy to perceive of instances where politicians might be inclined to “revise” yesterday’s truth to better fit with the reality of today, or to remove statements whose preservation might not be politically opportune.

There were to be sure mechanisms preventing too extravagant a use of the opportunity to “revise and extend” the *Record*. For one thing Senate proceedings were open to the press, and leading American newspapers followed the debate in the upper-chamber of Congress keenly, delivering daily reports on major issues. Furthermore, to many senators in the mid 1950s, the *Record* came close to being an institutional relic. Each day began with the reading (if demanded by a single senator) and approval of previous days *Record*. I have found several instances where debate – or all hell – broke loose over perceived errors in the *Record*.

Still this is a real challenge for a thesis so dependent on the *Congressional Record* as a primary source. Faced with this weakness in my main source, I have made three choices. First, I have deliberately avoided putting too great emphasis on any single quote, statement or even speech. The “revise and extend”-problem makes me unable to guarantee that every quote or excerpt from the *CR* included in this thesis are accurate reflections of the words spoken in the Senate. Yet my conclusions draw from a then 50 speeches made by southern senators, and an even higher number of exchanges, decreasing the likelihood that “revisions and extensions” affects the substance of my findings. At critical junctures in the debate I have also systematically compared the speeches and debates recorded in the *Congressional Record* with the reports made by journalists and political correspondents following the debate. I have used *The New York Times* as my main source of contemporary reporting on the civil rights debate in the Senate. In part for practical reasons, since the New York Times provides an easy to access online database for a relatively low cost, and in part because of the paper’s reputation for solid and serious political reporting.

¹⁶ Steven S. Smith, Jason M. Roberts, and Ryan J. Vander Wielen, *The American Congress*, 8 edition (New York: Cambridge University Press, 2013), 275.

Finally, I have used a number of memoirs and biographies as a second-hand source that also helps check the *CR* against personal correspondence, diaries, interviews with the senators and their aides, and other sources available to biographers. I shall have more to say about these biographies in the chapter on literature.

While I am certain that the main conclusions drawn from my study of the *Congressional Record* are not significantly weakened by the possibility of “revisions and extensions” made by the senators, there is one possible exception that cannot conclusively be ruled out. I have found plenty of quotes openly defending racial segregation among the speeches held by southern senators in 1956-57, but few examples of outright racist or supremacist rhetoric. The reason for the absence of such outbursts is likely that the southerners took care, as I argue in both chapter 5 and 6, to frame the debate in a way beneficiary to them, and to avoid *being* framed as simple-minded demagogues. However, there is a non-trivial chance that this absence can – at least in part – be explained by editing of the *Records*.

There is, of course, a second, more structural problem, with relying on the *Congressional Record* as my most important source. While it might provide a reasonable comprehensive and accurate account of what senators said, what amendments they offered and how they voted, the *CR* does not necessarily reveal what senators thought and how they reasoned or strategized. Nor does the *CR* contain information from the hundreds of encounters, meetings and discussions in the Senate cloak-rooms, hallways and offices – all important arenas for negotiations, back-room-deals and caucusing. Again both newspaper reporting, with access to background conversation, and biographies revealing the content of private archives and oral histories, does help remedy the situation. But the larger problem remains. Thus this story will be heavily eschewed towards the open and overt debates in the Senate chamber.

However, I hope I will be able to persuade the reader that the *Congressional Record* contains more than enough evidence to form the basis for meaningful discussions of how the Southern bloc handled the 1957 Civil Rights Act. For all the back-room dealing and secret strategies occurring in a legislative body, politics is still characterized by the need elected representatives have to make their positions, goals and world-view known to the public in general, and their constituents in particular.

As indicated above, while being the most important by far, the *Congressional Record* is not the only source on which I build this thesis. I have scanned the New York Times digital archives for articles on civil rights in 1956 and 1957, of which there are many.

A few oral histories also help illuminate this discussion. I have primarily accessed the Senate's own database with oral histories from the civil rights era. This database mainly contains the histories of legislative aids – which I have found particularly useful, both because they cover perspectives of people close to the action but not mentioned in the Congressional Records or in newspaper-articles.

Based on references made in the Senate debate, I have also been able to detect some other bits and pieces of original sources of interest to my discussion. Most important transcripts from Eisenhower's press conferences where the President discussed the civil rights legislation, and a few interesting newspaper articles listed in the references.

As noted above, and further discussed in chapter 2, I have also consulted a number of biographies on key senators, sometimes providing insight to personal correspondence, notes and conversations pertinent to issues discussed in this thesis.

1.2 A note on terminology

When discussing issues related to race and civil rights, language at once becomes a notorious problem. In 1957 both proponents and opponents of civil rights legislation routinely spoke and wrote of the rights and plights of “negroes,” or in the case of liberals “negro citizens.” Except when directly quoting from the Senate debate, I will use the terms “African American,” “black citizens” or “persons of color.”

Terms like “the South” and “southerners” will turn up frequently in discussion to follow. Defining “the South” is no straightforward matter. I will define the “South” as the former eleven states that formed the Confederacy during the civil war: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas and Virginia. The terms “Southern bloc” and “Southern caucus” I will use interchangeably. While there were, as will be discussed later, a few southern senators not wanting to be associated with the “Southern bloc,” I will use the term “southerner” as a synonym for senators who were members of the Southern caucus.

Chapter 2. Theory and literature

Diving into the some of the great questions of American society – civil rights and racial relations, the role of the federal government, politics and political institutions – one is immediately faced with an enormous, varied and impressive load of literature. The literature underlying this thesis does not even come close to being representative of the massive body of scholarly work about civil rights, southern politics or legislative processes in the American Congress. Still I hope it does provide a reasonable amount of different perspectives on the issues most salient to my discussion: how southern senators handled civil rights legislation. In this chapter I shall provide an overview of that literature, as well as some theoretical angles that I have used in my discussion. For practical purposes, I will not be able to discuss *all* the literature referenced in this thesis, limiting myself to those whose ideas and perspectives have had the greatest impact on my discussion.

2.1. Literature on civil rights legislation

The problem of literature-overload is most acute when it comes to that unavoidable question of historical background. I have largely relied on three different types of background-literature. First there is literature on the history of civil rights legislation. I found Richard Kluger's seminar work *Simple Justice: The History of Brown V. Board of Education and Black America's Struggle for Equality*¹⁷ and Eugene Gressman's paper *The Unhappy History of Civil Rights Legislation*¹⁸ particularly useful in providing a long-term perspective on civil rights legislation in America. Kluger's book is best known for its discussion of *Brown*, but includes a detailed account of the Reconstruction-legislation on civil rights. That is also the focus of Gressman, although he provides interesting details on the years prior to the civil war. Both present a picture of largely ambitious legislation being passed during Reconstruction, before almost all meaningful federal civil rights statues were dismantled by the Supreme Court in the 1870s, 1880s and 1890. Kluger also shows of the Supreme Court from the Roosevelt-years begin its

¹⁷ Kluger, *Simple Justice*.

¹⁸ Eugene Gressman, "The Unhappy History of Civil Rights Legislation," *Michigan Law Review* 50, no. 8 (1952): 1323–58, doi:10.2307/1284416.

movement toward re-interpreting the Reconstruction-amendments to the Constitution in a way that opens for the Brown-ruling in 1953, where segregation in schools were determined unconstitutional – but that is somewhat besides my story. There are reasons discuss Kluger and Gressman’s assertion that the federal civil rights legislation had all but been dismantled by the beginning of the 20th century. Risa Goluboff provides an interesting counter-argument in her book *The Lost Promise of Civil Rights*¹⁹, showing that Justice Department lawyers had substantial legal room to litigate particularly in discrimination cases in the work-place in the 1930s and 1940s, but that both the civil right movement and the federal government abandoned that perspective after the war. Yet, little doubt that both proponents and opponents of federal civil rights laws in the 1950s believed this to be an area where the federal government had little authority.

Background on the Senate, its history, procedures and protocol can be found many places. I have consulted literature from both political science and history, using Smith, Roberts and Wielen’s *The American Congress*²⁰ as a basic instruction in Senate rules, procedures and history, and McNeill and Bakers *The American Senate: An insider’s history*²¹, as a more detailed study of Senate history. On Senate procedure Smiths new *The Senate Syndrome: The Evolution of Procedural Warfare in the Modern U.S. Senate*²² is indispensable, providing a detailed study of Senate rules, with a particular emphasis on the filibuster. And then there is William S. White’s *Citadel: The Story of the US Senate* written just prior to the battle over the 1957 civil rights act. White, a New York Times reporter, made several acute observations, and is frequently quoted in this thesis, although his belief in the almost absoluteness of southern power in the Senate, proved to be somewhat overstated, as the passage of the 1957 civil rights act demonstrated.

2.2. Literature on the Senate and senators

There are written many biographies on senators serving in the two congresses which the debate over the 1957 Civil Rights Act spawned. The biographies of three key southern Senators, Richard B. Russell, Sam Ervin and Lyndon B. Johnson (who was not a

¹⁹ Risa L. Goluboff, *The Lost Promise of Civil Rights* (Cambridge, Mass.; London: Harvard University Press, 2009).

²⁰ Smith, Roberts, and Wielen, *The American Congress*.

²¹ Neil MacNeil and Richard A. Baker, *The American Senate: An Insider’s History*, 1 edition (Oxford University Press, 2013).

²² Steven S. Smith, *The Senate Syndrome: The Evolution of Procedural Warfare in the Modern U.S. Senate* (Norman: University of Oklahoma Press, 2014).

member of the Southern caucus despite representing a southern state) have been useful to my discussion. About Lyndon Johnson several well-known biographies are published, with Doris Kearns Goodwin's *Lyndon Johnson and the American Dream*²³, and Robert A Caro's multi-volume *The Years of Lyndon Johnson* (where volume three *Master of the Senate*²⁴ covers the 1950s) being known to most students of modern American history. I have found interesting perspectives in both, and in Novak and Evans *Lyndon Johnson: The Exercise of Power*. From Evans and Novak, as noted in the introduction, I have also stolen the title of this thesis.

It is perhaps the nature of biographers to ascribe to their subject as much importance as possible. Particularly Robert Caro - and to some extent Novak and Evans - paints a picture where the 1957 Civil Rights Act almost singlehandedly was secured by the legislative genius of Lyndon Johnson. Though Johnson will play a central part in my discussion, I do not accept - for reasons to be discussed - the premise that the story of the 1957 Civil Rights Act is essentially about Lyndon B. Johnson.

A propensity to somewhat overestimate the importance of its subject, seems to also affect Campbell's fine biography about North Carolina Senator Sam Ervin entitled *Senator Sam Ervin, Last of the Founding Fathers*.²⁵ While Campbell is less ambitious in the role he wants reserved for Ervin in the 1957 struggle over civil Rights, when he argues that Ervin to a large extent formulated the southern strategy, I find that the legalistic perspectives effectively deployed by the North Carolina lawyer, was but one part of a broader southern narrative about the proposed legislation.

It is fitting that the one senator whose role in the civil rights debate in 1957 was perhaps *the* most important, the Southern blocs leader Richard B. Russell, is subject to the least aggressive promotion by his biographer, Gilbert C. Fite. Fite's *Richard B. Russell Jr, Senator from Georgia*²⁶, does mention Russell's major, and defining, speeches on civil rights in the Senate in July 1952, and the discipline which he tried to impose to his caucus. But based on my reading of the impact Russell's arguments had on the Senate discussion, I believe Fite if anything has underestimated Russell's ability to influence and frame the debate in the Senate. An interesting perspective on the

²³ Doris Kearns Goodwin, *Lyndon Johnson and the American Dream* (New York: Saint Martin's Press, 1991).

²⁴ Robert A. Caro, *Master Of The Senate: The Years of Lyndon Johnson*, Reprint edition (New York: Vintage, 2003).

²⁵ Karl E. Campbell, *Senator Sam Ervin, Last of the Founding Fathers* (Chapel Hill: The University of North Carolina Press, 2007).

²⁶ Gilbert C. Fite, *Richard B. Russell, Jr., Senator From Georgia*, 1st New edition edition (Place of publication not identified: The University of North Carolina Press, 2002).

relationship between Russell and Lyndon Johnson is also provided by Mark Sterns paper *Lyndon Johnson and Richard Russell: Institutions, Ambitions and Civil Rights*.

In addition to the biographies, of which there are several other to my view somewhat less important contributions, there is written a few works on the southern caucus and how they handled civil rights. Keith Finley's *Delaying the Dream: Southern Senators and the Fight Against Civil Rights, 1938-1965* is in my mind arguable the best. Finley's work is balanced, well-researched and provides an excellent record of legislative strategies southern senators deployed to thwart civil rights law. Finley's main thesis is that the southerners understood early on that they were on the defensive, and sought to *delay* major civil rights legislation as long as possible. This I believe is an interesting perspective that I will discuss in chapter 6, but I have to add that I am not entirely convinced of Finley's thesis. While his argument that delay guided the southerners from the mid 1960s on is convincing, I find that assertion less well-suited guide to understanding the southern Senate strategy in the mid 1950s.

Some other works on the southern bloc also influences my perspective on this group. In a detailed study of southern voting-patterns Katznelson, Geiger and Kryders *Limiting Liberalism: The Southern Veto in Congress, 1933-50*,²⁷ finds that the southern bloc were largely a cohesive group in the Senate, but that ideological dispositions did wary when it came to labour issues. On civil rights the southerners voted almost united. An interesting case-study of differences in ideological dispositions, as well as style and background, among southern senators is found in Meads study *Russell vs. Talmadge: Southern Politics and the New Deal*.²⁸

2.3. Literature on the political context

There are written several interesting works on civil rights and American politics in the mid 1950s. David Nichols new book on civil right in the Eisenhower-administration, casts Ike's policies in such a new (and positive) light that it almost merits being described as *revisionist*. Nichols *A Matter of Justice: Eisenhower and the Beginning of the Civil Rights Revolution*²⁹ describes a President both far more interested in leading on civil rights issues than has been presumed by a long list of Eisenhower-biographers -

²⁷ Katznelson, Geiger, and Kryder, "Limiting Liberalism."

²⁸ Howard N. Mead, "Russell vs. Talmadge: Southern Politics and the New Deal," *The Georgia Historical Quarterly* 65, no. 1 (1981): 28–45.

²⁹ David A. Nichols, *A Matter of Justice: Eisenhower and the Beginning of the Civil Rights Revolution*, Reprint edition (New York: Simon & Schuster, 2008).

with Ambrose³⁰ perhaps as the most influential – *and* more attuned to the political upside civil rights might provide for the Republican party.

The political context is further elaborated in Timothy Thurber’s *Republicans and Race: The GOP’s Frayed Relationship with African Americans, 1945-1974*.³¹ Thurber tracks the GOP relations with African-American voters, and how the Republicans handled civil rights legislation. He discusses the 1957 and 1960 civil rights acts in some detail, providing an interesting and updated perspectives on the Eisenhower-administration, that largely places itself somewhere between Nichols “revisionist” approach and the more traditional view of the President.

Michael Stern also discusses how Eisenhower’s electoral strategy influenced civil rights in the paper *Presidential strategies and civil rights: Eisenhower, the early years, 1952-54*³² and the electoral fallout from civil rights more broadly in another paper *Lyndon Johnson and the Democrat’s civil rights strategy*.³³ Stern’s central claim is that Republicans actively sought to court black voters in the early and mid-1950s, forcing the Democratic Party to adopt even more liberal positions on civil rights. Stern, however, focuses most of his discussion on how civil rights debates in the 1950s influenced electoral strategy and the electoral landscape in the 1960s.⁴⁹

Finally, at least two studies of southern politics deserve mentioning here because of the influence their perspective has had on my thesis: V.O. Keys 1949 seminal *Southern Politics in State and Nation*³⁴, is certainly not updated, but neither outdated. Key argues for the centrality of race in southern politics, but also shows how race remained more salient in some southern states than others, helping explain the relative independence of four Dixie senators from the southern bloc in 1957, the two representing Texas, and the two from Tennessee. Bartley’s *The New South, 1945-1980: A History of the South, Volume XI*,³⁵ is a balanced and accessible account of southern society in a time of transition. It provides much of the broader background on southern politics, alongside an important perspective on southern society – namely the economic growth and demographic change in the South after the war, potentially influencing the political

³⁰ Stephen E. Ambrose, *Eisenhower: Soldier and President*, Revised ed. edition (New York: Simon & Schuster, 1991).

³¹ Timothy N. Thurber, *Republicans and Race: The GOP’s Frayed Relationship with African Americans, 1945-1974* (Lawrence: University Press of Kansas, 2013).

³² Mark Stern, “Presidential Strategies and Civil Rights: Eisenhower, the Early Years, 1952-54,” *Presidential Studies Quarterly* 19, no. 4 (1989): 769–95.

³³ Mark Stern, “Lyndon Johnson and Richard Russell: Institutions, Ambitions and Civil Rights,” *Presidential Studies Quarterly* 21, no. 4 (1991): 687–704.

³⁴ V. O. Key, *Southern Politics In State and Nation* (Alfred A. Knopf, 1950).

³⁵ Bartley, *New South, 1945-1980*.

outlook for the southern section. As is the case with Key and Katzenelson et al. Bartley's study of the South after world war II, demonstrates some of the complexities of southern politics, emphasizing the support for New Deal policies in certain parts of the South.

2.4. Ambition theory

This thesis is about the action of a political coalition. It therefore necessarily rests upon a certain set of assumptions about political behaviour. I do not pretend to, nor do I think it to particularly virtuous to be, loyal to any *one* set of theory when it comes to a matter as broad and complex as human behaviour, even when that behaviour is structured by powerful institutions like legislative chambers, elections and political culture. Yet I have found some of the insights of *one* theoretical perspective particularly insightful for my discussion of southern Senators and the Civil Rights Act of 1957.

Two months before the final vote on the Civil Rights Act, in June 1957, the American economist Anthony Downs published what was to become a classic work in the field of political science. In *An Economic Theory of Democracy* Downs argued that both the electorate and their political representatives behave as utility-optimizing rational actors.³⁶ Politicians and their parties are not driven by ideology or moral convictions, only the desire to acquire office and control of the state apparatus and the power, prestige and money that comes with it, motivates legislators and political coalitions, according to Downs.³⁷ Thus, according to Downs, politicians formulate public policies and take positions on issues "strictly as a means of gaining votes."³⁸ Consequentially, since the politicians running the government "wishes to maximize political support," it (the government) carries out those acts or the spending which "gain the most votes, by means of those acts or financing which lose the fewest votes."³⁹

Downs approach to political behaviour has of course not been accepted without criticism. Political scientists Robert Shapiro and Lawrence Jacobs contradicts Downs thesis on empirical grounds.⁴⁰ They find that politicians are far more ideological and less opportunist, or rational, than assumed by Downs. While politicians do engage in hosts of different, and time-consuming, activities aimed at shaping public opinion, they also, according to Shapiro and Jacobs, stick to their guns when the electorate resists being

³⁶ Anthony Downs, *An Economic Theory of Democracy* (New York: Prentice Hall, 1997).

³⁷ *Ibid.*, 30.

³⁸ *Ibid.*, 137.

³⁹ *Ibid.*, 52.

⁴⁰ Lawrence R. Jacobs and Robert Y. Shapiro, *Politicians Don't Pander: Political Manipulation And The Loss Of Democratic Responsiveness*, 2nd edition (Chicago, IL: University of Chicago Press, 2000).

convinced of supporting their policies. In Shapiro and Jacobs's 2000 study, this is seen most clearly by the fact that elected officials very rarely change their positions on issues, even in the face of overwhelming public opinion.⁴¹

While it is very plausible that politicians are not as calculating and single-minded on gaining and maintaining elected office as the only worthwhile goal as Downs argued, ambition theory remains central to understanding the behaviour of elected officials. This is in no small part the result of Joseph Schlesinger influential 1994-study *Political parties and the winning of office*.⁴² According to Schlesinger, rational-choice theories are at an advantage when studying "well-defined structures such as markets or political competition, where individuals work to satisfy specific wants."⁴³ Schlesinger argues that individual ambitions for office is the force motivating politicians, and stresses that political institutions work *because* they make the self-interest of elected officials obvious to the voters.⁴⁴ Where Downs all-but removes ideology from the equation, Schlesinger argues that politicians might very well hold strong moral and ideological views, in fact they are likely to do so, but that the winning of elected office still takes precedence over all other concerns.⁴⁵ Only by winning office can principle be carried out into public policy. Not only is winning office seen as the most efficient way for parties and individual candidates to forward their ideological goals, and get results for the constituency they seek to represent, the individuals inside parties responsible for success in the electoral market-place can according to Schlesinger be readily identified.⁴⁶ Interestingly for my purpose Schlesinger, specifically discusses the ambitions of U.S senators. Schlesinger finds that the reason why so many U.S. senators run for President can be found in the unique ability of the Senate due to its six-year terms, to allow its members to chase greater ambitions, without necessarily jeopardizing the position they already have. From 1900 to 1988 twenty of the twenty-five senators running for president or vice-president, faced no risk of losing their senate-seats.⁴⁷

Both Downs and Schlesinger can, in my view reasonably, be accused of overstating the impact of electoral calculation and underestimating the moral and ideological components of political action. Yet when faced with a question like civil rights

⁴¹ Ibid.

⁴² Joseph A. Schlesinger, *Political Parties and the Winning of Office* (Ann Arbor: University of Michigan Press, 1994).

⁴³ Ibid., 6.

⁴⁴ Ibid., 34.

⁴⁵ Ibid., 14.

⁴⁶ Ibid., 15.

⁴⁷ Ibid., 57.

in mid-century America, it is far easier to be overwhelmed by the philosophical, ideological and moral dimensions of the questions, and forget that no political question can be understood by isolating it from the political, electoral and legislative strategies of politicians and parties that considered it. I have therefore consulted these theoretical perspectives in no small part as a *reminder* not to lose sight of some core truths about politics and the political process.

Despite their limitations, the ambition theories of Downs and Schlesinger, provide key insights that I will use frequently in my discussion of the 1957 Civil Rights Act. Ambition theory is particularly useful for understanding the Senate debate on civil rights in 1956 and 1957 because the key legislative coalition, and the subject of my discussion, the Southern bloc was a quite cohesive legislative coalition, at least when it came to civil rights,⁴⁸ and furthermore a political bloc clearly trying to act in a strategic manner seeing their struggle against federal civil rights legislation as a long game.⁴⁹

⁴⁸ Katznelson, Geiger, and Kryder, "Limiting Liberalism."

⁴⁹ Finley, *Delaying the Dream*, 7.

Chapter 3. “The South’s unending revenge upon the North for Gettysburg”

“You felt this around the Senate. There was a mystique about them. God don’t get the South mad! And why get them mad, when you weren’t going to win anyway?”⁵⁰

JAMES H. ROWE, DEMOCRATIC STRATEGIST

If history is the study of continuity and change in human societies, the struggle over the 1957 Civil Rights Act seems tailor made for historians. In the Senate-debate over H.R. 6127 one of the most determined forces for social advancement in modern American history, the civil rights movement and their liberal political allies, confronted one of the most formidable legislative coalitions in U.S. history, the conservative Southern Bloc of the United States Senate. Fueling the demand for the federal government to act on civil rights, was a growing civil rights movement, riding a wave of social, economic and ideological change.⁵¹ Resisting federal civil rights legislation were first and foremost 18 conservative Democratic senators, deeply entrenched in a political institution designed to thwart radical social change and to empower the states against the national government.⁵² In this chapter I shall try to lay out the background for the 1957 Civil Rights Act, with particular emphasis on the Senate, its procedure, and the how the southerners came to play such an outsized role in the upper chamber of Congress

3.1. “An irresistible force”

One thing is clear: Whatever the source of southern power in the Senate was, it did not originate in their numbers. Only 22 of the 96 senators seated in the 85th Congress represented states belonging to the former confederate South, and four of them could not be relied upon to vote with the rest. Estes Kefauver and Albert Gore of Tennessee, and Ralph Yarborough of Texas were moderates distancing themselves from the southern

⁵⁰ Caro, *Master Of The Senate*, 893.

⁵¹ On how social and economic change affected the civil rights debate, see William H. Chafe, *The Unfinished Journey: America Since World War II*, 7 edition (New York: OUP USA, 2011); John R. Zaller, *The Nature and Origins of Mass Opinion*, 1st edition (Cambridge England ; New York, NY, USA: Cambridge University Press, 1992); Gunnar Myrdal and Sissela Bok, *An American Dilemma: The Negro Problem and Modern Democracy*, Revised ed. edition (New Brunswick, NJ: Transaction Publishers, 1995).

⁵² MacNeil and Baker, *The American Senate*, 4.

bloc.⁵³ Lyndon B. Johnson of Texas did attend many southern caucus-meetings while making sure to formally seem at arms-length from the southern coalition.⁵⁴

But the Senate was never designed to be an institution where power rested with numbers. On the contrary – it was deliberately constructed to be a check on the majoritarian principle guiding the House of Representatives.⁵⁵ A powerhouse of the states, where all the Union’s states were given equal representation regardless of their population. An institution constructed, in the words of James Madison, to “proceed with more coolness and wisdom than the popular branch.”⁵⁶ Thus senators served – and still serve – longer terms than members of the House. And only one third of the Senate is up for re-election at any time, making the institution singularly well protected against shifts in the “transient impressions into which they [the people] might be led,”⁵⁷ to quote Madison. All this conspired to make the Senate a conservative institution, “a body that never wholly changes and never quite dies,” said William S. White. ⁵⁸

Yet it was a system never envisioned by the founders, nor mentioned in the Constitution or the original rules of the Senate, that provided the South with its most potent source of Senate power: the *seniority system*. Developed in the 19th century⁵⁹, by the mid-20th century, the seniority system had become an all but “irresistible force”⁶⁰, according to White’s contemporary observations. Simply put, the seniority system made the length of tenure the central organizing principle for the distribution of different prizes individual senators might want. Some were symbolic or practical in nature, like the assignment of offices, desks and seating arrangements at state-dinners. ⁶¹ But the crucial contribution of the seniority system to the distribution of Senate power was the fact that seniority almost became the sole qualification for acquiring sought-after committee-seats and chairmanships of standing Senate committees.

For the southerners, the beauty of the peculiar tradition of seniority lay in the way it worked in tandem with their own highly particular political system. Ever since the end of Reconstruction the South had been one-party country, dominated by the

⁵³ Finley, *Delaying the Dream*, 148–149.

⁵⁴ Caro, *Master Of The Senate*, 218.

⁵⁵ MacNeil and Baker, *The American Senate*, 4.

⁵⁶ *Ibid.*, 150.

⁵⁷ “Avalon Project - Madison Debates - June 26,” accessed May 7, 2017, http://avalon.law.yale.edu/18th_century/debates_626.asp.

⁵⁸ Joseph A. Schlesinger, *Political Parties and the Winning of Office* (Ann Arbor: University of Michigan Press, 1994), 58.

⁵⁹ Smith, Roberts, and Wielen, *The American Congress*, 204.

⁶⁰ White, *Citadel*, 69.

⁶¹ MacNeil and Baker, *The American Senate*, 7.

Democratic Party.⁶² The former confederate states had developed a profound animosity to the Republican party, - after all the party of Lincoln, emancipation and the Union army. While the Dixiecrat rebellion in 1948 and Eisenhower's landslide in 1952 had produced cracks in the Democratic dominance in the South in presidential elections, the Democratic Party's grasp of Dixie's Senate seats was as firm as ever.⁶³

Not only did the eleven southern states nearly without exception elect Democrats to the Senate, they invariably elected the *same* Democrats. Once elected, a southern democrat was virtually guaranteed reelection, in part because southern voters understood that the power of their representatives in the Senate grew if they were allowed to acquire seniority.⁶⁴ Herman Talmadge's ability to force sitting Senator Walter George to withdraw from the primary contest in 1956⁶⁵ was the exception to the rule.

Elected and re-elected, southern senators were thus uniquely well suited to take advantage of the seniority system. While they represented less than one-fifth of the Senate in the 85th Congress, and only one-third of the Democratic caucus, members of the Southern bloc still chaired more than half of the Senate's standing committees. Nine of fifteen permanent committees were chaired by a southern segregationist. In addition, the Senate's powerful Appropriations committee was chaired by a close ally of the segregationists, Carl Hayden of Arizona. South Carolina senator James Eastland, chaired the Senate's committee on the Judiciary, with jurisdiction of civil rights, Arkansas William Fulbright chaired the committee on banking and currency, Harry Byrd of Virginia the Finance committee - and the issues of taxation within its portfolio -, Lister Hill of Alabama chaired the Labor and Public Works committee and Allan Ellender of Louisiana was chairman of the Committee on Agriculture and Forestry, to mention only the most important.⁶⁶

Senate Rule XV, not coincidentally the center-ground for a major procedural debate between proponents and opponents of the 1957 Civil Rights Act, stipulated that all resolutions before the Senate should be referred to committee for consideration and a formal report before any action be taken on the issue at hand.⁶⁷ Prolonged committee hearings became a favorite dilatory tactics for southerners, particularly when civil rights-matters were concerned. This stratagem was made possible by the fact that

⁶² Key, *Southern Politics In State and Nation*, 10.

⁶³ *Ibid.*, 11.

⁶⁴ *Ibid.*, 644.

⁶⁵ Finley, *Delaying the Dream*, 153.

⁶⁶ "CommitteeChairs.pdf," accessed May 6, 2017,

<https://www.senate.gov/artandhistory/history/resources/pdf/CommitteeChairs.pdf>.

⁶⁷ *Congressional Record*, June 1957, Vol 103, Part 7., n.d., 9257.

committee chairmen in the mid 1950s Senate were given exclusive competence over the committee-agenda, including the right to recognize – or not recognize – committee members during meetings.⁶⁸

3.2. “Master of precedence”

However not only their ability to gain seniority, but also the individual capabilities of southern senators contributed to their power. That the southern states sent some of their ablest and determined individuals to the Senate, would be in accordance with the ambition-theory of Joseph Schlesinger. Schlesinger argues that most politicians seek to realize the highest ambition possible⁶⁹. Thus, many senators, according to Schlesinger, use their tenure in Congress to build a future presidential campaign⁷⁰. Seeing the Senate as a means to achieve a larger goal leads to a different approach to the duties of the Senate: More time is spent travelling the country, less in senate committees. Speeches become aimed at the news media, not fellow senators. And little time is invested in learning such mundane matters as Senate rules and precedence.

Thus, for example, John F. Kennedy - despite his considerable talent - did not become a particularly influential senator during his two terms in the Senate, yet the time he invested in speeches, tours of the country and cultivating the national media, made him all the more formidable as a Presidential candidate in 1960.⁷¹ Donald R. Matthews concluded that as “a general rule, it seems that a man who entirely adheres to the Senate folkways has little chance of ever becoming President of the United States.”⁷²

For the southerners, however, the Senate-path to the presidency might not be open. In fact, it was long held, not least among the southern members of Congress themselves, that there existed *no* viable route from Dixie to the White House. Not since Andrew Johnson had a southerner been elected President. While “nigger-baiting” and the touting of white supremacy still carried the day in southern Democratic primaries, the segregation and blatant racism associated with the South and southern politicians, was not perceived as compatible with electability in a national campaign.⁷³ Thus, instead

⁶⁸ United States Congress, *Congressional Record Vol. 103, Part 9, 1957*, 11832.

⁶⁹ Schlesinger, *Political Parties and the Winning of Office*, 34.

⁷⁰ *Ibid.*, 58.

⁷¹ W. J. Rorabaugh, *The Real Making of the President: Kennedy, Nixon, and the 1960 Election* (Lawrence: University Press of Kansas, 2009), 43–44.

⁷² Donald R. Matthews, *United States Senators and Their World*, New edition edition (Westport, Conn: Greenwood Press, 1980), 110.

⁷³ Gilbert Courtland Fite, *Richard B. Russell, Jr., Senator from Georgia* (Chapel Hill: The University of North Carolina Press, 1991), 273–275.

of plotting Presidential campaigns, most southern senators worked to become “master the precedents, the practices and even the moods of the Senate,” as White put it⁷⁴

Adding to their status as legislators of the highest quality was the southern senators position as experts on the law and legal questions. In his study of the United States Senate in the 1950s and 1960s, political scientist Donald R. Matthews noted that in the US “every political question tends to become a legal question.”⁷⁵ The Senate was filled with an outsized number of lawyers, frequently making debates – including the debate over the 1957 Civil Rights Act, - long and detailed disputes over legal technicalities and judicial principles. In the 1950s, no section of the country sent more lawyers to the Senate as a proportion of their senators, than the eleven southern states. Matthews found that in the 85th and 86th Congress, 74 % of southern senators were legal professionals.⁷⁶

3.3. “The world’s greatest deliberative body”

But the one feature most closely associated with southern Senate power in the public mind was the *filibuster*. Priding itself on being the “world’s greatest deliberative body,”⁷⁷ prolonged, sometimes seemingly endless, debate was a key feature of Senate proceedings from the start.⁷⁸ With Senate rules being silent on how long individual senators might be allowed to speak on any matter, the filibuster – after the Dutch term *vrijbuitter*, or pirate – evolved as a minority tactic in the early 1800s.⁷⁹ To filibuster a Senate debate simply meant to continue talking, denying the chamber the opportunity to close the debate and vote. What made filibusters, or the mere threat of “extended debate,” into an immensely powerful minority-tactic, was the fact that a filibuster not only blocked the legislation in question, but halted all Senate business. Once a filibuster started, the Senate floor was occupied and no legislation could be voted on, or even debated. Thus, senators with urgent legislative needs, or merely a desire to go home for the week-end, had a powerful incentive to work out compromises or vote to defeat the bill triggering the filibuster. Adding to the potency of filibusters was the fact that an issue not resolved in one two-year Congressional period would have to be re-introduced in the next. After a particularly troublesome, and for many senators embarrassing, filibuster against arming

⁷⁴ White, *Citadel*, 68.

⁷⁵ Matthews, *United States Senators and Their World*, 36.

⁷⁶ *Ibid.*, 38.

⁷⁷ United States Congress, *Congressional Record Volume 103, 85th Congress, 1st Session*.

⁷⁸ Smith, *The Senate Syndrome*, 25.

⁷⁹ *Ibid.*

American commercial-ships to combat German submarines during World War I, the Senate adopted a formal rule that sought to limit the influence of dilatory speeches.⁸⁰ The new rule XXII established a mechanism for forcing an end to debate provided that 2/3 of all senators voted for cloture. As organized filibusters became a repeated southern maneuver against civil rights legislation in the 1930s, 1940s and early 1950s, the interpretation of rule XXII became a staging-ground for bitter debates between Senate liberals and conservatives.⁸¹

3.4 “The southern bloc”

The filibuster could however not be deployed with necessary force absent efficient coordination between senators opposing legislation. Only when senators teamed up and took turns talking, could a Senate minority make the filibuster last long enough to derail legislation. By the mid-1950s “holds” and other modern dilatory techniques empowering individual senators had not been developed.⁸² Proper organization was key to minority power in the Senate. At this the southerners excelled. The one-party nature of the South helped, as did probably the quality of southern senators. In the mid-1930s the southerners started organized a formal Senate caucus to deliberate legislative strategy led by Texas Senator Tom Connally.⁸³ According to Keith Finley, increased pressure for federal civil rights legislation in the 1930s was the driving force behind the need for a better organized southern faction in the Senate.⁸⁴

After the world war, leadership of the southern bloc in the Senate passed to a perhaps even more astute and respected parliamentarian, the above mentioned Richard B. Russell of Georgia, for whom the main Senate office building is still named. Under the Russell’s leadership the Southern bloc evolved into a disciplined caucus, consisting of 19 Dixie senators at the beginning of the 85th Congress, and 18 senators after Price Daniel of Texas died in January 1957 and was replaced by the more liberal Ralph Yarborough. The eighteen senators – with the exception of Herman Talmadge elected to the Senate in 1956 - all signed the *Southern Manifesto*⁸⁵ in opposition to the Supreme Court’s ruling on school integration. These were John Sparkman and Lister Hill of Alabama, William

⁸⁰ Ibid., 26–27.

⁸¹ Finley, *Delaying the Dream*, see e.g p. 103-104 among other places.

⁸² Walter J. Oleszek, “Proposals to Reform ‘Holds’ in the Senate, CRS Report for Congress” (Congressional Research Service, December 20, 2007), https://digital.library.unt.edu/ark:/67531/metadc93963/m1/1/high_res_d/RL31685_2007Dec20.pdf.

⁸³ Finley, *Delaying the Dream*, 23.

⁸⁴ Ibid., 22–23.

⁸⁵ See chapter 4

Fulbright and John L. McClellan of Arkansas, George Smathers and Spessard Holland of Florida, Richard B. Russell and Herman Talmadge – an ardent segregationist despite the fact that he did not sign the Southern Manifesto -, Allen J. Ellender and Russel N. Long from Louisiana, James O. Eastland and John Stennis from Mississippi, Sam Ervin and W. Kerr Scott of North Carolina, Strom Thurmond and Olin D. Johnston of South Carolina, Price Daniel from Texas – until his death in January 1957 – Harry F. Byrd and Will Robertson of Virginia.

3.5. “With a wink and a nod”

Unlike the modern Senate, the Senate long remained without efficient party leadership.⁸⁶ Majority Leaders had few sources of power and almost no habit of using whatever power they might possess. This, of course, made it all the easier for sectional leaders like Richard Russell to impose discipline on “their” factions. This situation changed in the mid 1950s, but mostly because of the ambition, energy and talent of one particular senator, Lyndon Johnson of Texas, who transformed the role of Majority Leader into a real position of power, creating the modern role of Senate party-leader in the process.⁸⁷ Johnson was of course a southerner, and was only elected minority leader in 1953 because of the support given to him by Richard Russell and the southern caucus.⁸⁸ And he was only able to turn the Majority Leadership into a force to be reckoned with by his ability to work closely with southern committee-leaders and other senior southern senators.⁸⁹

By the mid-1950s the Democrats did not control the institution the way they had in the prime-days of the New Deal coalition. Republicans held a Senate majority from 1952 to 1954, and were only one vote shy of the Democrats after Eisenhower’s first mid-term election.⁹⁰ Yet the strong standing of the GOP did in fact not weaken, but strengthen the bargaining position of the southern Democrats. What played into the hands of the southerners, was the fact that the Republican Senate party was roughly as balkanized as the Democratic Senate Caucus. Just as the North-South divide created a gulf between liberal and conservative Democrats, there existed a profound division between liberal North-Eastern Republicans, mostly pro-business, internationalist and

⁸⁶ Smith, *The Senate Syndrome*, 27.

⁸⁷ MacNeil and Baker, *The American Senate*, 108.

⁸⁸ Caro, *Master Of The Senate*, 475–476.

⁸⁹ *Ibid.*, 496–498.

⁹⁰ “U.S. Senate: Party Division,” accessed April 14, 2017, https://www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm.

liberal on civil rights, and fellow GOP-representatives from the Midwest, often conservative, isolationist and starkly opposed to New Deal/Fair Deal economic policy.⁹¹ In the latter group, conservative southern Democrats found senators whose ideology did not much differ from their own, at least when it came to defending “states’ rights” against civil rights legislation⁹². In the late 1940s one observer noted that Robert Taft, a conservative Midwestern senator and Richard Russell ruled the Senate with “a wink and a nod” across the Senate aisle.⁹³ Recent studies cast doubt on the solidity of the “conservative coalition” between southern Democrats and Republicans in the Senate, by pointing out that several southern Democrats voted quite consistently with New Deal and Fair Deal programs⁹⁴ – even Richard B. Russell supported large parts of the New Deal agenda.⁹⁵ Yet the Southern caucus remained united and willing to cooperate closely with Republican conservatives on legislative matters where state’s rights and the southern way of life was on the line.

3.6 “The trail of inquiry leads to the Negro”

The seniority system, the filibuster, the discipline and quality of southern senators and their ability to make alliances with conservative Republicans, all contributed to the power of the South in the mid 20th century American Senate. These sources of power were first and foremost *negative*. They were ways to delay or defeat legislation by using the powers of a determined Senate minority, not a recipe for generating regular majorities to enact new legislation. Yet negative power was first and foremost what conservative southern Democrats needed. And the reason they needed it was civil rights.

“Whatever phase of southern politics one tries to understand sooner or later the trail of inquiry leads to the Negro,” V.O. Key wrote in his great study of *Southern politics in state and nation*⁹⁶. Noting that the population of African-Americans in the South in the late 1940s varied from 14 % in Texas to 44 % in Mississippi, Key argued that southern politics had been, and still was, dominated by whites living in the so-called southern “black belt” where the African-American population was densest. Although white people in the black belt were “few in number, their unity and their political skill

⁹¹ Thurber, *Republicans and Race*, 24–25.

⁹² Herbert Brownell, John P. Burke, and John Chancellor, *Advising Ike: The Memoirs of Attorney General Herbert Brownell*, 1st Edition edition (Lawrence: University Press of Kansas, 1993).

⁹³ Robert Mann, *The Walls of Jericho: Lyndon Johnson, Hubert Humphrey, Richard Russell, and the Struggle for Civil Rights* (San Diego: Harvest Books, 1997), 75.

⁹⁴ Katznelson, Geiger, and Kryder, “Limiting Liberalism.”

⁹⁵ Fite, *Richard B. Russell, Jr., Senator From Georgia*, 496.

⁹⁶ Key, *Southern Politics In State and Nation*, 5.

have enabled them to run a shoestring into device power at critical junctures in southern political history.”⁹⁷ The power of black belt whites over southern politics was largely synonymous with the power of the plantation owners, still dominating the economic structure of most southern states To the plantation owners, and the various businesses integrated in the plantation economy, white supremacy was seen as a key to their mode of production. ⁹⁸.

Planation-owners were surely not alone on the political stage in the South. Several southern states harbored strong populist traditions, originating in resentment white small farmers from the hills and upcountry felt towards the plantation-aristocracy and their economic interests. In some states the populists threatened to undercut white supremacy in the 1880s and 1890s by actively courting the black vote, and resisting the growing disenfranchisement of black voters that followed the end of Reconstruction and the withdrawal of Union troops from the South. ⁹⁹ The original populist movement with their demand for federal aid for farmers, a return to the silver-standard and skepticism of big business and plantation-power, declined and ultimately collapsed by the beginning of the 20th century.¹⁰⁰ Yet populist tendencies lingered. During the depression years support for New Deal programs remained high in many southern states. The attitudes the new wave of southern populist had to race varied. Some, like Alabama’s legendary governor” Big Jim” Folsom, made a point out of not caring about white supremacy. ¹⁰¹ Others, like Mississippi Senator Theodore Bilbo, perfected the political communication of “nigger baiting,” mixing anti-business populism with flagrant racism in his Senate speeches.¹⁰²

3.7. “Inadequate civil rights statutes”

In 1946 President Harry Truman concluded “in its discharge of the obligations placed in it by the constitution, the Federal Government is hampered by inadequate civil rights statutes”¹⁰³ It had not always been that, way. During the Reconstruction years after the Civil War, three constitutional amendments, the Thirteenth abolishing slavery, the

⁹⁷ Key, *Southern Politics In State and Nation*.

⁹⁸ Ibid.

⁹⁹ Dewey W. Grantham, *The Life and Death of the Solid South: A Political History*, Reprint edition (Lexington, Ky.: The University Press of Kentucky, 1992), 17.

¹⁰⁰ Ibid., 19.

¹⁰¹ Dan T. Carter, *The Politics of Rage: George Wallace, the Origins of the New Conservatism, and the Transformation of American Politics*, Reprint edition (Baton Rouge: Louisiana State University Press, 1996), 73.

¹⁰² Finley, *Delaying the Dream*, 24.

¹⁰³ Gressman, “The Unhappy History of Civil Rights Legislation,” 1343.

Fourteenth providing equal protection of the law for all citizens, and the Fifteenth securing the right to vote for all citizens, and five statues of federal law to ensure the civil rights of all Americans, had been enacted by Congress.¹⁰⁴ Together, these bills, in the words of Eugene Gressman, “effectively nationalized the civil rights of all inhabitants in the United States.”¹⁰⁵

But when Reconstruction ended in 1876-1877, a judicial pushback against these civil rights followed. The doctrine of state’s rights was revived, and in a series of cases the Supreme Court elected to interpret the three “civil war” amendments to the Constitution in the narrowest sense possible.¹⁰⁶ In 1875, federal laws prohibiting segregation in public facilities was declared unconstitutional. In 1896, segregation of public schools was upheld by the Court, and the doctrine of “separate but equal”-facilities were established.¹⁰⁷ Throughout the former Confederate Southern states, the new judicial situation unleashed a wave of state-legislation mandating racial segregation.¹⁰⁸ In addition to segregation in schools and public life, state-laws effectively nullified the Fifteenth Amendment’s protection of the right to vote for black citizens by introducing various practices like poll-taxes, grandfather-clauses (under which only citizens with a grandfather with the right to vote could vote) and notorious “literacy” tests to disenfranchise African-American voters.¹⁰⁹ By the start of the 20th century, segregation and white supremacy was the law of the southern states. It would remain so for a very long time indeed.

The men who began to make cracks in the legislative ice were dressed in white hoods and robes. In the depression-ridden 1930s the number of lynchings, and the capacity of Northern news-media to report the crimes against black citizens in the South, both increased dramatically. ¹¹⁰

In the mid 1930s began a series of organized attempts to get Congress to enact federal civil rights legislation. Lynching became the issue mobilizing support for federal action. If states and local authorities would not investigate, prosecute and sentence the criminals murdering black families, the federal government should. Or so thought the

¹⁰⁴ Kluger, *Simple Justice*.

¹⁰⁵ Gressmann 1952, p. 1326

¹⁰⁶ Richard Kluger 1976 *Simple Justice*, New York: Alfred Knopf, p 56

¹⁰⁷ Library of Congress, “Plessy v. Ferguson: Primary Documents in American History (Virtual Programs & Services, Library of Congress),” webpage, accessed April 14, 2017, <http://www.loc.gov/rr/program/bib/ourdocs/plessy.html>.

¹⁰⁸ Kluger 1976, p 72

¹⁰⁹ Caro 2003, p 689

¹¹⁰ Finley, *Delaying the Dream*, 16.

authors of the Costigan-Wagner Act introduced to the Senate in 1935. With southerners far less deeply entrenched in the committees than in the mid 1950s, the bill made it to the Senate floor. There, however, it met with the extensive will of southerners to “educate” the population on the constitutional problems associated with by-passing state law-enforcement on particular types of crimes.¹¹¹ The mere threat of a sustained filibuster was enough to bury the bill. It re-surfaced in 1937, passing the House with a comfortable 277-119 majority, and this time it would take a full-blown filibuster to defeat it on the Senate floor.¹¹² Several other attempts to pass federal anti-lynching bills faced the same fate. By the late 1930s, southern senators had deployed outright filibusters, alongside obstruction-tactics like day-long debates on the approval of the Congressional Record as well as refusing to convene Senate committees to avoid discussion of civil rights legislation.¹¹³

Accounts of how many civil rights bills were introduced to the Senate in the 1930s, 1940s and 1950s vary. On August 7 1957, Republican Senator Everett Dirksen inserted to the Congressional Records a list of 14 major civil rights programs failing to pass Congress during the previous 20 years. (CR 7 August 13893-13894)

The issues debated evolved from anti-lynchings measures in the 1930s, to a permanent Fair Employment Practices Commission (FEPC) to combat discrimination in the labor-market and the poll tax in the 1940s, and became more and more concentrated around voting-rights in the 1950s.

Perhaps the most determined effort to legislate a major civil rights program before 1956-57 came in 1948-49 when Harry Truman - recently the unlikely champion of a hard fought Presidential campaign where he had campaigned against the “do nothing Congress”- pushed for a permanent FEPC, removal for the poll-tax and a civil rights commission.¹¹⁴ Despite Truman’s electoral mandate and determined effort, the fate of the civil rights program was sealed when liberals failed to change rule XXII. With the filibuster intact, the southerners easily defeated Truman’s civil rights program.¹¹⁵

Not only did the southerners defeat Truman’s civil rights proposals, in the same period they also significantly strengthened their hold of the Senate’s permanent committees. With James Eastland promoted to chairman of the Judiciaries

¹¹¹ Ibid., 17.

¹¹² Ibid., 21.

¹¹³ Ibid., 24–30.

¹¹⁴ William C. Berman, *The Politics of Civil Rights in the Truman Administration* (Columbus: Ohio State Univ Pr, 1970), 154.

¹¹⁵ Ibid., 161.

subcommittee on civil rights, and John Stennis heading a Rules Committee subcommittee with responsibility for poll-tax legislation, one newspaper observed that “The state of Mississippi is now in charge of all civil rights legislation except the FEPC in the Senate”¹¹⁶

3.8. “An idea whose time had come”

Yet change was under way. The world war was a watershed in the struggle for civil rights in America: Increased employment and living-standards for black Americans created by the war- economy was matched by the decreased willingness of many young black men to accept segregation and white supremacy after returning from a war fought to protect democracy from fascism.¹¹⁷ Adding to the pressure for civil rights was the ideological climate of the cold war, the growing national and international concern for human rights, and structural changes in the American demography, most importantly the “Great migration” of black families from the Southern states to the industrial megacities in the North which among other things greatly increased the political clout of black Americans. From the late 1940s they started to constitute a major political force in several cities of populous Northern states.¹¹⁸

In the mid-1950s the steadily growing public support for black civil rights transformed into an urgent demand for political action from the federal government. Part of the reason was to be found in the reaction of Southern states to the increasing assertiveness of black Americans after World War II. Determined to protect racial segregation and white supremacy, a number of former Confederate states actually sharpened its segregationist laws and practices in the late 1940s. This was most evident when it came to the right to vote. From the late 1940s on the increase in number of blacks trying to register was matched with a similarly increased industriousness on behalf of local and state officials to stop new black voters from registering.¹¹⁹

But more than anything, the growing feeling of urgency in the civil rights debate was the product of a series of dramatic events occurring in the mid 1950s: In 1954 the Supreme Court made history by deciding that racial segregation “had no place” in public

¹¹⁶ Ibid., 162.

¹¹⁷ Chafe, *The Unfinished Journey*, 2011.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

education, in the case of *Brown v. Board of Education*.¹²⁰ The landmark decision led to the speedy desegregation of schools in some border-states and in some counties in the eleven southern states. But with no clear date set for the completion of desegregation, *Brown* invited resistance. Only in 1955 did the Supreme Court decide that desegregation should proceed with "all deliberate speed." Most southern Governors and legislatures simply refused to comply, some even changing their constitutions to remove the obligation to provide public education.¹²¹ In the South, white supremacist violence increased.¹²² In 1956 the murder of the 11-year old African-American boy Emmet Till in Mississippi, and the following acquittal of his two white murderers (they later admitted to the murder) despite the presence of witnesses led to public outcry all over America.¹²³

The Supreme Court ruling on school integration also sparked an increased effort among African-Americans in the South to challenge racial segregation. With *Brown* in place, a number of black students sought admission to "white" universities, some gaining entry only to face intimidation and violence from white students.¹²⁴ And on December 1, 1955, Rosa Parks refused to give up her seat on the Montgomery City Bus Line.

3.9. "Continued to be ruled from Birmingham"

And America was responding. In fact, even before the dramatic events of the mid 1950s, there were clear signs of change in the American people's attitude to race. By the late 1940s and early 1950s, pollsters, the new wise-men of modern society, could tell that on an increasing number of their indicators, the majority favored greater racial equality, and tougher federal action against states unwilling to redress injustice themselves. George Gallup's monthly examination of the attitudes of voters, suggested that by 1949 a clear majority – 69 % - supported the abolition of the poll tax. A less substantial plurality, 44 % to 41 %, also supported a FEPC to require employers to hire people without regard to their race, religion, color or nationality¹²⁵ And a majority – 50 % against 34 % nationally - believed time was ripe to end segregation in public

¹²⁰ "Brown v. Board of Education," *LII / Legal Information Institute*, accessed April 22, 2017, <https://www.law.cornell.edu/supremecourt/text/347/483>.

¹²¹ Bartley, *New South, 1945-1980*, 197.

¹²² *Ibid.*, 204.

¹²³ Caro, *Master Of The Senate*, 708.

¹²⁴ Bartley, *New South, 1945-1980*, 195.

¹²⁵ Gallup, *The Gallup Poll-Public Opinion-Volume Two*, 810.

transportation.¹²⁶ Southern respondent favored segregation, however, on a 5 to 1 margin.¹²⁷

Thus, by the mid 1950s there had developed a substantial gap between public opinion, increasingly friendly to black civil rights, and the public's representatives. Or at least one coalition of those representatives, dug in deep in the hallways and chambers of the United States Senate. There could be no doubt that the stubborn segregationists were losing ground in the electorate, The New York Times concluded on March 18 1949, reminding its readers that "last November Governors Thurmond and Wright, running on a States Rights ticket, received about 2 ½ % of the votes cast for President." But still, the paper lamented, "in the matter of federal action on civil rights, we will continue to be ruled from Birmingham."¹²⁸

¹²⁶ Ibid., 782–783.

¹²⁷ Ibid.

¹²⁸ "NOT THE LAST WORD," accessed April 14, 2017, <http://query.nytimes.com/mem/archive-free/pdf?res=9F07E7DE163BE23BBC4052DFB5668382659EDE>.

Chapter 4. “Abandon hope all ye who enter here”

“I want to run the Senate. I want to pass the bills that need to be passed. I want my party to do the right thing. But all I ever hear from the liberals is nigra, nigra, nigra”

LYNDON B. JOHNSON, MAJORITY LEADER U.S SENATE¹²⁹

“Proud” was what he said he was, but according to his biographers, “troubled,” is a more precise description of President Dwight D. Eisenhower’s state of mind when he addressed the issue of civil rights in his annual State of the Union in January 1956.¹³⁰ While the President in his speech was able to cite several advances - including desegregation in D.C. and of the Armed forces - that justified his talk of pride in “the progress our people have made in the field of civil rights”¹³¹, the increased hostility in the civil rights debate following Brown doubtlessly troubled the popular Executive.¹³²

This chapter will examine how the troubled President, and his even more worried Attorney General, in 1956 believed the time was right to attempt to pass a major civil right program in Congress - a program that eventually became the 1957 Civil Rights Act. Relying largely on secondary literature, I will discuss the content of that legislation, how the Eisenhower-administration processed it, and then, based on the Congressional Records and oral histories, in detail, how the first confrontation over the civil rights bill unfolded in the Senate in the summer of 1956.

4.1 “A program to advance the efforts of Government”

In his 1956 State of the Union message Eisenhower told Congress and the nation that it was “disturbing that in some localities allegations persist that Negro citizens are being

¹²⁹ Caro, *Master Of The Senate*, 832.

¹³⁰ Ambrose, *Eisenhower*, 443.

¹³¹ “Dwight D. Eisenhower: Annual Message to the Congress on the State of the Union.,” accessed April 14, 2017, <http://www.presidency.ucsb.edu/ws/?pid=10593>.

¹³² Nichols, *A Matter of Justice*, 159.

deprived of their right to vote and are likewise being subjected to unwarranted economic pressures.”¹³³

Eisenhower announced that he wanted Congress to establish a Bipartisan Commission to investigate the problem, and furthermore, “there will soon be recommended to the Congress a program further to advance the efforts of the Government, within the area of Federal responsibility, to accomplish these objectives.”¹³⁴

In his *A Matter of Justice: Eisenhower and the beginning of the civil rights revolution* David Nichols argues that the increased temperature in the civil rights debate played an important role in convincing Eisenhower that the time had come to signal the introduction of new legislation.¹³⁵ According To Timothy N. Thurber’s study of the Republican Party’s attitude to civil rights in the period, Eisenhower desperately wanted an alternative that could “mitigate tensions” after the Supreme Court’s *Brown*-ruling, so that the President wouldn’t have to send the army to the South to enforce school-integration.¹³⁶

Eisenhower’s closest political advisor and Attorney General, Herbert Brownell, was a well-known civil rights liberal.”¹³⁷ Brownell had convinced Eisenhower, despite the President ambivalent position on school-integration, to allow him to appear before the Supreme Court with a brief in support of desegregation under the *Brown* deliberation.¹³⁸ Now the Attorney General was frustrated by the federal government’s lack of legal authority in civil rights cases,¹³⁹ The almost complete lack of southern compliance with *Brown*, as well as what seemed to be a decrease in black voter-registration in several southern states, added to Brownell’s lists of reasons for tougher legislative measures.¹⁴⁰ In November (or December, accounts vary) 1955, Herbert Brownell began drafting a legislative program that he believed would remedy his own inability to intervene on behalf of black Americans being deprived of their basic civil rights, a bill that would in time become the first civil rights act passed in the 20th Century.

¹³³ “Dwight D. Eisenhower: Annual Message to the Congress on the State of the Union.,” accessed December 23, 2016, <http://www.presidency.ucsb.edu/ws/?pid=10593>.

¹³⁴ Ibid.

¹³⁵ Nichols, *A Matter of Justice*, 122–123.

¹³⁶ Thurber, *Republicans and Race*, 100.

¹³⁷ Ambrose, *Eisenhower*, 341–342.

¹³⁸ Brownell, Burke, and Chancellor, *Advising Ike*, 190.

¹³⁹ Nichols, *A Matter of Justice*, 117.

¹⁴⁰ Ibid., 120.

4.2. “The Southern Manifesto”

However, in the winter of 1955 – 1956, Herbert Brownell was not the only one drafting documents that sought to provide answers to the increasingly hostile debate over civil right. In the United States Senate, Richard Russell, worked his troops overtime. Sensing the fiery rage created among white southerners by *Brown* - and perhaps fearing that some of his more simple-minded constituents might not be attuned to finer points of the constitutional which prevented the southern senators from filibustering the Supreme Court - the southerners saw the need for placing themselves in the front line against Brown, integration and the “destruction of the southern way of life. If not, the leadership of “massive resistance” be turned over to Governors, state-assemblymen or random demagogues with aspiration for higher office. ¹⁴¹”

The measure of choice was a document outlining their opposition to school-integration. The “A Declaration of Constitutional Principles,” - commonly referred to as the “Southern manifesto” - was a battle cry against *Brown*. The Manifesto declared that the Supreme Court decision in “public school cases” was the product of men substituting “naked power for established law.” ¹⁴²*Brown* was no less than a “clear abuse of judicial power,” “contrary to the Constitution” and likely to “destroy the system of public education.”

In the Senate, only three of the 22 senators from the eleven former Confederate states refused to sign or - in the case of Lyndon B. Johnson- was *excused* from signing. Robert A. Caro finds that Richard Russell understood signing the Manifesto would put Johnson in a difficult situation as Majority Leader – and potentially weaken Johnsons Presidential ambitions. ¹⁴³ The two other defectors were to by now well-known deviators Estes Kefauver and Albert Gore. ¹⁴⁴

4.3. “The Brownell bill”

The Southern Manifesto would not be published before February 23, 1956. By December 2 1955, Herbert Brownell was ready to present a comprehensive legislative program for cabinet review. The bill Brownell proposed included four main provisions. First, as Eisenhower was to announce in his State of the Union-address, a commission on voting

¹⁴¹ Finley, *Delaying the Dream*, 142–143.

¹⁴² United States Congress, *Congressional Record Vol. 102, Part 4*, 1954, 4459–4460.

¹⁴³ Caro, *Master Of The Senate*, 787.

¹⁴⁴ United States Congress, *Congressional Record Vol. 102, Part 4*, 4459–4460.

rights to investigate “where there are charges that by one means or another the vote is being denied” either by “unwarranted economic or other pressures.”¹⁴⁵ The Commission, Brownell suggested, should have the power to subpoena witnesses and take testimony under oath.¹⁴⁶

Section two of Brownell’s proposed civil rights bill provided for the appointment of an additional Assistant Attorney General in charge of a new civil rights division within the Justice Department.¹⁴⁷ Previously civil rights had belonged to the domain of the Criminal Division of the JD. In addition to the symbolism involved in establishing a new, separate Civil Rights Division, Brownell believed strongly that to reduce opposition to federal involvement in civil rights cases, “more emphasis should be on civil law remedies.”¹⁴⁸ As it turned out, Brownell’s assessment proved accurate. In the Senate proceedings on the civil rights bill, southern conservatives deliberately attempted to frame the issue of federal civil rights as a question of *criminal law*, warning that one would have to assume that the Brownell bill would give federal judges the authority to throw suspected civil rights offenders in jail indefinitely, without jury trial.

It was the third section of the Brownell bill that became the epicenter of debate, and rallying ground for opposition to the bill. According to section III in Brownell’s bill, the Attorney General should have the authority to *initiate* civil suits to protect constitutional rights.¹⁴⁹

The right to initiate civil rights suits, placed, as the language clearly implies, the *initiative* with the federal government. It would not be necessary for black citizens to approach the Federal government and ask for aid, with risk of intimidation and violence associated with such a move. The Justice Department would, if the bill was passed, have the right to enter itself into the equation when it perceived that constitutional rights were violated. Under the Brownell bill could be held in contempt until they registered black voters.

Instead of seeking to convict persons violating civil rights laws, the aim of civil proceedings would be to avoid any crime from happening in the first place. With the Brownell’s bill title III in place, the Justice Department could ask federal judges to make injunctions preventing violations of civil rights, by prohibiting persons previously

¹⁴⁵ “1956_04_01_Cabinet_Paper.pdf,” accessed April 16, 2017, https://eisenhower.archives.gov/research/online_documents/civil_rights_act/1956_04_01_Cabinet_Paper.pdf.

¹⁴⁶ Ibid.

¹⁴⁷ United States Congress, *Congressional Record Vol. 102, Part 4*, 4459–4460.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

involved in intimidating black citizens from approaching the polling stations on election day, or by ordering a registrar to register a particular voter. Injunctions could also be used to produce full records of registered voters from local board of registrars before election day, making the federal government able to check for foul play. If any persons refused to comply with the injunctions made by a - presumably federal - judge, the judge could hold the person in civil contempt, imprisoning or fining said official until he complied to the order.

While voting rights was presented as the main concern for the civil rights bill, the third section of the bill suggested by Brownell included broad language that it possible for the Justice Department to seek civil court injunctions in other cases related to civil right. One did not have to share the paranoia of southern segregationists to imagine that the Justice Department would use a free-pass for seeking civil proceedings against civil rights violations to address issues such as school-integration and desegregation of other facilities through the injunctive power of federal district courts. And with *Brown* being the law of the land, there could furthermore be little doubt that such orders would be sustained by liberals of the Warren-court.

The fourth section of the Brownell-bill included provisions dealing specifically with the right to vote. This section only covered elections, or primaries for federal offices; President, Vice President, presidential elector, Senate and Congress. But it would provide the Attorney General with the power to “institute for the United States” civil actions or preventive relief against any person “engaging in” or when there was reason that any person was “about to engage in” acts that deprived any other person of the right to vote – be that “coercion,” “intimidation” or “threats.”¹⁵⁰

4.4. “A moderate bill”

The Attorney General’s proposals faced fierce resistance even within Eisenhower’s cabinet. Leading the opposition against federal civil rights legislation was the infamous FBI Director Herbert Hoover.¹⁵¹ Hoover warned against “extremists on both sides,” and true to his reputation, interpreted the tension around civil rights as a result of the action of communist “intent on forcing the Administration to take a stand on civil rights legislation with the present Congress.”¹⁵² But Eisenhower sided with Brownell,

¹⁵⁰ “Civil_Rights_Bill.pdf,” accessed April 16, 2017,

https://eisenhower.archives.gov/research/online_documents/civil_rights_act/Civil_Rights_Bill.pdf.

¹⁵¹ Nichols, *A Matter of Justice*, 126.

¹⁵² *Ibid.*

describing the bill as “moderate” thus securing cabinet approval of the legislation. According to Nichols Eisenhower stated in a March Cabinet-meeting that “I believe that Herb Brownell should put forward what he has got here, but with a statement that many Americans understandable are separated by deep emotions on the subject.”

While Herbert Brownell was busy dotting the i-s on his landmark civil rights legislation, the southern solons of the Senate had a document of their own to share with the public. The honor of presenting “The Declaration of Constitutional principles” was awarded the Southern caucus’s most unrelenting segregationist, South-Carolina senator and former Dixiecrat Presidential candidate Strom Thurmond. On March 12, Thurmond shared the pledge of more than a hundred senators and congressmen to “use all lawful means to bring about a reversal of this decision which is contrary to the Constitution and to prevent the use of force in its implementation.”¹⁵³

With the Southern Manifesto out in the open, and southern senators positioning themselves as the leaders of the resistance to Brown, sceptics in Eisenhower’s cabinet resumed their criticism of Brownell’s ambitious legislation. On March 23 the Cabinet was called together for a special session dealing exclusively with the Brownell-bill. In this second round, Secretary of State John Foster Dulles spearheaded the opposition to the bill, urging Brownell to “go a bit slow to accomplish by law what is essentially a social matter.” Dulles warned, somewhat disingenuously, that section III of the bill “if literally applied, would send a large portion of the white southerners to jail.”¹⁵⁴

While holding his ground in the cabinet, Eisenhower according to Nichols seemed to harbor doubts. Republican Congressional leaders fueled his second-thoughts by laying out the extremely low chances of getting a civil rights measure passed the Senate, a problem underscored by the fact that one-third of the congressional session had already come and gone without any bill being sent to the House.¹⁵⁵

In a private meeting Eisenhower and Brownell agreed that Brownell would send the legislation to Congress, but without the customary letter from the President recommending the legislation *and* without the broad section III and IV, limiting the legislation to a civil rights commission and a new section in the Justice Department.¹⁵⁶

¹⁵³ United States Congress, *Congressional Record Vol. 102, Part 4*, 4459–4460.

¹⁵⁴ Nichols, *A Matter of Justice*, 130.

¹⁵⁵ *Ibid.*, 129.

¹⁵⁶ *Ibid.*, 131.

That could have been the end of the two main provisions of the 1957 Civil Rights Act, and with them the tools required for a more efficient enforcement of civil rights through federal action. However, it was not.

For in his statement to the House committee on the Judiciary, Brownell argued for a far more far-reaching and radical bill than the one he presented. Driving home the point that the Justice Department at present had no adequate means to address the blatant violation of civil rights, Brownell left the good men and women of House Judiciary Committee guessing why the bill he presented included nothing more than an exploratory Committee and a new high-ranking bureaucrat. One of those members, Republican congressman of New York Kenneth Keating – almost certainly by pre-agreement with Brownell¹⁵⁷– wanted to guess no more, and asked the Attorney General if the Justice Department “perhaps would be able to draft some additional legislation” to meet the various grievances listed in his testimony? That Brownell could. In fact, Brownell informed the committee, such legislation was written already. “We have drafts right here,” Brownell said, and pulled the censored parts III and IV from his pockets. Keating, a prominent civil rights liberal, then promptly added the sections as amendments to the original Brownell-bill.¹⁵⁸

Brownell got what he wanted. Yet his clever maneuver in the hearing, left one question unresolved: Was the bill, the *whole* bill, endorsed by the President? That question would become central to the Senate debate in 1957. It is not entirely unreasonable to argue that Brownell’s industrious maneuver in the House committee hearing in 1956, at the same time ensured the introduction of a comprehensive civil rights bill, and fundamentally weakened the chance of the bill’s passage.

4.5. “The jig’s up”

As with previous civil rights bills, the Brownell Bill made headway in the House of Representatives. In fact, liberal Democrats in the House had already submitted a civil rights bill of their own at the start of the session in January. Now Judiciary Committee Chairman Emmanuel Celler, the author of the House-bill, agreed to subordinate his bill to Brownell’s in order to secure bi-partisan support, and the support of the White House.

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¹⁵⁷ Caro, *Master Of The Senate*, 781.

¹⁵⁸ Nichols, *A Matter of Justice*, 134.

¹⁵⁹ Caro, *Master Of The Senate*, 781.

Before the bill could be scheduled for a vote in the House it had to pass the Rules Committee with competence over House procedure. That committee was chaired by a southerner, Howard Smith of Virginia that took care to delay and if possible obstruct civil rights legislation¹⁶⁰. The House, however, distinguished itself from the Senate in another way. Here the leader, or the Speaker, had both formal and informal power to organize proceedings.¹⁶¹ Including the power to remove members from the Rules Committee – if they should revert to dilatory behavior not desired by the Speaker. And in 1956 the House had a Speaker more powerful than few others in Congressional history, Texas Congressman Sam Rayburn¹⁶². Rayburn, a southerner, was also a staunch New Dealer and a moderate on racial issues¹⁶³. According to Robert Caro Rayburn studied the Brownell bill in detail and concluded that it was “fair.”¹⁶⁴ But, Rayburn was also a Democratic partisan. And he believed that this bill could weaken the Democratic Party in the 1956 Presidential and Congressional elections, *if* the civil rights issue went up in flames in a Senate spectacle with southern Democrats filibustering the bill before the entire nation in an election year¹⁶⁵.

So he delayed. Or, rather, allowed Smith and the rules-committee to let the clock keep running. April became May and May drifted over in June. First in middle of that month, with only a few weeks left of the 84th Congress, Rayburn decided to act. After being summoned to the Speakers office, Rules Committee Chairman Smith red writing on the wall. “The jig’s up. I know it,” Smith admitted. ¹⁶⁶A week later H.R. 627 was reported out of the Rules Committee.

Southern House conservatives did not simply roll-over, though. Trying to catch the proponents of civil rights by surprise, they moved for a vote on July 23. ¹⁶⁷ But to no avail. On July 23 1956 the United States House of Representatives passed H.R 627, “An Act to provide means of further securing and protecting the civil rights of persons within

¹⁶⁰ “SMITH, Howard Worth | US House of Representatives: History, Art & Archives,” accessed April 14, 2017, <http://history.house.gov/People/Detail/21821>.

¹⁶¹ Smith, Roberts, and Wielen, *The American Congress*, 158–159.

¹⁶² Anthony Champagne, *Congressman Sam Rayburn* (New Brunswick, N.J: Rutgers University Press, 1986), 1–2.

¹⁶³ Robert A. Caro, *The Path To Power: The Years of Lyndon Johnson*, New Ed edition (London: Pimlico, 1992), 306.

¹⁶⁴ Caro, *Master Of The Senate*, 781.

¹⁶⁵ *Ibid.*, 790.

¹⁶⁶ *Ibid.*, 791.

¹⁶⁷ United States Congress, *Congressional Record Vol. 102, Part 11*, 1956, 13998–13999.

the jurisdiction of the United States” with 279 representatives voting in favor and only 126 opposing the bill. ¹⁶⁸

4.6. “Let us pretend I am a senator”

What happened next became Senate legend. Thanks to the lengthy process in Eisenhower’s cabinet and Sam Rayburns hesitation to immediately force a House-vote, the southerners were in a good strategic position: time was running out. If they could just avoid a vote a few more days, the entire process would stop and the civil rights-liberals would be forced to start all over again introducing a new bill to the next Congress¹⁶⁹.

Southern as the segregationists in the Senate were, they were also Democrats. And as experienced politicians, they were fully aware of the problems ending the Congressional session with an extended southern Senate “education-campaign” on civil might create for their Democratic friends in the North, many of whom were facing an uphill election in the shadow of a popular Republican President. So they needed to get the Brownell-bill out of the way without making a fuzz.

There was only one way to make H.R. 627 go away without any noise being made: The civil rights bill had to be referred to the Senates Judiciary Committee, where chairman James O. Eastland of Mississippi would be sure to postpone deliberating it until the Senate session expired. However, it was clear that any attempt to move the bill into Eastland’s pockets, would generate just the kind of political mess the southerners, and Democratic party leaders in both houses of Congress, did not desire. For among the Democrats in the Senate there were members more concerned with demonstrating that the time had come to legislate on civil rights, than on helping their southern friends, or even their party. Liberals like New Deal economist Paul Douglas Democrat of Illinois, Herbert Lehman Democrat of New York and Tom Hennings Democrat of Missouri, had all but *announced* that would very much like to make as much fuzz as possible, and that they certainly would object to H.R. 627 being handed over to James Eastland and a certain death. ¹⁷⁰ While, as will be discussed in greater detail when we approach the 1957 debate, there was some ambiguity in the Senate rules when it came to the question of committee-referral, most notably if such referral could only be done by “unanimous

¹⁶⁸ Ibid., 13998–13999.

¹⁶⁹ Smith, Roberts, and Wielen, *The American Congress*, 230–.

¹⁷⁰ Finley, *Delaying the Dream*, 155.

consent,” there could be no doubt that if any of the liberals , got the chance to object, a prolonged debate would ensue where the split in the Democratic party on civil rights would become clear as day. ¹⁷¹

So the southerners needed a way to get the H.R. 627 referred to committee without their liberal party-colleagues noticing it before it was too late. That was easier said than done. For both Henning and Douglas were on the alert. ¹⁷² On the morning of July 23, the day the House passed H.R. 627, Hennings sat at attention in the Senate chamber, waiting for the bill to arrive – and the chance to object to committee-referral. Douglas walked to the House-chamber to accompany the bill to the Senate, in order to ensure that no shenanigans happened to the priced legislation. ¹⁷³

To counter the liberals, the southerners - working with both Majority Leader Lyndon Johnson and House Speaker Sam Rayburn to silently defuse the situation before it became an embarrassment to the party - devised an advanced parliamentary maneuver. First James Eastland convened his Judiciary Committee for an unscheduled morning meeting, forcing Tom Hennings, the liberal chairman of the Judiciary’s subcommittee on civil rights, to leave his watch-post in the chamber. ¹⁷⁴ Second, even though Paul Douglas arrived in the House only minutes after receiving word that the lower body was voting on H.R. 627, the southerners ensured that he came too late. When Douglas approached the House Clerk to inquire about the status of the civil rights bill, he was told that the measure had already passed, signed and sent to the Senate. Thus bypassing the customary, and usual lengthy “engrossing-process,” where the bill would be printed, checked for errors and sent back to the Speaker and his clerk for a final signature.¹⁷⁵ Douglas rushed back to the Senate, but did not arrive fast enough. For the Senate Majority Leader had been waiting for Douglas to leave the chamber and go on his fruitless mission to retrieve the bill from the House. Now H.R 627 was dispensed with at the speed of light. At the second the bill arrived, the Presiding Officer, Lister Hill of Alabama, asked the senator speaking, Mike Mansfield, to yield. Without any further announcement Hill said: “The Chair lays before the Senate the bill (H.R. 627) to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the united states, which will be read the first time by title. The clerk will read the bill by title.” Skipping the reading of the entire bill, the title was read again.

¹⁷¹ Mann, *The Walls of Jericho*, 172.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Finley, *Delaying the Dream*, 155.

¹⁷⁵ Mann, *The Walls of Jericho*, 172.

Hill continued. “Without objection the bill will be read the second time and referred to the appropriate committee. The chair hears no objection.” The bill was read the second time and referred to the Committee on the Judiciary.¹⁷⁶ It was over within a minute.

Tricked by this unusual procedure, Hennings and Douglas tried to move the Senate to reconsider. On July 24 Hennings asked “unanimous consent that I be permitted at this time to submit the following resolution Resolved that The Committee on the Judiciary be, and it is hereby, discharged from the further consideration of the bill H.R. 627 to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States.”¹⁷⁷ But the Senate would not even discuss the merits of the resolution. B. Russell objected, saying “the resolution cannot be considered except by unanimous consent; and I object.”¹⁷⁸ Inquiring on the reasons why his resolution could not be considered, Hennings was told by the Presiding Officer that such resolutions could only be introduced during the Senate’s daily *morning hour*, and that there would be no morning hour since the Senate, at the request of the Majority Leader, had decided not to *adjourn* but to *recess*. Thus, technically, July 24 was the same legislative day as July 23.¹⁷⁹ Furthermore, it became clear for Hennings, Douglas and other Senate liberals, that the Leader, had no plans to adjourn the Senate this day either. “Will the effect be to prevent a morning hour?” asked Paul Douglas Lyndon Johnson affirmed, stating “The effect of that will be to prevent the introduction of bills at the last minute without following the regular procedures of the Senate.”¹⁸⁰

Still the liberals did not yield. Addressing Johnson, who had drawn considerable prize from southerners for his firm attitude toward allowing debate on the discharge-resolution, Lehman asked if the Majority Leader “recalls any time during his entire career in the Senate when there was not a morning hour because of an objection.”¹⁸¹ This triggered a determined reply, pushing the debate over into a question on leadership-authority. “There are some senators,” said Johnson “who would, without consulting the Majority Leader, have their own legislative programs, and they are entitled to have them.”¹⁸² Referring to the fact that a number of important bills to liberals had not yet been passed, and would be threatened by a filibuster, Johnson added that he feared that “if we get into a hassle here, the social security bill may be endangered,” adding “I think

¹⁷⁶ United States Congress, *Congressional Record Vol. 102, Part 10*, 1956, 13937.

¹⁷⁷ *Ibid.*, 14161.

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*, 14161.

¹⁸¹ *Ibid.*

¹⁸² United States Congress, *Congressional Record Vol. 102, Part 11*, 14612.

he [Lehman] knows it [the bill] would bring all legislation to a halt, has it always has when it has been brought up in the past.”¹⁸³

Frustrated by the southerners’ ability to use the rules to object to even discussing the resolution to discharge the Judiciary Committee from the civil rights bill, the liberals went on a procedural rampage of their own. On July 24 and 25 Paul Douglas made a point of objecting to almost everything that required unanimous consent in the Senate, including insertions of articles to the Congressional Record¹⁸⁴ and legislation introduced by a liberal ally, Hubert Humphrey¹⁸⁵ It is doubtful, to say the least, whether these revenge-objections strengthen Douglas’ and the liberals hand.

Part of the problem for Douglas, Hennings and the Democratic civil rights liberals in July 1956, was that the Republican leaders in the Senate, despite possible political upsides to the bill being lifted to the Senate floor, seemed uninterested in challenging the southern bloc on the issue. Minority Leader William Knowland of California criticized the Democratic liberals openly on July 25, stating that “at any time from the introduction of the measure [in the House] the Senator from New York had within his power, and the Senator from Missouri within his power, to move to discharge the Judiciary Committee from the consideration of such a bill. It was not necessary, in the last few days of the session to submit a resolution of that kind”¹⁸⁶ To Knowland what was not only the protection of ordinary procedure, but the right of the leadership to control the legislative process in the final chaotic days of the Senate. Knowland, a potential future Majority Leader, had no incentive to help rebels overrun Senate rules. At any rate, all civil rights liberals knew that the Brownell bill had been sent to the House far too late, and from the House way to close to the end of the Congressional session, to have any real chance of passage. And, as James Rowe said, on a different occasion, “why get the South mad, when you weren’t going to win anyway?”¹⁸⁷

Still, that was just what Douglas and Hennings did. On the evening of July 24 Paul Douglas introduced a motion to adjourn the Senate – thus directly challenging the Majority Leader and his southern friends. On Johnson’s insistence the vote was made as voice-vote, demonstrating the overwhelming support for the leader’s right to control

¹⁸³ United States Congress, *Congressional Record Vol. 102, Part 10*, 14162.

¹⁸⁴ *Ibid.*, 14191.

¹⁸⁵ *Ibid.*, 14201.

¹⁸⁶ *Ibid.*, 14324.

¹⁸⁷ Caro, *Master Of The Senate*, 893.

when and if the Senate adjourned for the day. Douglas' motion was defeated 76-6, with liberals like Hubert Humphrey and Wayne Morse supporting the leadership.¹⁸⁸

Not only defeated, but - according to the oral history of his legislative aid Howard Shuman - personally *crushed* by the humiliation, Douglas retreated from the Senate chamber and asked Shuman to "push the elevator-button three times", like the legislators did to indicate to the elevator-operators that a senator was waiting, adding "let's pretend I'm a senator."¹⁸⁹

On July 27, the last day of the legislative session Douglas and Lehman was allowed to formally introduce their discharge-resolution. But time was up. There would be no debate on the issue, and no vote. The resolution to remove H.R. 627 from the Committee on the Judiciary, would remain only a piece of paper in a Congressional Record already cataloguing decades of defeated civil rights legislation. Allowed, at least, the last word on civil rights during the 84th Congress, Paul Douglas lamented "as this legislative waif is at last permitted to enter the parliamentary halls when it is too late for it to have any future, its dying eyes can perhaps look upon the walls of the Senate and see the otherwise invisible but no less real inscription which men have placed there for all civil rights measure: abandon hope all ye who enter here" But then he added "How much longer will the Senate and the country permit man made rules to prevent us from even considering measures which the vast majority of the people desire?"¹⁹⁰ How much longer, indeed.

¹⁸⁸ United States Congress, *Congressional Record Vol. 102, Part 11*, 14229.

¹⁸⁹ "Shuman_interview_3.pdf," accessed April 14, 2017, https://www.senate.gov/artandhistory/history/resources/pdf/Shuman_interview_3.pdf.

¹⁹⁰ United States Congress, *Congressional Record Vol. 102, Part 11*, 14837.

Chapter 5. “The Miracle of 1957”

“This bill would reduce the status of officials in the southern States to a point inferior to that enjoyed by murderers, thieves, counterfeiters, dope peddlers and parties to the Communist conspiracy”

SAM ERVIN, U.S SENATOR¹⁹¹

All told it was a disaster. Not only had Herbert Brownell and the liberals lost to against the southern power in the Senate. This time they had even been refused the decency of a glorious defeat. There had been no filibuster. No ranting and raving southern racists – all Democrats incidentally – to fill Northern newspapers. If anything, the liberal media divided the blame for the defeat of H.R. 627 between a slow-moving administration, incompetent liberal senators and the racists of the Southern bloc.¹⁹²

This chapter tell the story of how the civil rights bill re-emerged in Congress, and details the Senate debate on the re-named H.R. 6127. It focuses on January 1957, when the Senate debated its rules, and on the period June – August, when the civil rights bill was pending before the Senate. The account in this chapter will largely be descriptive, providing the basis for the discussions in chapter six about the reasons why southern senators allowed the 1957 Civil Rights Act to pass.

5.1 “If we were bad boys”

Within a month after the opening of Congress in 1957 the Brownell Bill returned to both to the House and Senate. In the House of Representatives, the exact same bill that passed in June 1956 was reintroduced on January 21st. A few days’ later, on February 1, Senator Thomas Hennings proposed a civil rights bill, a copy of Brownell’s original, in the Senate, named S 83 and referred to the Senates Judiciary Committee.¹⁹³With two bills in process only a few weeks into the Congressional session, there was a decent hope that this time would be different. Paraphrasing Woodrow Wilson, *The New York Times*

¹⁹¹ United States Congress, *Congressional Record Vol. 103, Part 7*, 1957, 9627.

¹⁹² Caro, *Master Of The Senate*, 798.

¹⁹³ United States Congress, *Congressional Record Vol. 103, Part 1*, 1957, 1386–87.

declared that only a “little band of willful men” now stood in the way of meaningful civil rights legislation.¹⁹⁴

But if this tiny band was to be defeated outright one of two things would have to happen: Either the proponents of civil rights would have to mobilize the 64 votes required by Rule 22 to break a filibuster, or the rules of the game would have change.

In January 1957 liberal senators attempted the latter. At the first day of the 85th Congress, January 3 1957, Senator Clinton Anderson of New Mexico, introduced a motion that would change one of the fundamental tenets of Senate procedure. On behalf of 25 senators, Anderson requested that the Senate “take up for immediate consideration the rules of the Senate for the 85th Congress.”¹⁹⁵

Strikingly for a body so obsessed with rules and procedures, the Senate 167 after the seating of the first Congress, had still not come to a final agreement on one basic point: How were the rules for its operations to be decided? One school of thought argued that the Senate at the beginning of *each* Congress had the right and duty to write new rules for its proceedings, starting with a blank slate. Another claimed that the Senates rules were *fixed*, and would be carried over from one congressional session to the next. As so often in legislative institutions, difference of opinion on procedural matters were infused with ideological and political considerations. Particularly for the southern segregationist, who for long had substituted the power of persuasion with the more tangible power of procedure. Deliberation on Senate rules at the beginning of each congressional session would not only certainly bring their most precious rule, rule 22 and the filibuster it regulated, up for debate. Worse, in debate over rules *without* rules to guide it, it was not given that the southerners would be able to defend the right to unlimited debate. If attempts to change the rules were done within the normal procedure, the southerners could – as a last defense - filibuster in defense of the filibuster. But if the normal procedures were to be thrown out at the start of each Congress, there was a real chance that the Senate decide on new rules for each session based on majoritarian principles, with no room for extended debate.

The link between Andersons motion and civil rights was not hard to see. Paul Douglas, a liberal New Deal-economist from Illinois, inserted several newspaper editorials and op-eds to the Congressional Records where the link to civil rights was drawn explicitly, demonstrating the growing consensus in the liberal media that it was

¹⁹⁴ Ibid., 18.

¹⁹⁵ Ibid., 9.

“time to kill the filibuster before it killed more civil rights legislation” as the Chicago Daily Sun-Times put it.¹⁹⁶

And the liberals had an ally, Vice President Richard Nixon. From the Presiding Officers chair, Nixon ruled that the Constitution indeed provided each House of Congress with the right to make its own rules stating “this constitutional right (...) might be exercised by a majority of the Senate at any time.”¹⁹⁷ Thus Nixon used the constitutional option - or the *nuclear option* as it has been named in recent year - the same Senate procedure as Majority Leader Harry Reid and Vice President Joe Biden deployed in 2013 to confirm President Obamas nominees for the federal bench¹⁹⁸, and Mitch McConnell and Mike Pence used to get President Trumps Supreme Court nominee Neil Gorsuch confirmed in 2017. Yet there was one crucial difference between Nixon 1957 ruling and the modern examples of the nuclear option: Nixon did not have the Majority Leader on his side.

Among the tradition of the Senate is the right of the Majority Leader to gain “first recognition.”¹⁹⁹ And as we saw in chapter 3, the Majority Leader in the Senate in the 85th Congress was a southerner, Lyndon B. Johnson.

Now Lyndon Johnson used his prerogative as Majority Leader to defuse the situation as best as he could. Not by making any speech, not yet, but by introducing his own motion: a motion to *table* the Anderson-motion.²⁰⁰ Given the Majority Leaders customary rights, the issue pending before the Senate would not be Andersons proposal, *nor* Nixon’s ruling on the constitutionality of adopting Senate rules, but Johnsons motion to lay Andersons resolution aside. If the Johnson-motion passed, Andersons would not be taken up for further consideration.

The point emphasized by the rule-changers speaking on January 4th was the filibuster. Clinton Anderson, referring to the fact that filibusters blocked other legislation, asked his colleagues to remember that with the filibuster in place there was nothing stopping the southerners from answering any legislation they did not like by saying “this means that the appropriation bills will not pass.” In fact, the filibuster-rule gave the southerners so much power, Anderson claimed that the rest of the Senate were like children on Christmas, seeing the gift “dangling on the Christmas tree and we are

¹⁹⁶ Ibid., 19.

¹⁹⁷ Ibid., 17.

¹⁹⁸ Although not updated with the McConnell/Pence maneuver in 2017, Smith, *The Senate Syndrome*. provides a fascinating account of the development of the constitutional option in the Senate.

¹⁹⁹ Smith, *The Senate Syndrome*.

²⁰⁰ United States Congress, *Congressional Record Vol. 103, Part 1*, 10.

told that the good fairies will take away the Christmas tree and that Santa Claus will not come down the chimney if we are bad boys and insist that a change in the cloture rule be brought before the Congress.”²⁰¹

Richard Russell, the leader of the Southern bloc, answered Andersons charge by pointing out that the right to unlimited debate, was the essence of what made the Senate unique. “I believe that the fact that this is a forum of free expression is the one thing which distinguishes the Senate of the United States from every other parliamentary body that has ever assembled anywhere in the world.” Russell also pointed out that a sound precedence had been set by the fact that the Senate had operated as a continuing since the first Congress.²⁰²

When the time to vote came on the evening of January 4th, the southerners carried the day. The Johnson-motion to table the Anderson-proposal won a majority of 55 against 38 votes. By the beginning of the legislative session, the pinnacle of southern power in the Senate, rule 22 and the filibuster was intact. Why did the liberal rebels not prevail in their motion to change the rules?

First there was the constitutional point. Several senators shared the Russell interpretation of the constitution. Conservative Republicans like Barry Goldwater and John Bricker were routinely in alignment with the South on constitutional matters²⁰³ Other senators had fundamental problems with the majoritarian logic underlying the Anderson-motion. William Fulbright, Democrat of Arkansas, it was a huge mistake to assume that any majoritarian thinking was implicit in the Constitution. In fact, to Fulbright the Constitution was a “denial of the rule by a majority.”²⁰⁴

Second, while many senators could agree with the problems created by the filibuster, Rule 22 was not the only Senate procedure that would be opened for debate and change if the Anderson-motion was approved. Passing the motion would undoubtedly open a can of procedural worms, with more than 40 rules on the line. There were quite a few senators whose power and prestige was linked to the existing Senate procedures. Member of the GOP Senate leadership – and future Minority Leader – Everett Dirksen spoke on behalf of such senators when he stated that “I am prepared to go along with some reasonable and decent modifications of rule 22, but I am certainly

²⁰¹ Ibid., 143.

²⁰² Ibid., 153.

²⁰³ Ibid., 215.

²⁰⁴ Ibid., 208.

declined to open up the all-embrasive controversy involving the 40 standing rules of the Senate.”²⁰⁵

And linked to that was a third, and by far more prosaic – yet pressing - problem: Even if the debate triggered by passing the Anderson-motion only ended up affecting rule 22, it would still unleash a debate that was very likely to last for weeks. It could even go “two or three months before we got around to constructive legislation, and the consideration of the Presidents program” as Dirksen put it.²⁰⁶ Even without the filibuster, the southerners could help turn a discussion of Senate rules into quite the “extended education” on parliamentary matters. With the rule-book filled with blank pages, the number of proposed rules, amendments to such proposals, - not to forget addendum to the amendments- could easily occupy the Senate for quite a while, even without dilatory speeches.

Finally, the move made by the Majority Leader Lyndon Johnson, when he ensured that his own motion became the pending business of the Senate, probably further increased the likelihood of defeat for the liberals. By substituting a vote on the Anderson-motion with a vote on *his* motion, Johnson used a trick later deployed frequently by leaders in Congress: forcing dissenters to *explicitly* and openly defying the leadership-line. If they dared. In addition, the fact that the Senate would vote on Johnsons motion, not on Nixon’s interpretation of the rules, made the situation easier for a lot of Republicans. This way they did not have to vote against their own Vice President directly.

With the debate over rules ending in defeat for the Senate’s liberals, the first session of the 85th Congress opened much in the way the final session of 84th had ended; with the South’s position in the Senate proving as strong as ever, and the liberals looking far from able to overcome the procedural obstacles to get the Senate moving on civil rights.

And yet there was something providing the liberals with hope – and the southerners with an afterthought. For while the victory was decisive, it was not as impressive as previous votes. In 1953 the Senate had defeated a similar motion 71 – 12. It could seem like time was moving against the southerners.²⁰⁷

²⁰⁵ Ibid., 176.

²⁰⁶ Ibid.

²⁰⁷ Steven Lawson, *Black Ballots: Voting Rights in the South, 1944-1969* (Lanham: Lexington Books, 1999), 166.

Table 1. Senate vote on Johnson-motion to table Anderson-motion ²⁰⁸

YEAS	NAYS
Barret (R-WY), Bennet (R-UT), Bible (D-NV), Bricker (R-OH), Bridges (R-NH), Butler (R-MD), Byrd (D-VA), Capehart (R-IN), Carlson (R-KA), Case (R-SD) Cotton (NH-R), Curtis (R-NE), Daniel (D-TX), Dirksen (R-IL), Dworshak (R-ID), Eastland (D-MI), Ellender (D-LA) Ervin (D-NC), Frear (D- DE), Fulbright (D-AR), Goldwater (R-AZ), Gore (D- TN), Green (D-RI), Hayden (D-AZ), Hickenlooper (R-IW), Hill (D-AL), Holland (D-FL), Hruska (R- NE), Jenner (R-IN), Johnson (D-TX), Johnston (D- SC), Kerr (D-NC), Knowland (R-CA), Langer (R- ND), Long (D-LA), Malone (R-NV), Martin (R-PA), McCarthy (R-WI), McClellan (D-AR), Monroney (D- OK), Mundt (R-SD), Revercomb (R-WV), Robertson (D-VA), Russell (D-GA), Saltonstall (R-MA), Schoeppel (R-KA), Scott (D-NC), Smathers (D-FL), Sparkman (D-AL), Stennis (D-MI), Talmadge (D- GA), Thurmond (D-SC), Watkins (R-UT), Williams (R-DE), Young (R-ND)	Aiken (R-VT), Allot (R-CO), Anderson (D-NM), Beall (D-MD), Bush (R-CT), Carroll (D-CO), Case (R-NJ) Chavez (D-NM), Church (D-ID), Clark, (D- PA) Cooper (R-KT) Douglas (D-IL), Flanders (R- VT), Hennings (D-MO), Humphrey (D-MIN), Ives (R-NY), Jackson (D-WA), Kefauver (D-TE), Kennedy (D-MA), Kuchel (R-CA), Lausche (D-OH), Magnuson (D-WA), Mansfield (D-MT), martin (R- IW), McNamara (D-MI), Morse (D-OR), Morton ((R- KY), Murray (D-MT), Neuberger (D-OR), O'Mahoney (D-WY), Pastore (D-RI), Payne (R-ME), Potter (R-MI), Purtell (R-CT), Smith (R-ME) Smith (R-NJ), Symington (D-MO), Thye (R-MIN)
NOT VOTING Neely (D-WV), Wiley (R-WI)	

Though, if time was moving, it was moving slowly. For during the entire spring of 1957 the legislative process around civil rights in Congress seemed to be an exact copy of the previous year. In House, H.R. 6127 moved, but at a pace that merely surpassed crawling. In the Senate, S 83, was stuck in Eastland's Judiciary Committee. By June 1957 neither chamber had voted on any form of civil rights legislation.

5.2. "So that it may go on the Senate calendar"

And then it all happened very fast. In June rumors that the House was finally gearing up to vote on civil rights starting spreading the Senate, and the liberals began preparing for a real debate on the merits of the Brownell bill. On June 10th Paul Douglas made a

²⁰⁸ United States Congress, *Congressional Record Vol. 103, Part 1*, 215.

major speech in the chamber, trying to frame²⁰⁹ the issue now soon to be before the Senate as a question of protecting the right to vote for every qualified citizen.

“On January 17 1956” liberal Paul Douglas said on June 10th “there were approximately 4000 persons of the Negro race whose names appeared on the list of registered voters of Ouachita Parish [Louisiana]. As of October 4 1956 the names of only 694 Negro voters remained on the rolls.”²¹⁰ With tables and numbers printed for his colleagues, and added to the Congressional Record, Douglas methodically went through dozens of examples similar to the situation in Ouachita Parish. Stories of parishes and counties where thousands, sometime tens of thousands, of African-American citizens resided, but none but a few hundred were registered to vote. Stories of thousands of black men and women, through persistent efforts – often waiting hours after hours, day after day in the same empty registrars-office - making their way into those voter-records, only to find that a few weeks or months later, their names had been removed. In Ouachita Parish, as in hundreds of other southern parishes, the “mass disenfranchisement of Negro voters was accomplished by a scheme and device to which a number of white citizens and certain local officials were parties,” Douglas argued.²¹¹

Not only did Douglas catalogue list of voting-rights violations in the South, in the same speech he addressed the southern opposition to civil rights legislation directly, describing the foot-dragging in both houses of Congress as a “silent filibuster,” acknowledging that once the bill passed in the House it would encounter “much tougher, and longer wired opposition in the Senate.”²¹²

But this time the liberals would play tough too. Four days later, on June 14th, Douglas returned to the floor with a statement signed by senators Humphrey, Pastore, Hennings, Murray, Green, Morse, Neely, Jackson, Symington, McNamara, Neuberger, Carrol, Church and Clark. According to the statement it “now seems evident that a civil rights bill will be enacted by the other body”²¹³ Yet “our joy is tempered by the knowledge that a civil-rights bill was passed by the other body in the last session of

²⁰⁹ Following linguist George Lakoff a frame is a cognitive structure helping us to perceive of reality. A frame creates associations and provides context. Framing as an activity consists of using language, examples and stories that creates desired associations. In political communication framing is understood as deliberately and consistently trying to define what the debate is really about, ideally forcing one’s opponents to accept central premises. See George Lakoff *The Political Mind a Cognitive Scientist Guide to Your Brain and Its Politics*, Penguin, London 2008.

²¹⁰ *Congressional Record, June 1957, Vol 103, Part 7.*, 8607.

²¹¹ *Ibid.*

²¹² *Ibid.*, 8620.

²¹³ *Ibid.*, 9145.

Congress, only to die from want of any action by the Senate.” Then came the punch: “We would prefer to act on S 83, which has been pending in Senate Judiciary Committee Since January 7 1957, and we strongly recommend that it be reported out forthwith by the Committee.” However, “if this is not done before H.R. 6127 reaches the Senate, then we shall be compelled, under rule XIV, after the second reading of H.R. 6127, to object to further proceedings thereon so that it may go on the Senate calendar...further, we announce that we shall not give unanimous consent to any motion to refer the House-passed civil rights bill to any committee.”²¹⁴

The liberals were not only signaling openly their discontent with the slow-pace of the Judiciary Committee, they were declaring their intent to, if necessary, deny the Eastland’s Judiciary, indeed any committee, the chance to bury the House-bill. As with the Anderson-resolution, the second confrontation over civil rights in the Senate in 1957, would be a battle over procedure.

In the debate over rule XIV, the liberals started by suffering a self-inflicted wound. On June 17th, the first legislative day after the Douglas read the announcement, Senator Wayne Morse of Oregon, one of the senators supposedly behind the statement, rose to announce that he did in fact *not* support the statement read by Senator Douglas. Morse, a western liberal and New Dealer known as a friend of civil rights,²¹⁵ also turned out to be a friend of “sound procedure in the Senate.”²¹⁶ And sound procedure would have to involve the referral of all legislation to their appropriate committees, in order for the Senate to be fully informed on the issues at hand through hearings, investigation and a formal Committee-report.²¹⁷ Morse, was of course not blind to the dilatory habits of James Eastland and his segregationist friends on the Judiciary Committee. But the prudent thing to do with obstruction would, according to Morse, be to “make a motion to discharge the committee from further considerations of the bill,” if the committee did not act after a “reasonable length of time,”²¹⁸ not to upend ordinary Senate procedure.

Morse’s speech immediately sparked praise from southern senators. Richard Russell rose to “commend the distinguished Senator from Oregon.” Acknowledging that “the Senator from Oregon and I are as far apart as the poles in our basic philosophy with the respect to the proposed legislation...but we have both been members of the Senate

²¹⁴ Ibid., 9146.

²¹⁵ Mason Drukman, *Wayne Morse: A Political Biography* by Mason Drukman (Oregon Historical Society Press, 1895), 305–307.

²¹⁶ *Congressional Record*, June 1957, Vol 103, Part 7., 9257.

²¹⁷ United States Congress, *Congressional Record* Vol. 103, Part 7, 9257.

²¹⁸ Ibid.

long enough to know what will happen if the Senate is driven by expediency to depart from the procedures of the Senate which are prescribed in rules.”²¹⁹

Republican Minority Leader William Knowland of California, did not share Morse, and Russell’s take on the procedural situation. Knowland suggested that in *some* cases ordinary procedure would have to be broken. Agreeing with Douglas, Knowland argued that Rule XIV did require unanimous consent for a bill to be referred to committee, and that in cases of “great provocation,”²²⁰ it would be reasonable to cut committees out of the process. Since January the Judiciary Committee had done its best to provoke the Republican Leader. “Six months have gone by. The Committee on the Judiciary has shown no indication that the bill which is before it will be reported to the Senate.”²²¹

Richard Brevard Russell rose to reply to Knowland. “Rantin’ and ravin” was not the style of the aristocratic Richard B. Russell, “a senators senator” according to his biographer Gilbert Fite.²²² Russell had in fact become famous for refusing to denigrate his senatorial style by engaging in “nigger baiting” during his hard-fought 1936-primary campaign against the racist-demagogue Eugene Talmadge, father of Senator Herman Talmadge.²²³

Now aristocratic dignity had to yield to aggressive defiance. Placing the civil rights bill directly on the Senate calendar, without referring it to committee for consideration would, Richard Russell said, be nothing short of a “parliamentary hanging on the gallows.”²²⁴ Not only would the southerners hang, if the unusual procedure was in fact adopted, they – the men and women of the South – would be subject to a “legislative lynching.”²²⁵ But, warned Russell, while it would be southerners neck on the line this time, “the Minority Leader will be hanged time and again with the demands of a single senator to place bills on the calendar that should go to committee.”²²⁶

Liberal Minnesota senator Hubert Humphrey responded to Russell. Humphrey started by acknowledging not only the deep knowledge of the “learned Senator from Georgia” but also that Russell was right in inferring that the rules of the Senate was “full of the methodology for the protection of minority right,” this Humphrey said was

²¹⁹ Ibid., 9259.

²²⁰ Ibid.

²²¹ *Congressional Record, June 1957, Vol 103, Part 7.*, 9259.

²²² Fite, *Richard B. Russell, Jr., Senator From Georgia*, 8.

²²³ Mead, “Russell vs. Talmadge.”

²²⁴ United States Congress, *Congressional Record Vol. 103, Part 7*, 9260.

²²⁵ Ibid., 9262.

²²⁶ Ibid., 9260.

both “fitting and proper.”²²⁷ However, Humphrey refused to accept the premise that this debate was primarily a question of internal Senate house-keeping. “I have heard a great deal about the rights of senators. I ask my colleagues: What about the rights of people? What about the right of the individual citizen to cast his vote without fear of coercion or violence?” According to Humphrey, “the great albatross around the neck of the Senate,” he said “has been the failure of the Senate to act in the field of civil rights”²²⁸ And holding that large bird in place were the rules: “I say this most respectfully that I have noticed, in connection with other debates, that when certain Members of this body wished to make a point they applied to the rules of the Senate. The rules have been used again and again to obstruct action on civil rights.”²²⁹ Now, Humphrey argued, the words of rule 14 could be used to break that logjam.

In my reading of the Congressional Records from the summer of 1957, I found no senator on the liberal side of the civil-rights debate, more clearly engaging in emotional communication than Hubert Humphrey. As we shall see, the southerners eagerly and effectively established a frame around the Senate civil rights debate in the summer of 1957, that most of the liberals accepted. Hubert Humphrey did not. And more importantly he combined rhetoric re-framing the issues back to the plight of black Americans and civil rights, with language seemingly designed to appeal to the southerners – or at least convince them that he harbored nothing but respect and admiration for the South and its culture and traditions. Together with Douglas attempt on June 10 to frame the issue before the Senate as one singularly connected to protecting the voting rights of all Americans, this is one few examples of liberals actively attempting to define what the civil rights debate in 1957 was *really* about.

Several southern senators answered Humphrey’s challenges. Spessard Holland of Florida, reminded his fellow parliamentarians that it was “stability, stability, stability that is described over and over again as the unique quality which the setting up and the function of the Senate was design to subserve.”²³⁰ Then Holland argued that the *real* reason why liberals were so eager to push through civil rights legislation was not their pure hearts or social concerns, but rather cold political considerations. The civil rights debate, argued Holland, had become a competition for credit and votes in the Northern states, and “our 15 liberal friends [referring to the senators who signed of the petition to

²²⁷ Ibid., 9291.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Ibid., 9293.

put H.R. 6127 directly on the Senate calendar] on this side of the aisle apparently made a bid for that credit the other they.”²³¹

Richard Russell’s harsh words signaled the fierceness with which the southerners would attack H.R. 6127, and Spessard Hollands assertion that the liberals were only out fishing votes was an omen indicating that the Southern bloc would not allow the debate to framed as one between heroes and villains, with all the black hats being reserved for the South. Yet it was North Carolinas Sam Ervin’s short speech on June 14th who went into the *core* of what was to become the southern narrative about the civil rights bill. Ervin, a respected lawyer and member of the Senates Judiciary Committee argued that the civil rights bill was far more complicated and far broader than what most liberals, and the Eisenhower-administration, seemed to acknowledge. To Sam Ervin the H.R.6127 was not, as Humphrey argued, primarily a voting-rights measure. If it passed, Ervin claimed, the resolution would provide the Attorney General with unprecedented powers. He could “litigate at public expenses, on behalf of any citizen, alien, or private corporation in any of the 43 states, as to any matter coming under the equal protection clause of the 14th amendment, which covers virtually *all* fields in which States are authorized to legislate.”²³² To Ervin, placing a bill with such broad scope directly on the calendar without the traditional hearings and reports from the Senates Judiciary Committee, was unacceptable.²³³ Thus Ervin helped pave the way for the Southern master-frame in the civil rights debate; the assertion that voting-rights was only an excuse for pushing a far more radical and dangerous agenda.

On June 18th Douglas returned the chambers attention to the motion to place H.R. 6127 directly on the Senate calendar. The Illinois Senator reminded the Senate of what happened last year when the House passed the same bill, only for southerners to manipulate the process in the Senate.²³⁴ Humphrey warned that “the Speaker of the House has jurisdiction over the until it leaves the House. The Secretary of the Senate has jurisdiction of it, presumably, when it reaches the Senate. Into how many pockets it may, however, be placed, and what delays could occur in its handling, only the human imagination can conjure up.”²³⁵

He needed not worry. For on the same day Lyndon Johnson asked specifically for the attention from the “senator from Illinois [Douglas] the Senator from Georgia

²³¹ Ibid.

²³² Ibid., 9296.

²³³ Ibid.

²³⁴ Ibid., 9348.

²³⁵ Ibid.

[Russell] and the senator from California [Knowland]” The Majority Leader continued saying that he asked “unanimous consent that when the Senate adjourns tonight, it will meet tomorrow at 12 o’clock. Following the routine business, the Majority Leader will be recognized to suggest the absence of a quorum, after which the Chair will lay before the Senate H.R. 6127.”²³⁶ The Majority Leader himself would ensure that the H.R 6127 would be laid before the Senate, and that all parties interested in the bill have a chance of being present when that happened.

Paul Douglas, however, was not entirely convinced by Johnsons declaration of intent to play fairly. Douglas rose to inquire whether there indeed would *be* a next Senate day, hinting that the Majority Leader might chose not end the legislative day just as he did at the end of the session in 1956. Johnson promised that ordinary procedure would be followed and that Douglas would get the chance to see for himself next morning.²³⁷

But Lyndon Johnson wasn’t done announcing. The Leader had one more message for the Senate. This one was delivered without any of the attention-seeking language of the previous announcement. In fact, Johnson did his best to make the statement short and entirely routine like: “Mr. President I move that the Senate proceed to the consideration of order no 330, Senate bill 555,”²³⁸ Johnson said. No objection was heard, in fact there is no recollection in the Congressional Records of any reaction to Majority Leader suggestion that the next business of the Senate would be the discussion of the Hells Canyon Dam Project. That would prove a fateful mistake for the Senate’s civil rights advocates.

5.3. “The pending business of the Senate”

The importance of Hells Canyon, however would only become apparent a few days later. First the Senate would vote on the issue of putting H.R. 6127 directly on the Senate calendar without referring it to committee. After dispensing with the morning routine on June 19th, the Majority Leader, as promised the day before, suggested the absence of a quorum, and announced that he would lay before the Senate “the House civil rights bill”

²³⁹

²³⁶ Ibid., 9515.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Ibid., 9618.

Richard Russell answered that announcement by a long speech where the Georgia senator declared that that Brownell's civil rights bill threw "out the window the laws, the rules and the Constituting in order to get at "these infernal southerners"²⁴⁰ Russell elaborated in detail on the points made by Sam Ervin the day before, arguing that the scope of the legislation now before the Senate was vast and unprecedented. "Some of our friends have risen into the clouds and loftily referred to the right to vote as though that were all that is involved in this bill," Russel said. But "what they really are thinking about is schools, and the provisions in the bill which would enable the Attorney General of the United States to invade every southern community and jail or imprison the trustee of the school unless they agree to strike down the separate school system" Senators, Russel said should "not be deceived by the smokescreen about voting That is one of our minor problems in the South,"²⁴¹ Russell claimed. Then Russell dialed up the rhetoric and at the same time introduced a new major theme in the southern argument against H.R 6127:

*Let no one give my any holier-than-thou talk about voting. This bill was so deviously drawn that it went through a series of hearings without people catching on to the fact that it was skillfully and cunningly designed to eliminate the jury trial to American citizens. (..) I say to senators that they can rush this bill through if they wish, but if they do, they will start a series of events that will abolish the individual rights and liberties of American citizens everywhere."*²⁴²

Russell's speech on June 19th was high on emotion, accusation and, more than anything else, attempts push the debate into the southern frame. What it was lacking was detail and specificity. But Russell had by his bold and dramatic accusation, done his best to rise public suspicion that there might be more to the new civil rights proposal than the protection of voting rights. When Russell a few days later did venture into the specifics of his accusations, the speech on June 19th had prepared the ground, and secured the attention of both newspaper-men and colleagues.

But first the pending decision on what procedure to follow would have to be dealt with. The next day, June 20th, the Senate voted on the motion to by-pass the James Eastland's Judiciary Committee by placing the civil rights bill directly on the Senate

²⁴⁰ Ibid., 9626.

²⁴¹ Ibid., 9627.

²⁴² Ibid.

Calendar. To preside over this first confrontation over the Eisenhower-administrations landmark civil rights bill, Vice President Richard Nixon arrived in the Senate and, as granted by the Constitution, took the Presiding Officers chair.²⁴³

As soon as the Senate did away with its customary morning routines, senator William Knowland, rose to object to further debate on H.R 6127 and asked that the bill be placed the bill directly on the Senates calendar.²⁴⁴

With senators disagreeing on the right interpretation of the rules regarding committee referral, it was for the Senates President to make a ruling on the matter. Not surprisingly Richard Nixon ruled in favor of William Knowland stating “it is the opinion of the Chair that the rules should be amended to clarify this question. Until that is done the chair rules that Rule XIV sets forth the procedure to be followed in referring bills to committee. On the other hand, rule XXV defines the jurisdiction of committee over bills when they are referred to committee.”²⁴⁵ Thus, according to Nixon, there was no rule demanding that all legislation be referred to committee, only rules stating how committee referral were to happen and which committees would have jurisdiction *if* bills were referred to a committee.²⁴⁶

The ruling sparked immediate debate. Richard Russell demanded to know if this ruling would set precedence, which Nixon affirmed. The Russell formally protested against the ruling, demanding a vote. ²⁴⁷

The vote on the Nixon-ruling, or formally on Richard Russell’s objection to that ruling, was the second sharp showdown in the Senate over civil rights in 1957. Despite Wayne Morse last-minute demands that the Nixon-ruling should be presented in writing before the Senate proceeded, the Senate voted 45-39 to overrule Richard B. Russell’s objection, and sustain Richard Nixon’s ruling. ²⁴⁸ The southerners were defeated.

Not only were they defeated. They were defeated without a real fight. Notwithstanding two lengthy, but far from unreasonably protracted, speeches from Richard Russell, and a few medium-sized contributions by senators Holland and Ervin, the southerners did not try to delay the process by extensive “education of the public.” The absence of a filibuster was more surprising considering that the votes 39 votes for Russell’s objection to the Nixon-ruling was north of the votes needed to defeat cloture.

²⁴³ Ibid., 9811.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ United States Congress, *Congressional Record Vol. 103, Part 7*, 9627.

Thus the first vote on H.R 6127 perfectly illustrates the core problem of addressed by this thesis: Why did the southerners accept the further deliberation of a bill they vehemently opposed? We shall discuss this question in detail in the chapters that will follow.

On closer inspection, however, there was something odd with the 45-39 vote placing H.R 6127 directly on the Senate calendar. If the victorious civil-rights advocates analyzed the yeas and nays on June 20th, they would have to be puzzled by some of the names appearing on the record in favor of Richard Russell's objection. Names like Harry Byrd, James Eastland, Herman Talmadge and Olin Johnston were to be expected. As were the other 14 names of southern segregationists organized in Russell's southern caucus. Expected were also the names of the traditional friends of the South; conservative Republicans like Barry Goldwater voted with Russell and his objection. The presence of a number of moderate Democrats like Lyndon B. Johnson, John F. Kennedy, Estes Kefauver and Albert Gore, could hardly be surprising either. But then there were some names that were not expected at all. Names like Montana's old liberal hero Jim Murray voted with the segregationists. As did Montana's other liberal Democratic senator, Mike Mansfield. And Wyoming's fiery New Deal-democrat Joseph C. O'Mahoney were on the list of senators voting with Russell, and Warren Magnusson of Washington and civil rights champion Wayne Morse of Oregon ²⁴⁹. All liberal Democrats campaigning and elected on variations of the New Deal/ Fair Deal platform. All regularly opposed to the southern conservatives on both economic and social matters. All expected to be firmly in the pro-civil rights camp in the Senate. And all representing the Western "mountain states" affected by the Hells Canyon dam project.

5.4. "The high dam"

The hydropower-project in Hells Canyon had been a well-known customer in the Senate. In several elections, the Mountain states in the West had sent to Congress representatives promising to convince the federal government to support the building of great dams that could harness the hydropower of the great falls of Hells Canyon. ²⁵⁰Not any kind of dams, but public dams. Dams built and owned by the people, and certainly *not* by private enterprises and the eastern money-men behind them.

²⁴⁹ Ibid.

²⁵⁰ Drukman, *Wayne Morse*, 230–231.

And there lay the crux of the problem. For in the White House sat a Republican President already known for his disposition to grant private utilities access to natural resources, and for his promise to scale back the role of the federal government. President Eisenhower thought that *if* dams were to be built in Hells Canyon, such construction should not be for the federal government make.

While popular in their own states, the senators fighting for public dams in Hells Canyons, were no longer on their home turf when they carried the debate over to the Senate. Most Republicans opposed “socialist” ideas such as using public money to construct what private investors could build themselves, so did most of the Southern bloc. When the Western liberals in 1956 proposed legislation that would ensure public development of 12 dams in Hells Canyon, they were defeated in a 51-42 vote.²⁵¹

Now the liberal Westerners had new friends.

Exactly how the Hells Canyon-civil rights deal was made, is still not entirely clear. But most sources point to the leader Senate’s Majority Leader, Lyndon B. Johnson, who was - for reasons we shall discuss in detail in the next chapter – looking for a way that the civil rights bill could pass without triggering a filibuster. To do so, Johnson knew he would need votes in favor of amendments that would substantially water-out the bill.²⁵²

In an interview with Doris Kearns Goodwin, Johnson stated “I began with the assumption that most of the senators from the Mountain States had never seen a Negro and couldn’t care all *that* much about the whole civil rights issue.”²⁵³

Russell Long summarized what happened next “Johnson put together sort of a gentleman’s agreement where about four of us would vote for the high dam at Hells Canyon and about four on the other side would vote with us (...) on a completely unrelated subject: civil rights”²⁵⁴

On June 21st the Senate, as the Majority Leader had promised two days before, moved to consider the Hells Canyon Dam-project. The bill before the Senate was sponsored by Oregon Democrat Wayne Morse, Idaho Democrat Frank Church. It included appropriations of no less than 470 million USD for the construction of 12 dams in Hells Canyons on the border between Oregon, Idaho and Washington. The spending included in the bill infuriated Republicans. It was a “notorious” and “nefarious” proposal,

²⁵¹ “HELL’S CANYON REJECTED (July 21, 1956),” accessed February 12, 2017, <http://archives.chicagotribune.com/1956/07/21/page/12/article/hells-canyon-rejected>.

²⁵² Goodwin, *Lyndon Johnson and the American Dream*.

²⁵³ Goodwin, 150

²⁵⁴ Caro, *Master Of The Senate*, 901.

²⁵⁵ said Barry Goldwater of Arizona, who would become the Republican party's nominee for President in 196. Republican Prescott Bush of Connecticut, the father and grandfather of two more famous Bushes, reminded his friend of the GOP side of the aisle that support for a public construction-program of this type would fly directly in the face of the "Presidents promise to get the Government out of the business as much as we possibly could."²⁵⁶

These and similar protests were in vain. For the Senate voted 45-38 in favor of appropriating federal money to build the Hells Canyon Dam project as a public construction-program. And the list of senators supporting the "notorious" public spending in Hells Canyon would include names like Richard B. Russell, Sam Ervin, James Eastland, Herman Talmadge and Russell Long.²⁵⁷ All southerners. And all voting *against* the exact same measure one year before.²⁵⁸ In fact only Harry Byrd, whose segregationist views on race were only slightly more extreme than his absolute opposition to public spending, was the only southern Democrat not showing up to support the liberal Westerners and their long-sought Dam-project. He abstained. ²⁵⁹

Congratulations were in place. Senator Richard Neuberger of Oregon found that in addition to thanking "every single one of us from the Pacific Northwest" for the efforts made, a special thanks was owed to the "senior senator from Texas." Neuberger wanted the Majority Leader to know that "we are fully conscious of the leadership which he has provided and which he has demonstrated today."²⁶⁰

However, the congratulatory speeches had not lasted long before rumors of vote-trading began to spread. Senator Morse felt the need to address the issue, denying in clear terms that the Western senators voting with the south the day before had "sold out civil rights (..) in a trade for Hells Canyon." Such accusations against himself and senators Magnusson and Murray were "vicious, unwarranted falsehoods."²⁶¹

Apparently, vote-trading - or accusations thereof - was not the only outrage happening in the Senate on July 1. Strom Thurmond rose to give a brief address another evil supported by some in the federal government: "judicial tyranny." With reference to the 1956 Soviet intervention in Hungary, Thurmond said he wanted to "take a few

²⁵⁵ United States Congress, *Congressional Record Vol. 103, Part 8*, 1957, 9916.

²⁵⁶ *Ibid.*, 9921.

²⁵⁷ *Ibid.*, 9975.

²⁵⁸ "HELL'S CANYON BILL APPROVED BY SENATORS (June 22, 1957)," accessed February 12, 2017, <http://archives.chicagotribune.com/1957/06/22/page/A5/article/hells-canyon-bill-approved-by-senators>.

²⁵⁹ United States Congress, *Congressional Record Vol. 103, Part 8*, 9975.

²⁶⁰ *Ibid.*, 9921.

²⁶¹ *Ibid.*, 9988.

minutes to discuss tyranny in the United States.”²⁶² In America “the [Supreme] Court [has] dealt deadly blows to the constitutional principles of States rights and to the lawmaking power of the legislative branch in the Federal Government,” Thurmond said, adding before he sat down “Congress must exercise its constitutional authority to curb the Court or soon the Court will dominate and direct the activities of all branches of the Federal and States government.”²⁶³ Harsh words, but hardly noteworthy compared to the salvo that would follow the next morning.

5.5. “Constructed to deceive the American people”

“Mr President, for the first time since I have been a Member of the Senate, I respectfully request that I be not interrupted in the course of my prepared discussion.”²⁶⁴ According to his biographer Gilbert Fite, the Richard Russell had prepared his speech meticulously.²⁶⁵ Poring over documents and testimonies for days, Russell had read every word uttered in the House and Senate hearings on H.R 6127, as well as detailed accounts of the history of existing civil rights statute in the U.S Code of Law.²⁶⁶

The “propaganda-campaign” accompanying the civil rights proposal, Russell said was “constructed to deceive the American people as to the true purpose and effect of the measure.” Once again Russell stated that the bill was “cunningly designed to vest in the Attorney general unprecedented power” This time he would, Russell said, provide ample documentation for his accusation. And he would show to the Senate and American people that what the proponents of the civil rights act really desired was to make it possible for the federal Government to “*bring to bear the whole might of the Federal Government, including the Armed Forces if necessary, to force a commingling of white and negro children in the state-supported public schools of the South*”²⁶⁷

The cunningness of the bills creators, Russell explained, lay in the way Part III would amend existing legislation if enacted. “By taking this statute or law incorporating it, by reference to a number, into another law, without anywhere spelling out the total effect of the proposed law in express terms, it cunningly obscures its real scope and purpose,” said Russell.²⁶⁸ What the Georgian had found was this: If enacted the language

²⁶² Ibid., 10334.

²⁶³ Ibid., 10335.

²⁶⁴ Ibid., 10771.

²⁶⁵ Fite, *Richard B. Russell, Jr., Senator From Georgia*, 337.

²⁶⁶ Ibid.

²⁶⁷ United States Congress, *Congressional Record Vol. 103, Part 8*, 10771.

²⁶⁸ Ibid., 10772.

of H.R 6127 would be inserted into Section 1985 of Title 42 of the United States Codes. And that section was nothing less than one of the old Reconstruction laws, so deeply detested in the South. Not only would H.R 6127 in effect amend a Reconstruction law, Russell demonstrated that the criminal counterpart of the particular law had been declared unconstitutional by the Supreme Court because it, according to Russell's interpretation, was "enacted by an impassionate Congress operating on the theory that the Southern states were conquered provinces."²⁶⁹ One did not have to agree with Richard Russell's views on civil rights to acknowledge the unhelpful symbolism of enacting civil rights on the tail of old Reconstruction-statues – indeed the liberals would in the weeks to come rush to introduce resolution repealing old Reconstruction statues still lingering in the U.S Codes to accommodate the southerners. But to no avail. For there was worse to come

Richard Russell had one further announcement: Section 1985 of Title 42 referred to another Section in the that title - Section 1993. That Section stated that "It shall be lawful for the president of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as may be necessary to aid in the execution of judicial process issued under sections 1981-1983 and 1985-1995 of this title."²⁷⁰ Then Russell went for the kill: "I might point out that the voting rights section of the code is not tied in with the use of military force, whereas the section [Part III] which will be utilized to force the mixing of the races in school and in the public places of amusement is tied with the state authorizing the use of military force."²⁷¹

And there was more. In Russell's view the civil rights bill would also remove the right to jury trial. "White people who operate the places of amusement could be jailed without benefit of jury trial and kept in jail until they either rotted or until they conformed to the edict to integrate their places of business," Russell said.²⁷²

The jury trial issue had been lifted by southerners in the House-debate, and centered around the fact that Brownell's civil rights, as we saw in chapter 4, was not first and foremost drawn to punish but to prevent civil rights abuses.²⁷³ The heart of H.R. 6127 was the Attorney General's new authority to ask federal judges to *order* state officials, or private persons, to comply with federal civil rights laws. If such persons did

²⁶⁹ Ibid.

²⁷⁰ Ibid., 10773.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ United States Congress, *Congressional Record Vol. 103, Part 7*, 8606.

not comply, the federal judges could hold them in contempt – and jail them until they followed the judge’s ruling, typically by enrolling a black citizen previously refused the right to sign up as a voter. The southerners wanted such rulings to be subject to a jury trial, where (white) citizens could overrule the federal judge’s orders.

Before he yielded, Russell made a last substantial point. He challenged the President directly, and did so in a rather shrewd way. Speaking of the “confusion, bitterness and bloodshed” that would ensue if a bill as drastic as H.R 6127 were to pass, Russell added that he believed the President to be a man of “moderation.”²⁷⁴ In fact, Russell said he did not think the President was at all aware of the content of the legislation his administration had sent before Congress. “I would be less than frank,” Russell said “if I did not say that I doubt very much whether the full implications of the bill have ever been explained to President Eisenhower.”²⁷⁵

Regardless of what the President knew or not about the contents of the bill now before the Senate, Russell’s speech forced Eisenhower out in the open. Russell’s dramatic accusations were carried nearly in full by several news-outlets, including the U.S News and World Report and The New York Times.²⁷⁶ Seldom, said Everett Dirksen “have I seen within the frame of a single speech so many ghosts discovered under the same bed.”²⁷⁷

The next day, July 3rd, President Eisenhower faced the press. James Reston of the New York Times challenged the President to comment on Senator Russell’s accusation that H.R 6127 did not seek to “guarantee the right of all people to vote, but actually was a cunning devise to enforce integration of the races in the South.”²⁷⁸ The President’s reply did little to counter the claim that he was not himself deeply engaged in the details of the law: “Well, I would say this. Naturally, I am not lawyer and I don’t participate in drawing up the exact language of proposals. I know what the objective was that I was seeking, wish was to prevent anybody illegally from interfering with any individual’s right to vote.”²⁷⁹ Eisenhower then reminded the press that his proposals were “very moderate,” and when it came to the senators opposing the bill he was “always ready to

²⁷⁴ United States Congress, *Congressional Record Vol. 103, Part 8*, 10774.

²⁷⁵ Ibid.

²⁷⁶ Fite, *Richard B. Russell, Jr., Senator From Georgia*, 338.

²⁷⁷ United States Congress, *Congressional Record Vol. 103, Part 8*, 10780.

²⁷⁸ “Dwight D. Eisenhower: The President’s News Conference,” accessed April 15, 2017, <http://www.presidency.ucsb.edu/ws/index.php?pid=10839>.

²⁷⁹ “Dwight D. Eisenhower: The President’s News Conference,” accessed April 22, 2017, <http://www.presidency.ucsb.edu/ws/index.php?pid=10828>.

listen to anyone's presentation to me of his views." ²⁸⁰Reston of the Times followed up and asked in light of the President's first answer if he would be "willing to see the bill written so that it specifically dealt with the question of right to vote rather than implementing the Supreme Court decision on the integration of the schools?"

Eisenhower's second reply presented the Senate southern opposition with a sound-bite they would cherish for the remaining legislative process: "Well," Ike said "I would not want to answer this in detail, because I was reading part of that bill this morning, and there were *certain phrases I didn't completely understand*. So before I made any more remarks on that, I would want to talk to the Attorney General and see exactly what they do mean." ²⁸¹ Those words would come to haunt the civil rights proponents for the rest of the debate.

5.6. "The misnamed civil-rights bill"

By early July the southerners had outlined their objections to the civil rights bill. Not only had they communicated their positions. Through a combination of aggressive defiance, consistency of message and ability to identify the weak-points of the proposed legislation, the southerners had by July 3rd effectively re-framed the issue before the Senate from a debate over disenfranchisement and civil rights abuses in the South, to a debate over whether the Senate would approve of a bill possibly authorizing the Attorney General to send the army on political expeditions to enforce race-mingling. Before we continue to unfold the legislative process it is worthwhile to make a short stop to examine the content of the southern framing narrative, told and retold during July and August 1957. It was a story in four parts.

First, it sowed suspicion. H.R. 6127, Russell, Ervin and others argued, contained more than first met the eye. Implying that a bill or law has more far-reaching consequences, or will lead to great problems that will only become visible once the law is in effect, is standard code of conduct for political actors protesting any major legislation. Still the southerners were uniquely well-placed to exploit the power of such thinking for two reasons. For one thing, the political culture of the United States in the 1950s, as several distinguished scholars have noted, was heavily infested with distrust of the federal government. In his famous 1948 essay political scientist Richard Hofstadter, describe what he called the "paranoid style of American politics," and, talking about the

²⁸⁰ Ibid.

²⁸¹ Ibid.

1950s, Hofstadter – in admittedly rather sweeping terms – describes the American citizen as believing “himself to be living in a world in which he is spied upon, plotted against, betrayed, and very likely destined for total ruin”²⁸²In such a climate suspicion and mistrust, it is easier for radical political groups to mobilize against “hidden forces” and their concealed, malign, purposes. Second, the southerners had already found *something*, and that something fitted perfectly with the great southern narrative of injustice, prejudice and outright hatred towards the South. If H.R 6127 hid the legal opening for radical Republicans to deploy the federal army into the South to force the “co-mingling of the races”²⁸³what further humiliations and violations of the rights of States and citizens might be buried in that infamous document? Buried so deep inside the legal structure of the bill that even the penetrating eyes of Richard B. Russell or the legal mind of Sam Ervin, could not discern it before it was too late? The question needed to be asked, the southern senators felt. And ask it they did.

Inside that frame of suspicion and distrust the southerners inserted the second part of their story: The accusation that H.R 6127 not provided new rights, but on the contrary violated old and sacred civil and constitutional rights. Exhibit one was the case of jury-trial. For was not the absence of jury-trial for civil rights defendants, on the grounds that the violations they would be charged with would be *civil* not *criminal* offenses, an example of cunning dismantling of fundamental constitutional rights? Was it not precisely the type of canny and cloaked legal trickery one could expect from a Federal Government with unlimited appetite for power? Who would be next? Perhaps liberal Northerners would cherish the idea of southern racists “rotting in jail” for their unwillingness to comply with the “edicts”²⁸⁴ of Federal Judges. But when the same judges raised their gavels against striking workers, sending union organizers to limitless imprisonment, with no jury present to speak for the common man, might not the liberals regret their abandonment of constitutional principles? Again questions that needed asking. And among the southerners there were senators ready to ask.

Not that the aristocratic Richard Russel, who helped pass the Taft-Hartley anti-union bill during the Republican majority in Congress, could ask such questions.²⁸⁵Nor could - or would - Harry Byrd of Virginia speak for labor, proud as he was to be “the only

²⁸² Richard Hofstadter and George Henry Davis 1886 Professor of American History Sean Wilentz, *The Paranoid Style in American Politics: And Other Essays*, Reprint edition (New York: Random House USA Inc, 2008), 45.

²⁸³ United States Congress, *Congressional Record Vol. 103, Part 8*, 10771.

²⁸⁴ *Ibid.*, 10773.

²⁸⁵ Fite, *Richard B. Russell, Jr., Senator From Georgia*, 222.

man left in the Senate” who voted against the pro-union Wagner-act in the New Deal 1930s.²⁸⁶ But there were others, less conservative, southerners ready for the job. Senators like John Sparkman and Lister Hill, both Senators from Alabama - where economic populism competed with racism for dominance in the political debate, - could ask. As could Russell Long of Louisiana.²⁸⁷ On July 17, when the debate over the jury-trial had raged for a week, John Sparkman pointedly challenged the liberals on jury trial. Was it not the liberal lion George Norris of Nebraska who in the 1930s championed the right of jury-trial also in civil cases, in order to protect unions from conservative judges, Sparkman asked?²⁸⁸ On a different occasion, Lister Hill, reminded his colleagues of the “judicial tyranny in the field of labor-management relations which preceded the enactment of the Norris – La Guardia Act.”

But the lack of trial by jury was not the only reason why H.R 6127 threatened constitutional principles. The bill would, the southerners argued, continue a process where the law-making powers of Congress was reduced, while the courts set public policy. The Supreme Court was already “usurping the power of Congress,” according to Sam Ervin.²⁸⁹ If the civil rights bill passed, the southerners claimed, the federal courts would be the ones deciding whether separate facilities in transportation and places of amusement would be allowed, and what kinds of qualifications a state could demand of voters. The political debate would thus be replaced by injunctions from the Attorney General followed by rulings by the courts. And by doing so, the bill, or so the southerners said, challenged constitutional principles on a third front; it vested too much power in the hand of one single unelected individual, the Attorney General. According to Sam Ervin, H.R 6127 gave the “Attorney General the power to nullify statues enacted by states legislatures.”²⁹⁰

To Sam Ervin such developments would be nothing less than a “rape upon the constitution.”²⁹¹ Olin Johnston submitted that “such legislation can only lead to a complete breakdown in our system of Government. We would live, under this bill, in stark terror (...) Enactment of this bill will destroy the bill of rights and create a modern American Gestapo-state. (...) it will create an American Hitler out of the Attorney

²⁸⁶ Robert A. Caro, *The Passage of Power: The Years of Lyndon Johnson, Vol. IV*, Reprint edition (New York: Vintage, 2013), 469.

²⁸⁷ Key, *Southern Politics In State and Nation*, 43.

²⁸⁸ United States Congress, *Congressional Record Vol. 103, Part 9*, 11985.

²⁸⁹ United States Congress, *Congressional Record Vol. 103, Part 8*, 11202.

²⁹⁰ United States Congress, *Congressional Record Vol. 103, Part 9*, 11333.

²⁹¹ *Ibid.*, 11331.

General”²⁹² Russell Long of Louisiana added to the list of grievances by, admittedly rather bizarrely, claiming that “threats” in the electoral process subject to federal intervention if H.R 6127 passed, could possibly include “threats” not to vote for officials, thus infringing with the core of the democratic debate.²⁹³

One constitutional question lay closer to the heart of the southern senators than any other; *the rights of states*. To Louisiana Senator Allen Ellender, states right was the “the heart of our system,” since sovereign states acted as “a buffer between the people and their national Government,” and was the only thing which could “hold back the tides of all-engulfing centralism.”²⁹⁴ Southerners argued that the constitution gave the states, not the federal government, authority over such areas as public schools and elections. On July 11, Strom Thurmond quoted the 10th Amendment stating “The powers not delegated to the United States by the Constitution, nor prohibited by to the States, are reserved to the States respectively, or to the people”²⁹⁵ Clear as the southerners found the Constitution to be, they also found equally clear evidence that the wishes, and legal doctrine, of the Founding Fathers were being ignored. The Courts, Strom Thurmond argued a week earlier, had through *Brown*, dealt “deadly blows to the constitutional principle of States rights”²⁹⁶

There was also a different, less judicial and purely emotional, component of the southerners “state’s rights” argument. In his major July 2nd speech, Richard Russell ended on a highly passionate note: “I say to all other Members of this body: If there should ever be presented here a bill which proposed to deal so harshly with the people of their States as this bill deal with the people of my State, if they did not fight it to the very death, they would be unworthy of the people who sent them here.”²⁹⁷ The Senate, was designed as an institution representing and protecting the states. Its members proudly saw themselves as speaking for their states, taking affront to any criticism of *their* states. Thus, the southerners tried to tap into the pride of their colleagues as *ombudsmen* of their states, asking their fellow senators, to admit that the Senate should be the last place where legislation perceived as hostile to specific states were allowed to pass.

²⁹² Ibid., 11337.

²⁹³ Ibid.

²⁹⁴ Ibid., 11591.

²⁹⁵ Ibid., 11369.

²⁹⁶ United States Congress, *Congressional Record Vol. 103, Part 8*, 10334–10335.

²⁹⁷ Ibid., 10774.

While clearly less important than the two first, the third part of the southern narrative struck the civil rights liberals where it hurt the most. Several times southern Senate segregationists reminded their colleagues in the North, that racial problems were in fact *not* a sectional issue. Racism and poor social conditions for black people existed in the Northern section as well. “Even the most biased observer who has been through the slums of the Northern cities including the Nation’s capital” Strom Thurmond argued on July 11, “has viewed scenes far worse than can be found in the South.”²⁹⁸

And then there was a different point, made more subtly – barely made at all – but still clearly present between the lines: What the Northerners did to the South, they would also have to do in their own home states. There was perhaps no *de jure* segregation in Chicago, Washington D.C. and Philadelphia. But *de facto* segregation existed; in housing, employment and education. As did police violence and discrimination against black citizens. Some liberals, like Paul Douglas - who admitted that the North had no right to be “self-righteous” on the matter of civil rights - ²⁹⁹ were probably willing to accept that federal civil rights legislation would also have to mean changes in racial relations in the North. But others, perhaps less idealistic, and more electorally vulnerable senators from the North, might not be as interested in challenging the prejudices of their own voters. Few Northern politicians had anything to fear from condemning the Ku Klux Klan and white supremacy in the South. Demanding integrated housing and end to discrimination in factories, unions and schools in their own state was a far riskier undertaking.

And the hypocrisy of the northern civil rights champions did not stop at the inability to the plank in their own eye. When it came to civil rights, the southerners argued, liberals in the Senate forgot what lay at heart of progressivism. Was it not economic and social development that really made society advance? Education, not legislation, economic development, not federal edicts, would improve the situation of the Negro – in the South and all over America. Better schools and better jobs would foster increased participation in election by African-American citizens, said John Sparkman on July 10th.³⁰⁰

The fourth part of the southern narrative was the story of how change was already underway. Employment was growing, education improving. And with them racial relations would enhance as well, the southerners argued. If the progress was

²⁹⁸ United States Congress, *Congressional Record Vol. 103, Part 9*, 11370.

²⁹⁹ United States Congress, *Congressional Record Vol. 103, Part 8*, 9348.

³⁰⁰ *Ibid.*, 11195.

allowed to continue uninterrupted, that is. “Instead of allowing the people of the South, Negroes and whites, to work out mutual problems,” Olin Johnston said “the race haters and troublemakers of the North set out a vast propaganda movement to stir up the issue.”³⁰¹ Not only was further federal legislation unnecessary, since race-relations were already rapidly improving. “Before”, Strom Thurmond added, there was “no trouble, but friendly relations between the races” in his home-state of South Carolina. Then came the orders to integrate the schools, and problems erupted.”³⁰² Russell Long reminder to his colleagues on July 13, that changed would take time, and that the problems that remained would be very much harder to solve if “the majority of white people of the South are determined to frustrate it” because they perceive the federal government to be “punitive” against the South.

5.7. “Power to call out the troops”

With a clearer understanding of the southern narrative, we can return to the chronology of the legislative process. There, the fallout from Eisenhower’s July 3rd press conference, was felt immediately. The next day, Senator Patrick McNamara of Michigan, declared that spoke or “many Senate supporters of the civil-rights bill when I say that the reported vacillation of the President on this proposed legislation comes as a shock.”³⁰³

Furthermore, the topics dominating the debate, were the two southerners two core-messages; 1) That part III in the bill included sweeping, dangerous and unprecedented unconstitutional powers for the Attorney General, including the ability to deploy soldiers to the South to enforce desegregation, - and perhaps other equally unconstitutional and authoritarian expansions of federal capacity that would only be revealed once the bill was enacted. 2) That the civil rights bill included clear violations of rights, State’s rights, and the right to trial by jury.

Liberals, of course, disputed both points. Even before H.R 6127 arrived in the Senate, Paul Douglas warned the Senate against making jury-trial a central issue. With the help of liberal legal scholars, Douglas found no less than 28 other statues of federal law where jury-trial was not required in injunction-cases.³⁰⁴ There, is Douglas argued, “no history of jury trials in such injunction contempt cases. The so-called “jury-trial” issue in such cases is a new, unique, and radical departure from the precedents of our

³⁰¹ Ibid., 11232.

³⁰² United States Congress, *Congressional Record Vol. 103, Part 9*, 11370.

³⁰³ Ibid., 11312.

³⁰⁴ United States Congress, *Congressional Record Vol. 103, Part 7*, 8601.

law.”³⁰⁵ Furthermore, Douglas claimed, the Attorney General already *had* the right to file injunctions against persons about to engage in specific conspiracies against civil rights. The only material change brought about by H.R 6127, as Douglas saw it, was that the bill allowed such action to be instituted “before an election or during an election rather than [the AG being] compelled to wait until after some civil or criminal offense has already been committed.”³⁰⁶

Joseph O’Mahoney - a recent proprietor of the Senate’s approval of the Hells Canyon Dam-project - disagreed with Douglas. The Wyoming senator was the first of the liberal and moderate senators to openly argue for a compromise that would accommodate the southern concerns over the jury-issue.³⁰⁷ Speaking just after Ervin, O’Mahoney started by congratulating the South on the “great progress in the program of building up race relations.” Then he offered a formal amendment to H.R 6127, stipulating that if “there appears that there is one or more question of fact to be determined, such questions of fact shall be tried by a jury.”³⁰⁸

On July 12, Everett Dirksen pushed back against Russell’s accusation that H.R. 6127 would provide the President or the Attorney General new broad and sweeping powers to use the military to enforce racial integration. Dirksen argued that “as early as 1795, and as recently as 1956, Congress has given the power to the President to enforce the laws of the land, among which are the new group of equal rights established by the court since 1954. The embodiment of these statues in part III furnishes no power the President does not already possess.”³⁰⁹ Thus there was nothing new under the sun. The President did command the armed forces, and he was entrusted with, in fact obliged to, use the power of the federal government to enforce the law of the land. He would have such power whether the text in H.R 6127 landed inside an old reconstruction-section of the U.S codes, or not.

This, Sam Ervin did not buy. Replying to Knowland, Ervin argued, that the invocation of “this particular chain of statues gives the president the power to call out the troops to enforce an equal right judgment of the federal courts.” That would, Ervin believed, be a *new* Presidential power, because “under all the related statues, the

³⁰⁵ United States Congress, *Congressional Record Vol. 103, Part 8*, 8601.

³⁰⁶ *Ibid.*

³⁰⁷ *Ibid.*, 11005.

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid.*, 11451.

conditioned precedent to calling out the troops must practically amount to an *insurrection.*”³¹⁰

In mid-July, the southerners included new dynamism in the debate, by suddenly allowing the Judiciary Committee to start reporting on S. 83. That particular legislation was, as we will recall, the Senate version of the Brownell-bill, introduced in January, but kept safe from Senate consideration by James Eastland and his Judiciary Committee. With the cat soundly out of the bag now that the House-edition of the bill was on the Senate’s calendar, the southerners managed the use their previous obstruction of S. 83 to their advantage. Swiftly Sam Ervin and Olin Johnston, both members of the Judiciary’s subcommittee on civil rights, released their “minority report” on S. 83. While the report was short on new significant findings, it did present the southerners with an opportunity to re-litigate their central themes, with fresh language, new examples and the formal authority of a (minority) committee report.

The report, promptly inserted to the Congressional Records, opened with the authors announcing their goal of seeking to “preserve the American constitution and legal system for all Americans of all races and all generations,” before swiftly labeling S83 as an attempt to “promote the civil rights of some Americans by robbing other Americans of civil rights equally as precious” and to entrust the Attorney General with “autocratic, despotic powers.”³¹¹In an ingenious re-framing of the key southern pre-civil war demand of “nullification” - once used by slave states who insisted that they had the constitutional right to nullify abolitionist federal legislation – Ervin and Johnston argued that S. 83, and thus H.R 6127, “nullified state laws” reducing the “supposedly sovereign States to meaningless zeros on the Nations map.”³¹²

Georgia’s junior Senator Herman Talmadge also wanted to add a new dimension to debate. After spending some time describing the “harmony” prevailing “throughout Georgia among all our people,” Talmadge in a speech in July 12, attacked part I of the civil rights bill, thus far saved from much attention. Talmadge claimed that a civil rights commission would “not be able to bestow a single additional right upon the American people” to the contrary the “commission will jeopardize, encroach upon and actually take away existing rights.”³¹³ The way the commission would “jeopardize” existing civil rights, according to Talmadge, would be through “intimidation” of witnesses, and

³¹⁰ Ibid.

³¹¹ Ibid., 11476.

³¹² United States Congress, *Congressional Record Vol. 103, Part 9*, 11476.

³¹³ Ibid., 11503.

“abuses” of people accused of civil rights violations. Asked by Sam Ervin if this commission would not in fact be a “quasi-judicial body,” Talmadge had to concur.³¹⁴

Talmadge’s expose on the civil rights commission was followed up by Richard Russell using the opportunity to attract attention to part II of the bill, and the proposed civil rights division within the Justice Department. Such bureaucratic innovation, Russell assumed, would not come at a low price for the taxpayers. Russell estimated, though without presenting any documentation, that at least 200 lawyers would be employed by the division.³¹⁵ The seminar on “economy in the government,” continued with Russell Long reminding Russell that lawyers needed secretaries, and Thurmond recalling that in addition to the salaries, government employees were entitled to pensions. Sam Ervin then overbid his caucus-leader, by estimating that at least “two thousand” new lawyers would be hired to fill a civil rights division in the Justice Department.” No wonder Herman Talmadge concluded the southern plenum-exchange by stating that “the cost of this nasty decision would be in the millions of dollars.”³¹⁶

5.8. “An impressive victory”

During the Senate’s morning hour on July 14th, Majority Leader Lyndon Johnson announced that he would soon schedule a vote on Republican Minority Leader William Knowlands motion to make H.R 6127 the “pending business of the Senate.” Given the intensity of the debate over civil rights, it could of course seem that the bill had already been “pending” for weeks. But Senate formalities required a vote before any legislation could be taken from the calendar and placed before the Senate. This second vote would not be on the material content of the bill, nor on the various amendments already introduced or promised. The Senate would simply decide if it wanted to proceed with deliberations – and thus formally clearing the final hurdle before a vote on the bill, and the amendments offered to it. A vote on whether to make the bill the “pending business” of the Senate, of course provided a new opportunity for the southerners to stage a filibuster.

Johnson started by saying that I would vote “yea in the question of agreeing got the motion of the Senator from California to have the Senate proceed to consideration of House bill 6127.”³¹⁷ Further he said he would also vote approvingly to send the bill to

³¹⁴ Ibid., 11504.

³¹⁵ Ibid., 11505.

³¹⁶ Ibid.

³¹⁷ Ibid., 11826.

committee for a week, as suggested by Senator Morse. Johnson also said he suspected he would vote for several amendments including jury-trial and removing part III from the bill. Such amendments were flowing in. Shortly after Johnson was finished with his announcement, senator George Aiken, Republican Vermont, introduced an amendment co-authored by Democrat Clinton Anderson of New Mexico, stipulating that part III be removed entirely from the bill, as it “added little” to question of voting rights. Sound legislation, Aiken said, “comes from fairness and compromise.”³¹⁸

A clear indication that a filibuster was not forthcoming – yet - came from Richard Russell, who used a few minutes to “praise the fairness of the leadership” and expressed “appreciation to senators offering amendments for their willingness to make real contributions to some solution of this grave question.”³¹⁹

The Senate then proceeded to vote on the Knowland-motion to make the bill the pending business of the body. Only the 18 southerners voted against the measure, with remaining 71 votes in favor. Again the southerners made no attempt to filibuster the vote. Then the Senate defeated Morse’s motion to refer the bill to committee, on a 54-35 vote against the measure,³²⁰ also without any southern obstruction.

In the Northern press, congratulations rained. The Washington post described the July 16-vote as an “impressive victory” stating that “the size of the vote clearly indicates why the foes of this legislation did not attempt to talk it to death before it came formally before the Senate.”³²¹ It was a “moment in history” the New York Times said, “comparable with 1870 when the 15th amendment was ratified.”³²²

However, the to some of the liberals, the victory was overshadowed by the President once again creating uncertainty and providing fuel to the southerners. On a press conference on July 17, William S. White of the New York Times, asked the President about his thoughts on the Aiken-Anderson amendment, which removed part III and as White described it “would take out of the bill all injunctive power except to deal directly with the right to vote,” Eisenhower did not exactly go out of his way to defend the original language of the bill. “I think the voting fight is something that should be emphasized,” the President said. Not volunteering any defense of the broader language of the bills part III, the President said “If every person (...) qualified under the laws of the States to vote, is permitted to vote, he has got a means of taking care of himself and

³¹⁸ Ibid.

³¹⁹ Ibid., 11832.

³²⁰ Ibid., 11833.

³²¹ Ibid., 11955.

³²² Ibid., 12275

of his group, his class. He has got a means of getting what he wants in democratic government, and that is the one on which I place the greatest emphasis.”³²³

Causing unrest among proponents of the bill p 11976, the President by request of William Knowland issued a statement to the Senate on July 18, expressing “gratitude that the Senate by a vote of 71-18 has made H.R 6127 the pending business before that body.” The President’s statement further said that the legislation sought to “protect the constitutional rights of all citizens to vote regardless of race or color” and to “provide a reasonable program of assistance in efforts to protect other constitutional rights of our citizens,” thus indirectly referring to without wholeheartedly asking for support for part III. The President added that the “details of language changes is a legislative matter. I hope, however that the Senate, in whatever clarification it may determine to make, will keep the measure an effective piece of legislation.”³²⁴

Still, there was the question of part III. On July 22, Paul Douglas acknowledged that there was “very strong movement on both sides of the aisle” to support the Anderson-Aiken amendment to strike part III.³²⁵ A feeling that was not likely reduced by Majority Leader Lyndon Johnson announcing that a vote on the Anderson-Aiken amendment would be scheduled in the coming days.³²⁶

5.9. “A signal they believe negroes should be showed to the back”

Before that crucial vote on July 24, several senators added their final considerations. John F. Kennedy, thus far all but silent on the material content of the bill, stated his intension to vote *against* removing part III, reminding the Senate that it did have safeguards against run-amuck Attorney Generals, including to refuse to consent to nominations for the federal bench or even impeaching the President.³²⁷ On July 24 Paul Douglas made a last emotional appeal to defend Part III, stating that senators voting to remove the section signaled they “believed negroes should be showed to back of public buses,” and declaring that “our vote on this and succeeding amendments will be watched not only all over this country, but all over the world as well. Not only in Europe, but also in India and Asia, and particularly in Africa it will be noted”³²⁸ Still, it was perhaps Lyndon B. Johnson who captured the situation best when he, just prior to the vote on

³²³ “Dwight D. Eisenhower: The President’s News Conference”
<http://www.presidency.ucsb.edu/ws/index.php?pid=10839> 2017-04-15 15:25:03.

³²⁴ United States Congress, *Congressional Record Vol. 103 Part 9*, 12050

³²⁵ *Ibid.*, 12292.

³²⁶ *Ibid.*, 12328.

³²⁷ *Ibid.*, 12460.

³²⁸ *Ibid.*, 12562.

July 24, stated “this vote may very well be the deciding factor in whether his Congress will pass any civil-rights bill at all.” (p 12564) According to Johnson the issue was simple “We can write an adequate bill to safeguard the right of all citizens to vote. We can create a commission which can study the overall problems and submit to the Congress its recommendations. Or we can attempt here, in the floor of the Senate, to write into law new and drastic and far-reaching enforcement-procedures to cover a wide variety of vaguely defined so-called civil rights”³²⁹

On July 24, the Aiken-Anderson amendment passed 52 – 38, striking the third part of Brownell’s bill from H.R 6127. In addition to 18 conservatives, moderate southerners like Johnson, and his fellow Texan Yarborough, and Kefauver and Gore of Tennessee voted for the amendment. As did the Hells-Canyon gang for Church, Mansfield, Murray and O’Mahoney. But the crucial block was 18 Republicans breaking with Knowland voting for the bill. The list included Massachusetts senator and Minority Whip, Leverett Saltonstall, Vermont-senator Ralph Flanders and New Jersey H. Alexander Smith.³³⁰ In the next chapter we shall discuss in further detail the reasons why so many republicans voted with the South on the Aiken-Anderson amendment.

Table 2: Senate vote on the Aiken-Anderson amendment ³³¹

YEAS	NAYS
Aiken (R-VT), Anderson (D-NM), Barret (R-WY)	Allot (R-CO), Beall (D-MD), Bush (R-CT),
Bennet (R-UT), Bible (D-NV) Bricker (R-OH), Butler (R-MD), Byrd (D-VA), Case (R-SD), Chavez (D-NM), Church (D-ID), Cotton (NH-R), Curtis (R-NE), Dworshak (R-ID), Eastland (D-MI), Ellender (D-LA) Ervin (D-NC), Flanders (R-VT), Frear (D-DE), Fulbright (D-AR), Goldwater (R-AZ), Gore (D-TN), Green (D-RI) Hayden (D-AZ),Hickenlooper (R-IW), Hill (D-AL), Holland (D-FL Johnson (D-TX), Johnston (D-SC) Kefauver (D-TE), Kerr (D-NC), Long (D-LA), Malone (R-NV), Mansfield (D-MT), McClellan (D-AR), Monroney (D-OK), Mundt (R-SD), Murray (D-MT), O’Mahoney (D-WY), Robertson (D-VA), Russell (D-GA), Saltonstall (R-MA), Scott (D-NC), Smathers (D-FL),Sparkman (D-AL), Stennis	Capehart (R-IN), Carlson (R-KA), Carroll (D-CO) Case (R-NJ), Clark, (D-PA), Cooper (R-KT), Dirksen (R-IL), Douglas (D-IL), Hruska (R-NE), Humphrey (D-MIN), Ives (R-NY), Jackson (D-WA), Javits (R-NY), Jenner (R-IN), Kennedy (D-MA, Knowland (R-CA), Kuchel (R-CA), Langer (R-ND), Lausche (D-OH), Magnuson (D-WA), Martin (R-IW), Martin (R-PA), McNamara (D-MI), Morse (D-OR), Morton ((R-KY, Neuberger (D-OR, Pastore (D-RI), Potter (R-MI), Purtell (R-CT), Revercomb (R-WV), Smith (R-ME), Symington (D-MO), Thye (R-MIN), Watkins (R-UT),Wiley (R-WI)

³²⁹ Ibid., 12564.

³³⁰ Ibid., 12564.

³³¹ United States Congress, *Congressional Record Vol. 103, Part 9*, 12564.

(D-MI), Smith (R-NJ), Talmadge (D-GA), Thurmond
(D-SC), Williams (R-DE), Yarborough (D-TX), Young
(R-ND)

NOT VOTING Bridges (R-NH), Hennings (D-MO), Neely (D-WV), Payne (R-ME), Schoeppel (R-KA)

5.10. “A vote against the right to vote.”

With part III gone, the crucial issue remaining was that of jury-trial. On July 26, the southerners opened a final push for a jury-trial amendment. Now the southerners focused intensely on the link between jury-trial and labor-unions. Lyndon Johnson announced that he had been contacted by “representatives of organized labor” expressing “deep concern over the absence of an adequate jury-trial provision” in the bill.³³² Estes Kefauver followed up accusing liberals arguing against jury-trial of protecting the anti-union Taft-Hartley Act.³³³

Of course, the fact that southerners in the final days of the 1957 civil-rights debate claimed to speak for labor, did not mean that the labor unions though the southern conservatives spoke for them. On July 29, Joseph Clark, a Pennsylvania Democrat, inserted a letter from several labor-organizations, including the International Union of electrical, radio and machine workers, opposing the jury-trial amendment. (p 12887) New York’s Republican Jacob Javits, arguably one of the most liberal member of the Republican caucus, followed suit inserting a statement from the largest U.S union, the AFL-CIO, endorsing H.R 6127 and opposing jury-trial in civil rights cases³³⁴

And more importantly: while The President had been caving on title III, on jury-trial he was not as forthcoming. Protecting the right to vote was *the* point of the entire legislation. Providing officials denying African-Americans the right to vote with an all-white jury that were sure to render non-guilty verdicts, would effectively undermine the meaning of section IV entirely. On July 31st Eisenhower in a statement on jury-trial inserted in the Congressional Records asserted that he believed “that the United States must make certain that every citizen entitled to vote under the Constitution is given actually that right. I believe also that in sustaining that right we must sustain the power of the Federal judges in whose hands such cases would fall. So I do not believe in any amendment to the section IV of the bill. I believe that we should preserve the traditional

³³² United States Congress, *Congressional Record Vol. 103, Part 10, 1957, 12785.*

³³³ *Ibid.*, 12803

³³⁴ United States Congress, *Congressional Record Vol. 103, Part 10, 12895.*

method to the Federal judges for enforcing their orders, and this, I am informed (..) that it is 35 different laws where these contempt cases do no demand trial by jury (..) So I support the bill as it now stands, earnestly, and I hope that it will be passed soon. That is my last word on civil rights.”³³⁵

Frank Church of Idaho however, did believe that section IV needed an amendment. More to the point, he apparently believed that the amendment offered by Senator O’Mahoney would not suffice. The amendment had already been changed once, by Estes Kefauver suggesting it would stand on firmer ground if jury-trial was limited to *criminal* contempt cases arising from the civil rights act. That would provide judges with the opportunity to hold civil-rights offenders in contempt if they did not comply with court orders, but would require jury-trial if the judged wanted to *punish* the offender for not complying with court orders. The crucial difference being that in civil contempt cases the accused could purge himself of contempt by complying with the order –for example by registering a qualified voter.³³⁶

Church proposed to add a new section in Section 1861 title 28 of the United States Codes, stating that “Any citizen of the United States who has attained the age of 21 years and who has resided for a period of 1 year within the judicial district is competent to serve as a grand or petit juror.”³³⁷ With a simple stroke Church suggested a whole *new* civil right: the right to serve in a jury. The amendment would render null and void state laws linking the right to serve as a juror to the right to vote. Thus, the vicious circle where black citizens deprived of their voting-rights would also be excluded from the juries determining whether civil-rights offenders were guilty, would – or at least *could* - be broken. Only persons convicted for a federal or state crime punishable by imprisonment for 1 year, or unable to read, speak or understand the English language, or mentally incapable of rendering efficient jury service, would be excluded if the amendment passed.³³⁸

The significance of the Church addendum to the jury-trial amendment, now labeled the “Kefauver-O’Mahoney-Church-amendment”, was apparent in the Senate immediately. To liberals uneasy with the precedent the absence of jury trial in civil rights cases might set for labor-conflicts, it provided a perfectly legitimate liberal reason an amendment associated with southern conservatism. They would not be voting with

³³⁵ Ibid., 13137.

³³⁶ United States Congress, *Congressional Record Vol. 103, Part 9*, 11983.

³³⁷ Ibid.

³³⁸ Ibid.

the South, they would be voting to create a new right for black citizens, the right to serve as a juror. As could Northern moderates who wanted some kind of civil rights legislation, but were perfectly happy with accepting an amendment satisfying the southerners.

John Pastore, Democrat of Rhode Island, was one moderate completely happy with supporting amendment that would ease the passing of some kind of civil rights legislation. Promptly after Church introduced his amendment on July 31st – but not before O’Mahoney and Kefauver both spoke in favor of the Church addendum – Pastore rose in support of the amendment.³³⁹ Later Pastore engaged in a prolonged colloquy with O’Mahoney where the two went through some possible objection to jury-trial in contempt cases, themselves providing answers. One objection raised was that providing jury trial in criminal contempt cases, would incentivize civil rights offenders to make sure they were held in criminal, not civil contempt. For example, sceptics argued, an election official held in civil contempt for not registering a qualified black voter, could “recant” and then be released from jail, only to continue refusing to register the voter. At that point he would, at least according to the law, be held in criminal contempt and thus have the right to trial by jury if the Kefauver-O’Mahoney-Church amendment passed.³⁴⁰ Against this, Pastore and O’Mahoney, argued that the only way an election official could “recant” was by actually allowing the registration of the qualified citizen previously refused registration. Thus, Pastore, concluded “it is fair for me to assume, that once the court acts in civil contempt, there is nothing the respondent can do on his own, by way of subterfuge, to change the situation from civil contempt to criminal contempt.”³⁴¹

Other moderate senators followed suit. John F. Kennedy, articulated the ideal-type moderate rationale for supporting the jury-trial amendment, saying “after observing the course of the debate during the past days, I am persuaded that if the O’Mahoney-amendment is not accepted, the passage of the bill will be delayed for weeks and possibly indefinitely. I consider it a mistake to insist dogmatically on the purity on the original act at peril to its larger objective”³⁴² Even Richard Neuberger, a liberal champion of the civil rights act, was torn by the Church-addendum to the Kefauver-O’Mahoney amendment. Neuberger tried – in vain – to get the Senate to vote separately on the Church-part of the amendment.³⁴³

³³⁹ Ibid., 13157.

³⁴⁰ Ibid., 13158.

³⁴¹ Ibid.

³⁴² Ibid., 13306.

³⁴³ Ibid., 13234

Did the southerners know of, or even initiate the Church-amendment? The Congressional Records does not include definitive proof of such machination, but there are plenty of circumstantial evidence. On July 31st Richard Russell was quick on his feet supporting the Church-amendment, and saluting Pastore and O'Mahoney for their excellent discussion of the criminal-contempt issue.³⁴⁴ New York Times correspondent James Reston, argued in a news-paper article that the southerners actively whipped votes to pass the amendment.

For more than eighty years the southerner civil rights strategy in the Senate had been to delay. Civil rights bills would be delayed in committees; by endless hearings, pointless debates and chairmen refusing to schedule votes. They would be delayed in the Senate chamber by day-long seminars between southern senators occupying the floor and a never ending stream of speeches “educating” the public on the issue. And if the time had not run out, or the point not been taken, there would be the filibuster – locking down all legislative business until time finally ran out, or – more likely – moderates caved in so that other pressing matters might be attended to.

Now they hit the gas. So suddenly and deliberately that it took liberals, Republican leaders and the press by surprise. On August 1st, without warning, and all at once, the flood of southern speeches ran dry. Sam Ervin had no further need to explore the legal technicalities of H.R 6127. Richard B. Russell had said all he wanted about the evil of Reconstruction. Even Storm Thurmond, for the time being, kept quiet.

It was a sight not seen in the Senate before. All of a sudden, it was the Senate's liberals who pleaded for time. For On August 1st Lyndon Johnson announced that the Senate would vote on the O'Mahoney-Kefauver-Church amendment the very next day. With the defeat of part III fresh in memory, and sensing the impact the Church-amendment had made on moderates, Paul Douglas begged for more time – since not a day had passed between the introduction of Churches addendum the decision to proceed to a vote. That request was denied³⁴⁵ Knowing that they had the votes, and eager to the yeas and nays before the President or any other started whipping moderates in doubt, the southerners abstained from delaying the process.

It was indeed a peculiar alliance that passed the jury-trial amendment on a 51-42 vote. Reston of the New York Times summarized it as the “one of the oddest coalitions of

³⁴⁴ Ibid., 13159.

³⁴⁵ Ibid., 13356.

strange bedfellows gathered together in Washington.”³⁴⁶The Southern bloc voted as one for the amendment. As did several moderates as Pastore, Kennedy and Theodore Francis Green. As in the title III-vote senators from the Western Mountain states also joined in; Mansfield, O’Mahoney and Church were examples. And then there were Republicans; twelve GOP members, Goldwater- among them -abandoned their President’s position and voted for the amendment.

Table 3: Senate vote on the Kefauver-O’Mahoney-Church-amendment³⁴⁷

YEAS	NAYS
Anderson (D-NM), Bible (D-NV), Butler, Byrd (D-VA), Capehart (R-IN), Case (R-DK) Chavez (D-NM) Church (D-ID), Curtis (R-NE), Eastland (D-SC), Ellender (D-LA), Ervin (D-NC), Frear (D-DE), Fulbright (D-AR), Goldwater (R-AZ), Gore (D-TE), Green (D-RI), Hayden (D-AZ), Hill (D-AL), Holland (D-FL), Jackson (D-WA), Johnson (D-TX), Johnston (D-SC), Kefauver (D-TE), Kennedy (D-MA), Kerr (D-NC), Lausche (D-OH), Long (D-LA), Magnuson (D-WA), Malone (R-NV), Mansfield (D-MT), McClellan (D-AR), Monroney (D-OK), Mundt (R-SD), Murray (D-MT), O’Mahoney (D-WY), Pastore (D-RI), Revercomb (R-WV), Robertson (D-VA), Russell (D-GA), Schoeppel (R-KA), Scott (D-NC), Smathers (D-FL), Smith (R-ME), Sparkman (D-AL), Stennis (D-MI), Talmadge (D-GA), Thurmond (D-SC), Williams (R-DE), Yarborough (D-TX), Young /R-ND)	Aiken (R-VT), Allot (R-CO), Barrett (R-WY), Beall (D-MD), Bennet (R-UT), Bush (R-CT), Carlson (R-KA), Carroll (D-CO), Case (R-NJ), Clark (D-PA), Cooper (R-KT), Cotton (R-NH), Dirksen (R-IL), Douglas (D-IL), Dworshak (R-ID), Flanders (R-VT), Hennings (D-MO), Hickenlooper (R-IW), Hruska (R-NE), Humphrey (D-MIN), Ives (R-NY), Javits (R-NY), Jenner (R-IN), Knowland (R-CA), Kuchel (R-CA), Langer (R-ND), Martin (R-IW), Martin (R-PA) McNamara (D-MI), Morse (D-OR), Morton (R-KY), Neuberger (D-OR), Payne (R-ME), Potter (R-MI), Purtell (R-CT), Saltonstall (R-MA), Smith (R-NJ) Symington (D-MO), Thye (R-MIN), Watkins (R-UT), Willey (R-WI)
NOT VOTING Bridges (R-NH), Neely (D-WV)	

To the Senate’s liberals the vote was a blow. The jury-trial issue was “simply too important” to be traded in a political game, Paul Douglas fumed on August 2nd. It was also a blow to the President and his administration. Vice President Richard Nixon was

³⁴⁶ “SENATE, 51 TO 42, ATTACHES JURY TRIALS TO RIGHTS BILL IN DEFEAT FOR PRESIDENT; DEBATE IS LIMITED 39 Democrats and 12 Republicans Favor the Amendment Knowland Led Opposition Nixon Deplores Action SENATE APPROVES JURY-TRIALS PLAN Assurance Included Absent Members Sought Labor Backing Cited,” accessed April 24, 2017, <http://query.nytimes.com/mem/archive-free/pdf?res=9802E2D61338E13BBC4A53DFBE66838C649EDE>.

³⁴⁷ United States Congress, *Congressional Record Vol. 103, Part 10*, 13296.

quoted in the New York Times as calling the day of the jury-trial vote, “one of the saddest in Senate history. It was a vote against the right to vote.”³⁴⁸

To the liberals there was little doubt that the Church addendum to the O’Mahoney-Kefauver amendment played a crucial part in making moderate senators vote for jury trial. “Yesterday,” Paul Douglas said on August 3rd, “I found that a number of senators whom we had expected to be with us against the jury-trial amended stated while they would have liked to vote against it, they were nevertheless afraid that if the jury-trial amendment were defeated the southerners would then filibuster the bill and prevent any bill from being passed.”³⁴⁹

5.11. “Effective and enforceable legislation”

The final vote on H.R 6127 turned out to be something of an anti-climax. With jury-trial dispensed of, a vote on the bill was scheduled on August 7. Before the vote, Majority Leader Lyndon B. Johnson found it necessary to provide a lengthy explanation for his vote, emphasizing that he believed the bill to be both “effective and enforceable legislation,” and adding that he could not “follow the logic of those who say that because we cannot solve all the problems, we should not try to solve some of them”³⁵⁰ Also Frank Church and John F. Kennedy spoke, the latter briefly, in favor of the bill’s passage.³⁵¹ Allen Ellender of Louisiana and James Eastland of Mississippi briefly outlined their continued opposition to the bill, although Senator Ellender did admit that the bill had been “greatly improved” by the amendments now passed.³⁵²

There had been rumors of liberal defections against the watered-down version of H.R 6127.³⁵³ Paul Douglas described the final version of the bill as a “soup made from the shadow of a crow that has starved to death.”³⁵⁴ While unhappy with the defeat of part III and the result of the jury-trial vote, most of the Senate’s liberals shared Kentucky Republican John Coopers assessment of the civil rights law: “I believe the bill

³⁴⁸ “SENATE, 51 TO 42, ATTACHES JURY TRIALS TO RIGHTS BILL IN DEFEAT FOR PRESIDENT; DEBATE IS LIMITED 39 Democrats and 12 Republicans Favor the Amendment Knowland Led Opposition Nixon Deplores Action SENATE APPROVES JURY-TRIALS PLAN Assurance Included Absent Members Sought Labor Backing Cited.”

³⁴⁹ United States Congress, *Congressional Record Vol. 103, Part 10*, 13440.

³⁵⁰ *Ibid.*, 13897.

³⁵¹ *Ibid.*

³⁵² *Ibid.*, 13867.

³⁵³ “JOHNSON CHARGES NIXON DISTORTION IN RIGHTS BATTLE,” accessed April 16, 2017, <http://query.nytimes.com/mem/archive-free/pdf?res=9901E3DF173AE13BBC4E53DFBE66838C649EDE>.

³⁵⁴ Carter, *The Politics of Rage*, 97.

makes an advance along the road to freedom at home and in the world. For that reason, I support the bill”³⁵⁵

On August 7 the Senate voted on H.R 6127, 72 to 18 in favor of approving the amended bill.³⁵⁶ Only one liberal Senator, Wayne Morse of Oregon, voted against the bill believing it to be far too weak. The South voted against it, though not without exception. The two “non-bloc” southerners, Estes Kefauver and Albert Gore voted for passage. As did Lyndon Johnson and Ralph Yarborough of Texas, also formally outside the Southern caucus. More surprisingly, George Smathers of Florida, who did attend the caucus-meetings in Richard Russell’s office, also voted for the passage of the amended civil rights bill.³⁵⁷ “We have eliminated the harsh and punitive provisions which would have permitted the use of troops against the people of the South” said the Florida Senator.³⁵⁸ “These are tremendous accomplishments which evidence superb leadership and devotion to principle on the part of the Senator from Georgia [Mr. RUSSELL] and the incomparable majority Leader, the Senator from Texas,” Smathers added. Since he did “recognize that that eventually some civil rights bill will be enacted into law- either at this or some later point,” he argued that it would be wise to vote for this bill since it was the most “sensible and moderate proposal we shall get, and because there is great need to move this problem outside the political arena.”³⁵⁹

Table 4: Senate vote on the amended H.R. 6127

YEAS	NAYS
Aiken (R-VT), Allott (R-CO), Anderson (D-NM), Barret (R-WY), Beall (D-MD), Bennet (R-UT), Bible (D-NV), Bricker (R-OH), Bush (R-CT), Butler (R-MD), Capehart (R-IN), Carlson (R-KA), Carroll (D-CO), Case (R-NJ), Case (R-SD), Chavez (D-NM), Church (D-ID), Clark (D-PA), Cooper (R-KT), Cotton (R-NH), Curtis (R-NE), Dirksen (R-IL), Douglas (D-IL), Dworshak (R-ID), Flanders (R-VT), Goldwater (R-AZ), Gore (D-TE), Green (D-RI), Hayden (D-AZ), Hennings (D-MO), Hickenlooper (R-IW) Hruska (R-NE), Humphrey (D-MIN), Ives	Byrd (D-VA), Eastland (D-MI), Ellender (D-LA), Ervin (D-NC), Fulbright (D-AR), Hill (D-AL), Holland (D-FL), Johnston (D-SC), Long (D-LA), McClellan (D-AR), Morse, (D-OR) Robertson (D-VA), Russell (D-GA), Scott (D-NC), Sparkman (D-AL), Stennis (D-MI), Talmadge (D-GA), Thurmond (D-SC)

³⁵⁵ United States Congress, *Congressional Record Vol. 103, Part 10*, 13886.

³⁵⁶ *Ibid.*, 13897.

³⁵⁷ *Ibid.*

³⁵⁸ *Ibid.*, 13890

³⁵⁹ *Ibid.*

(R-NY), Jackson (D-WA), Javits (R-NY), Jenner (R-IN), Johnson (D-TX), Kefauver (D-TE), Kennedy (D-MA), Kerr (D-NC), Knowland (R-CA), Kuchel (R-CA), Langer (R-ND), Lausche (D-OH), Magnuson (D-WA), Mansfield (D-MT), Martin (R-IW), Martin (R-PA), McNamara (D-MI), Monroney (D-OK), Morton (R-KY), Mundt (R-SD), Murray (D-MT), Neuberger (D-OR), O'Mahoney (D-WY), Pastore (D-RI), Potter (R-MI), Purtell (R-CT), Revercomb (R-WV), Saltonstall (R-MA), Schoeppel (R-KA), Smathers (D-FL), Smit (R-NJ) Symington (D-MO), Thye (R-MIN), Watkins (R-UT), Wiley (R-WI), Williams (R-DE), Yarborough (D-TX), Young (R-ND).

NOT VOTING Frear (D-DE), Malone (R-NV), Neely (D-WV), Payne (R-ME).

5.12. “Lead us not to temptation”

Together, the elimination of part III and the vote in favor of jury trial, was “my sweetest victory,” Richard Russell later stated.³⁶⁰ Yet, the legislative battle was not over, not just yet. As noted in chapter 2, the U.S Constitution requires that in order to pass legislation, both branches of Congress need not only to vote in favor of the same resolution, but to approve of *exactly* the same legislative language. As we will recall, the House passed Brownell’s civil rights bill without substantial amendments. In the House version part III was intact, and no jury-trial was provided in part IV. To sort out the differences between the versions, a so-called conference committee with members from both houses was convened.³⁶¹

In the case of H.R 6127 the conference consisted of the leaders from both parties, in both houses. From the Senate Lyndon Johnson and William Knowland participated, from the House Sam Rayburn and minority leader Joseph Martin³⁶² Johnson and Knowland also met with the President on at least one occasion to discuss the reconciliation-process between the House and Senate version of H.R 6127.³⁶³

³⁶⁰ Chafe, *The Unfinished Journey*, 2011, 157.

³⁶¹ For a discussion on conference-committees and the reconciliation between Senate and House versions of legislation see, Smith, Roberts, and Wielen, *The American Congress*, 238–239.

³⁶² United States Congress, *Congressional Record Vol. 103, Part 12*, 15793.

³⁶³ “OUTLOOK BRIGHTER FOR A RIGHTS BILL; Compromise on Jury Trials Discussed by Senators-- Outcome Still in Doubt,” accessed April 16, 2017, <http://query.nytimes.com/mem/archive-free/pdf?res=9F01EED71431E63ABC4F53DFBE66838C649EDE>.

On August 23 House and Senate leadership, after - according to Lyndon Johnson conferring with “many senators,”³⁶⁴ laid before the Senate a reconciled version of the bill. The conference had accepted both the removal of Part III and the insertion of a jury trial-provision. But the jury trial arrangement in this version of the legislation was slightly different from the amendment passed in the Senate. The new jury trial clause said that right to trial by jury in criminal contempt cases would only apply in more severe criminal contempt cases, where the accused was found guilty and sentenced in a “fine in excess of the 300 dollars or imprisonment in excess of 45 days.” In such cases offender would be entitled to a new trial before a jury. On the other hand, the reconciliation-bill also set a maximum-penalty for sentences for contempt-violations under the new legislation, ensuring that no-one found guilty of contempt in civil rights cases would be sentenced to more than a fine of 1000 dollars or prison of 6 months. ³⁶⁵

When the committee delivered its report on August 23, several southern senators re-discovered their desire to debate civil rights on the Senate floor. On July 23, Olin Johnston of South Carolina lashed out against the legislation, describing now as a “monstrosity” claiming that the conference had brought “a new matter into the picture. ³⁶⁶ Herman Talmadge of Georgia followed suit arguing that the 300-dollar limit was arbitrary and inconsistent, “the right to trial by jury” Talmadge said, “is either fundamental, or it is not.” ³⁶⁷

Yet, one is tempted to say that there was not as much spirit in the southern resistance to the amended jury-trial provision. In the following three days only one southerner spoke at length, Spessard Holland – and he used his speech to address de facto school segregation in the North.³⁶⁸

Only on July 27, when the House passed its final version of the bill, did there become more action. Strom Thurmond now tried to delay the process by requesting that the conference version of the bill be referred to Eastland’s Judiciary Committee. ³⁶⁹ Now at the very tail of the process, masks fell. Olin Johnston, speaking in support of Thurmond’s motion, and a member of the Judiciary Committee, announced that if the Senate referred the bill to committee, “I can assure the Senate that I shall do my best to

³⁶⁴ United States Congress, *Congressional Record Vol. 103, Part 12*, 15793.

³⁶⁵ *Ibid.*, 16207.

³⁶⁶ *Ibid.*, 16203.

³⁶⁷ *Ibid.*, 16207.

³⁶⁸ *Ibid.*, 15942.

³⁶⁹ *Ibid.*, 16074.

keep it there forever.”³⁷⁰ William Knowland immediately asked for “yeay’s and nays” on Thurmond’s motion. The Congressional Record clearly indicates the existence of considerable impatience with Thurmond and Johnston, two of the Southern blocs most ardent segregationists, with several senators exclaiming “Vote, vote.” And vote the Senate did, defeating Thurmond’s motion 65-18, with only the present members of Southern bloc *and* liberal Wayne Morse – once again the champion of committee deliberation -, supporting referral to committee.³⁷¹

Having exhausted all other procedural maneuvers, the southern bloc returned to its last line of defense, the filibuster. Only that it was not the entire southern bloc that started talking on August 27, only one of its members, Strom Thurmond. For the filibuster against the 1957 Civil Rights Act would not be the kind of organized, well-planned, on-shift talakthons, so lethal because of their abilities to block legislation for weeks, even months, as exhausted speakers could be relieved by fully rested obstructionists. Strom Thurmond stood alone. And while he stood for a long time – longer than any senator had managed to stand before him, *and* longer than any one individual has ever filibustered in the years after him – Strom Thurmond could not stand forever. Announcing that “I would merely say that my purpose in making the extended address is for educational purposes,” Thurmond spoke against H.R. 6127. for 24 hours and 18 minutes.

While historic, Thurmond’s filibuster was hardly dramatic. Knowing the South Carolinian acted alone, even civil rights liberals came to his aid with questions providing the speaker the chance to relieve his voice, if only for a few minutes.³⁷²

Before the final vote on August 29, a few other southern senators spoke, albeit briefly, explaining their vote, and using this last opportunity to castigate the civil rights law. Harry Byrd pointed out that what was compromised in the reconciliation version of the bill “is the right of an American to trial by jury in criminal cases.”³⁷³ The change in the jury trial clause also motivated George Smathers, who we recall was the only member of the southern bloc to vote *for* the amended Senate version of H.R. 6127, to announce that he would be voting against this final version of the civil rights bill. “The House of Representatives has now sent us a compromise version of that bill...that effectively destroys the protection of trial by jury in criminal-contempt cases,” Smathers

³⁷⁰ Ibid., 16081.

³⁷¹ Ibid., 16083.

³⁷² Ibid., 16401.

³⁷³ Ibid., 16469.

said “For that reason I shall not support this compromise version of the so-called civil-rights bill.”³⁷⁴

Finally, Sam Ervin perhaps came closes to summarizing the view of the Southern bloc, or at least the seventeen segregationists not willing to follow Strom Thurmond’s example: “I have some constituents who would like for me to engage in a filibuster against the pending bill,” Ervin said. “I am compelled however to recognize the facts of legislative life. One of those facts is that those who entertain the sound views which I entertain on the bill are in a small minority, and it would be physically impossible for them to maintain a filibuster from this moment until midnight on the second day of January 1959.” Finally, Ervin added “The Lord’s prayer says “lead us not to temptation” “I do not wish to lead any of my brethren in the Senate into temptation to change the rule which preserves the right to unlimited debate.”³⁷⁵

Table 5. Final Senate vote on H.R. 6127³⁷⁶

YEAS	NAYS
Aiken (R-VT), Allott (R-CO) Barret (R-WY), Beall (D-MD), Bennet (R-UT), Bible (D-NV) Bush (R-CT) Carroll (D-CO), Case (R-NJ), Case (R-SD), Church (D-ID), Clark (D-PA), Cooper (R-KT), Cotton (R-NH), Curtis (R-NE), Dirksen (R-IL), Douglas (D-IL), Dworshak (R-ID), Flanders (R_VT) Frear (D-DE) Goldwater (R-AZ), Hayden (D-AZ). Hennings (D-MO), Hickenlooper (R-IW) Hruska (R-NE), Humphrey (D-MIN), Ives (R-NY), Jackson (D-WA), Javits (R-NY), Johnson (D-TX), Kefauver (D-TE), Kennedy (D-MA), Knowland (R-CA), Kuchel (R-CA), Langer (R-ND), Lausche (D-OH), Magnuson (D-WA), Martin (R-IW), Martin (R-PA), McNamara (D-MI), Monroney (D-OK), Mundt (R-SD), Neuberger (D-OR), O’Mahoney (D-WY), Pastore (D-RI), Potter (R-MI), Purtell (R-CT), Proxmire (D-WI) Revercomb (R-WV), Saltonstall (R-MA), Schoeppel (R-KA), Smith (R-NJ) (Smith R-ME) Symington (D-MO), Thye (R-MIN), Watkins (R-UT), Wiley (R-WI), Williams (R-DE), Yarborough (D-TX), Young (R-ND).	Byrd (D-VA), Eastland (D-MI), Ellender (D-LA), Fulbright (D-AR), Hill (D-AL), Holland (D-FL), Long (D-LA), McClellan (D-AR), Robertson (D-VA), Russell (D-GA), Scott (D-NCS), Smathers (D-FL) Stennis (D-MI), Talmadge (D-GA), Thurmond (D-SC)

³⁷⁴ Ibid.

³⁷⁵ Ibid., 16021.

³⁷⁶ Ibid., 16478.

NOT VOTING Anderson (D-NM), , Bricker (R-OH), , Butler (R-MD), Carlson (R-KA), Ervin (D-NC), ,
Morse, (D-OR) , Capehart (R-IN), Chavez (D-NM), Gore (D-TE), Green (D-RI), Jenner (R-IN), Johnston
(D-SC), , Mansfield (D-MT), Morton (R-KY), Murray (D-MT), Malone (R-NV), Neely (D-WV), , Payne (R-
ME), Sparkman (D-AL)

Chapter 6. “Compelled to recognize the facts of legislative life”

“Give us an equal voting rights-bill and by 1960 we will break the Roosevelt-coalition of large cities and the South, even without Eisenhower”
REPUBLICAN LEADER TO THE NEW YORK TIMES ³⁷⁷

We entered the discussion about the 1957 Civil Rights Act with a puzzle, and the truth is, despite all the speeches, debates and votes we have considered in the previous chapter, the central question remains unanswered: Why did the southern senators allow the passage of a civil rights bill in 1957 without even attempting an organized filibuster? This chapter will try to systematize and summarize what I perceive to be the main mechanism behind the southerner’s decision to let H.R. 6127 pass, and thus allow Congress to enact its first civil rights bill in over eighty years. I will certainly come short of any conclusive answers, but I hope to provide some of the key pieces in this puzzle.

Whatever the reasons for the southern decision not to filibuster the civil rights bill, lack of misgivings about the proposed legislation was not among them. To the southern segregationists H.R 612 was “un-American,³⁷⁸” even “unconstitutional,³⁷⁹” as well as “despotic.³⁸⁰” Enacting it would open the way for “Gestapo-methods,³⁸¹” and federal practices “borrowed from Stalin’s tyranny.”³⁸² Not even the “radical Republicans of Reconstruction,³⁸³” could have conjured a legislation so “vicious³⁸⁴” and hell-bent on “forcing the co-mingling of the races³⁸⁵” at the point of “federal bayonets.³⁸⁶”

Their style certainly varied, but their hostility towards rights for black Americans, varied only by degree. The murder of Emmet Till might have shocked the American public,

³⁷⁷ “Politics and Civil Rights; An Appraisal of G.O.P. Chances to Break Democratic Allegiance of Negro Voters,” accessed April 14, 2017, <http://query.nytimes.com/mem/archive-free/pdf?res=9B02E1DD1F39EE3ABC4C51DFB166838C649EDE>.

³⁷⁸ United States Congress, *Congressional Record Vol. 103, Part 9*, 12073.

³⁷⁹ *Ibid.*, 12155.

³⁸⁰ *Ibid.*, 12149.

³⁸¹ *Ibid.*, 11335.

³⁸² *Ibid.*

³⁸³ United States Congress, *Congressional Record Vol. 103, Part 8*, 10774.

³⁸⁴ United States Congress, *Congressional Record Vol. 103, Part 9*, 11367.

³⁸⁵ United States Congress, *Congressional Record Vol. 103, Part 8*, 10771.

³⁸⁶ *Ibid.*, 10772.

and the defiance of Rosa Parks may have inspired resistance among black Americans. But among the southern leaders caucusing in Richard Russell's Senate office, such developments only encouraged further efforts to defend the "southern way of life." In order to understand the Southern blocs willingness to accept the amended H.R. 6127 we have to look other places.

6.1. "My sweetest victory"

When confronting a complicated puzzle, it can – if only to motivate oneself – be a good strategy to begin with the pieces that seems the easiest to put together. In the case of our puzzle, those pieces would be the placing the two key amendments made to the civil rights bill into the picture. As we saw in chapter five, the southern bloc succeeded gaining a majority in the Senate to remove part III from the H.R. 6127 entirely, and insert a jury-trial provision to section IV.

The southerners did of course not the two other parts pass without opposition. Above we saw Herman Talmadge initiating a seminar in the Senate chamber on the possible costs to the tax-payers which would "be in the millions,"³⁸⁷ and the "quasi-judicial status"³⁸⁸of the commission. Yet these two parts received only scant attention, and the opposition at times verged on the ridiculous. Although one *could* credit Richard Russell with foreseeing the hippie-movement, when he indicted the civil rights commission for unleashing "long-haired agitators and special pleaders running around the country stirring up trouble."³⁸⁹ The reasons why the southerners did not care too much about section I and II of the civil rights bill were not hard to understand. The civil rights commission established by section I would not be anything new. While the southerners had found the previous civil rights commission – established by President Harry S. Truman - troublesome enough to ensure its defunding, a commission with the power to study and report only, would be of only limited danger to the segregation and white supremacy.

And of course, accepting a commission now, was not the same as promising to fund or mandate it forever. As with the commission, the Senate would have ability to control the funding of the civil rights division established in the Justice Department through the enactment of section II of the 1957 Civil Rights Act. Thus the southerners could be sure that that Sam Ervin's dire prediction of at least "two thousand"³⁹⁰ new civil

³⁸⁷ United States Congress, *Congressional Record Vol. 103, Part 9*, 11505.

³⁸⁸ *Ibid.*, 11504

³⁸⁹ *Ibid.*, 11561

³⁹⁰ *Ibid.*, 11505

right lawyers would not come into being without Senate approval. At any rate, it seems the southerners were far more concerned with preventing far-reaching legislation from being inserted to the federal statutes, than preventing the Justice Department from expanding its operation to enforce them.

Part III of the Brownell-bill included just that kind of far-reaching legislation. As we have seen, the language of that section gave the Attorney General the capability to institute “the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order” whenever any persons “have engaged or there are reasonable grounds to believe that any persons are about to engage” in any practice violating the “equal protection of the law”³⁹¹ guaranteed to all citizens by the Fourteenth amendment. As we saw in chapter two, the scope of the equal-protection clause in the Fourteenth amendment has been subject to intense debate, and shifting interpretations by the Supreme Court. The 1954 *Brown*-case³⁹² signaled to the southern senators that the current Court was likely to interpret the equal protection clause far more broadly than previous benches.

In his memoirs, Herbert Brownell, states plainly that part III was deliberately designed with broad language, to ensure that the Attorney General could intervene and bring equal-protection cases before the federal courts.³⁹³ The language, Brownell said, was constructed to empower the Attorney General to “sue to redress *all* civil rights violations in cases where the Supreme Court had defined the civil right as one protected by the Constitution.”³⁹⁴ And the section deliberately included “actions of individuals,” so that there would be no need to prove complicity by the state or local government in order to convict in civil rights cases. While Brownell distances himself from the southern claims that part III would made him a “czar,” he adds that “this charge was true (..) to the extent that Congress, through filibusters, would no longer be able to stop the Justice Department from implementing the equal-protection promises of the Constitution through ways and means approved by the courts.”³⁹⁵

To the southerners this was the bridge that could not be crossed. Brown had placed the segregationist project at great peril. Granting the Attorney General the power to initiate lawsuits against school-boards, and quite possibly transportation-companies,

³⁹¹ “Eisenhower Presidential Library.”

³⁹² “Brown v. Board of Education.”

³⁹³ Brownell, Burke, and Chancellor, *Advising Ike*, 202.

³⁹⁴ *Ibid.*

³⁹⁵ *Ibid.*, 203.

amusement-facilities, restaurants and other segregated business, in a situation where the highest court seemed ready to replace the legal doctrine of states' rights with one of black civil rights, could prove to be the end of racial segregation and white supremacy in the South. Indeed it would, a short decade later.

The speeches and debates noted in the Congressional Records underscores the assertion that part III was the most pressing question in H.R 6127. I was this section Richard Russell attacked in his major July 2 speech. And while harsh words were uttered also about sections I, II and IV, nothing compares to the raw emotion and almost unlimited anger directed by several southerners toward to the “despotic³⁹⁶” powers given to the Attorney General by section III.

The importance the southern senators attributed to part III is also evidenced by an interesting note written by Richard Russell. According to Robert Caro, Lyndon B. Johnson at one point floated the idea of a compromise where the Senate liberals agreed to give the southerners the jury-trial they desired in section IV, if the southerners agreed to keep section III in the bill. Johnson leaked the idea to the New York Times to gauge reaction, and reactions he got. “Tearing White’s article out of the paper,” Caro writes “Russell scribbled across it a note to himself: “This story embraced LBJ’s idea and I believe was inspired by him. He talked to me as if this amendment was all we could expect – I don’t agree if he will go all out.” Caro explains that “All out” meant “removing Part III-entirely.”³⁹⁷ Gilbert Fite also argues that section III was the what concerned Russell the most, and that the southerners were eager to remove that section before proceeding to a final vote on the bill.³⁹⁸

The issue of jury trial was of course also important. But there is reason to believe that in addition to being a safe-guard against convictions of civil right offenders, the issue was perhaps equally important for political reasons. This is also indicated by the complete lack of southern opposition to the Church-addendum to the jury trial amendment. As will be recalled, Church proposed a crucial change in the O’Mahoney-Kefauver jury-trial amendment, in effect opening for black jurors in the South. In his biography on North-Carolina senator Sam Ervin, Karl E. Campbell argues that the southerners were searching for new arguments to use against the civil rights bill, since old-style “nigger baiting” would not play too-well in the public atmosphere of 1957. The jury trial-issue provided an opportunity to broaden the debate, and appeal to liberals

³⁹⁶ United States Congress, *Congressional Record Vol. 103, Part 8*, 11476.

³⁹⁷ Caro, *Master Of The Senate*, 871.

³⁹⁸ Fite, *Richard B. Russell, Jr., Senator From Georgia*, 338.

skeptical of federal judges.³⁹⁹ And, as we discussed in detail in the previous chapter, the jury-trial issue also played nicely into the southern master-frame, where H.R 6127 was narrated as a “devious”⁴⁰⁰ bill that possibly would undermine existing civil rights and empower federal judges and bureaucrats with “un-American”⁴⁰¹ and “despotic”⁴⁰² powers. As noted in chapter 5, the jury trial-question had the addition advantage of creating trouble for liberals usually supporting the right to trial by jury.

With part III deleted and part IV amended to include a provision guaranteeing jury trial in criminal contempt cases arising from H.R 6127, the southerners achieved major legislative victories. And, as we have seen, they admitted as much. Alan Ellender noted the “great improvement” made in H.R 6127, before he proceeded to vote against it.⁴⁰³ To Richard Russell the amendments stripping the civil rights bill of its most consequential provisions was, as mention above, his “sweetest victory.”⁴⁰⁴

Thus, their success in amending Brownell bill, presents itself as the first, and likely most important, reason why the southern bloc accepted the legislation. This, however, begs another question, *how* were the Southern bloc able to muster the votes needed to win majority votes in the Senate.

6.2. “A soup made of the shadow of a crow which has starved to death”

To say that the 1957 Civil Rights Bill got mixed reviews among liberals would be an understatement. While some, like ADA-chairman Joseph Rauh called it a “substantial contribution to the right to vote,”⁴⁰⁵ Paul Douglas was perhaps closer to reflecting the sentiment among the majority of the civil rights proponents, when he described the amended law as a “soup made of the shadow of a crow which has starved to death”⁴⁰⁶ Vice-President Richard Nixon described the day the jury-trial amendment passed as “one of the saddest days in the history of the Senate. It was a vote against the right to vote.”⁴⁰⁷ The black newspaper *The Afro American* called the bill “half a loaf.”⁴⁰⁸

³⁹⁹ Campbell, *Senator Sam Ervin, Last of the Founding Fathers*, 116.

⁴⁰⁰ United States Congress, *Congressional Record Vol. 103, Part 7*, 9627.

⁴⁰¹ United States Congress, *Congressional Record Vol. 103, Part 9*, 12073.

⁴⁰² Ibid.

⁴⁰³ United States Congress, *Congressional Record Vol. 103, Part 10*, 13867.

⁴⁰⁴ Chafe, *The Unfinished Journey*, 2011, 157.

⁴⁰⁵ Lawson, *Black Ballots*, 202.

⁴⁰⁶ Carter, *The Politics of Rage*, 97.

⁴⁰⁷ “SENATE, 51 TO 42, ATTACHES JURY TRIALS TO RIGHTS BILL IN DEFEAT FOR PRESIDENT;” accessed April 24, 2017, <http://query.nytimes.com/mem/archive-free/pdf?res=9802E2D61338E13BBC4A53DFBE66838C649EDE>.

⁴⁰⁸ Lawson, *Black Ballots*, 197.

Only weeks before, the Washington Post had, as mentioned in chapter 5, triumphantly described the vote to make H.R 6127 the pending business of the Senate an “impressive victory” for the liberals.”⁴⁰⁹ How did an “impressive victory” in late July turn out to end with the “saddest day in Senate history” in August? How did the southerners move from a minority defeated twice, both when H.R 6127 was placed directly on the calendar bypassing Eastland’s “graveyard-committee” and when the bill was made the business before the Senate, to a find themselves in comfortable majorities on the crucial votes on part III and jury-trial?

No small part of the answer is of course to found in the history of Hells Canyons, accounted for in chapter 5. There seems to be sound evidence suggesting that several wester senators voted with the south to remove part III and jury-trial after making a deal securing southern support for public dam-development at Hells Canyons.⁴¹⁰ Interestingly enough, the one senator accused on the Senate floor for “selling” his vote, Wayne Morse of Oregon, voted to keep part III – while supporting the southerners on jury trial.⁴¹¹ In total seven senators from the Western Mountain-states voted for the Aiken-Anderson amendment removing part III: Church and Dworshak of Idaho, Mansfield and Murray of Montana, Bible and Malone of Nevada, Anderson and Chaves of New Mexico and O’Mahoney of Wyoming. Several of whom had professed strong support for civil rights earlier, and during the summer of 1957 – before they voted with the southern segregationists on the crucial title III-vote. And according to Caro, perhaps three or four more votes from the Western Mountain-states were potentially available to the southerners. Still that was no majority.⁴¹²

Four more votes could of course be added if the South, the *entire* South, voted as one. That is if senators Kefauver, Gore, Johnson and Yarborough fell in line.

In chapter 2, we saw that Kefauver - and Albert Gore’s- independent positions might be explained by a combination of their national political ambitions, Kefauver who was elected as Adlai Stevenson’s running mate in 1956 certainly aspired to becoming Democratic Party’s candidate for President,⁴¹³ and the particularities of Tennessee politics. Defense of white supremacy and opposition to federal “force-legislation” had less potential to unify white voters Tennessee than any other state once belonging to the

⁴⁰⁹ United States Congress, *Congressional Record Vol. 103, Part 10*, 11955.

⁴¹⁰ Goodwin, *Lyndon Johnson and the American Dream*, 150.

⁴¹¹ Drukman, *Wayne Morse*, 306.

⁴¹² Caro, *Master Of The Senate*, 901.

⁴¹³ Finley, *Delaying the Dream*, 148–149.

Confederacy.⁴¹⁴ Still, Tennessee was not completely insulated from the politics of “massive resistance.” Neither was Texas. The fate of liberal Governors in Alabama and Louisiana in 1956 illustrated how the politics of massive resistance challenged moderate southerners.⁴¹⁵ Fortunately for these senators, it became possible to please a national audience by supporting federal civil rights legislation, without voting for the sweeping language in section III of H.R. 6127. Through that door walked both Kefauver, Gore, Yarborough and Lyndon B. Johnson.

Then there were at least 29. Still short of the majority needed amend legislation. The votes that remained to ensure victory on section III and jury-trial, the southerners would find in the source they had depended on for so many times before: conservative Republicans and moderate Northern Democrats.

Throughout the Senate-debate, the southerners were reminding their old allies on the other side of the aisle why opposing a broad and sweeping federal civil rights law was a matter of conservative principles. Some of the reminders were quite overt: Sam Ervin quoted the great conservative philosopher Edmund Burke (“the spirit of any of men is not a fit rule for deciding the bounds of their jurisdiction”)⁴¹⁶ in his argument against trusting that the Attorney General would not abuse the power’s accredited to him by section III. Even when the ideas of ideologues and thinkers were not directly invoked, a view of human action easily recognizable as core conservative philosophy, clearly underlay the southern narrative about the civil rights law. The founding fathers, southern senators, reminded their colleagues, “viewed all men as potential wrongdoers.”⁴¹⁷ Giving individuals power, without checks and balances, was always dangerous. Enacting H.R. 6127 with part III intact, Strom Thurmond said, could lead to the tyranny seen in other countries, “I do not want to see it foisted in the American people under the alias of civil rights.”⁴¹⁸

Against such human impulses the Founding Fathers had created a Constitution limiting the power of government, and that of the federal government above all. Defending that Constitution was perceived as a perhaps *the* core task of conservatives in Congress. Thus the lengthy speeches in defense of “constitutional principles,” held by southern senators also underscored a key Republican message: the need to defend the original principles in the Constitution against an ever expanding federal government.

⁴¹⁴ Key, *Southern Politics In State and Nation*, 75.

⁴¹⁵ Bartley, *New South, 1945-1980*, 208.

⁴¹⁶ United States Congress, *Congressional Record Vol. 103, Part 9*, 11483.

⁴¹⁷ *Ibid.*, 11982.

⁴¹⁸ *Ibid.*, 11370.

Ervin and Johnston's minority report on S. 83 declared that their task was nothing less than an attempt to "preserve the American constitutional and legal system for all Americans of all races and all generations."⁴¹⁹

The southerner narrative, described in chapter 5, also touched a deep undercurrent in contemporary American conservatism. The mid 1950s was a time of great uncertainty and anxiety among American conservatives. In Washington D.C. government kept expanding while Soviet tanks rolled unhindered through the streets of Budapest. And the virus of seemed to Marxism continue spreading to peoples and nations everywhere. How could backward Soviet-Russia be capable of setting of a thermonuclear bomb, and the even more underdeveloped peasant-armies of Mao and Kim il Sung manage to force the United States Army back across the 38-parallel? Clearly *something* was going on. "Communists influences" the well-funded extremist John Birch Society declared in 1952 "are now in almost complete control of our Federal Government."⁴²⁰ While the most hysterical anti-communist conspiracies abated after the fall of Joseph McCarthy in 1954⁴²¹ (McCarthy actually died in May 1957), the underlying fear and paranoia of right-wing elements in America, did not disappear. There was, Richard Hofstadter notes, a sustained feeling among a not insignificant number right-wing Americans of being "disposed," by a long "sustained conspiracy, reaching climax in Roosevelt's New Deal, to undermine free capitalism, and to bring the economy under federal government control."⁴²² Too many of those voters, the moderate policies of the Eisenhower-administration were nothing but proof of how far the entrenched conspiracy went.⁴²³

Into this the southerners tapped, and they tapped deeply. We remember southern senators arguing that the civil rights bill was "cunningly devised" to provide the Attorney General, the President and the federal courts with unprecedented power – including the power to use the military to enforce their political edicts.

And there were also reminders of the sort of people supporting the civil rights program. Surely, conservative Republicans would not like the policies of *their* administration to be dictated by liberal pressure-groups, "extremists"⁴²⁴, such as the National Association for the Advancement of Colored People (NAACP) and Americans

⁴¹⁹ Ibid., 11476.

⁴²⁰ Hofstadter and Wilentz, *The Paranoid Style in American Politics*, 27.

⁴²¹ The Senate censured McCarthy in December 1954.

⁴²² Hofstadter and Wilentz, *The Paranoid Style in American Politics*, 25.

⁴²³ Ibid.

⁴²⁴ United States Congress, *Congressional Record Vol. 103, Part 9*, 12288.

for Democratic Action? According to Olin Johnston the NAACP wanted to remove jury trial because “then there would not be the hurdle of these juries that refuse to convict and grand juries that refuse to convict.”⁴²⁵ Richard Russell followed suit, claiming that if H.R 6127 passed, the NAACP would be empowered to send “punitive expeditions” to the South.⁴²⁶ Such was the situation, Richard Russell explained in a TV-interview in mid-July, that “both parties are captive of a very small group that we might call rather extreme left wings and those groups have convinced both parties, that they have the votes of certain bloc voters in some of our large cities.”⁴²⁷ What conservative Republican would like to be seen as a captive of “extreme left wingers”?

Important as such reminders were, another indication was arguably more influential in convincing conservative Republicans to abandon the party line: the signals from President Eisenhower that such defection would be tolerated. For much of the liberal optimism was rooted in the fact that this time a vote on civil rights in the Senate would be a party-matter where most Republicans would be expected to follow their popular war-hero President. And indeed, as Robert Caro finds there was already in 1956 a clear “awareness” among Congressional Republican leaders that now they had an opportunity to get even conservative members of their caucuses to join in on civil rights legislation.⁴²⁸ David Nichols argues that passing civil rights legislation was perceived as a key strategic objective for the Republicans during a January 1957 meeting between the President and GOP Congressional leaders.⁴²⁹ The fact that the Republican leadership pushed for H.R. 6127 to become a matter of loyalty to party, and President, did not escape the southerners. In several speeches, as we shall discuss in more detail later, southerners accused proponents of civil rights legislation of advancing their program for purely political and electoral reasons.⁴³⁰

However, Eisenhower’s influence in the debate over H.R. 6127 during the summer of 1957 likely helped the southerners *opposing* his legislation more the Republicans loyally working to pass his program in the Senate. Ike’s admission that he did not “completely understand”⁴³¹ certain parts of his own bill, was particularly devastating to the civil rights advocates.⁴³² Not once, during the entire summer of 1957 did President

⁴²⁵ United States Congress, *Congressional Record Vol. 103, Part 8*, 11234.

⁴²⁶ United States Congress, *Congressional Record Vol. 103, Part 9*, 12911.

⁴²⁷ *Ibid.*, 12288.

⁴²⁸ Caro, *Master Of The Senate*, 777.

⁴²⁹ Nichols, *A Matter of Justice*, 146.

⁴³⁰ United States Congress, *Congressional Record Vol. 103, Part 9*, 11367.

⁴³¹ “Dwight D. Eisenhower: The President’s News Conference.”

⁴³² United States Congress, *Congressional Record Vol. 103, Part 9*, 11312.

Eisenhower state publicly, without reservation, that he wanted the Senate to pass H.R. 6127 with part III intact.⁴³³ On the question of part IV, the President was somewhat clearer – mentioning on several occasions that his principle aim was to secure efficient measures to protect the right to vote. But he limited his involvement to dispatching the Vice President to whip votes in the Senate.⁴³⁴

In a way, Eisenhower's reluctance to fully invest in his own civil rights bill, can in part be seen as a measure of the Southern bloc's success at framing the debate over the bill. By launching a broad, aggressive and determined effort to frame H.R. 6127 as a far-reaching and extreme bill that would force "co-mingling of the races" at gunpoint, they boxed the President in. Willing to enforce voting-rights through stronger federal legislation, but *unwilling* to get entangled with broader issue of integration and white supremacy, Eisenhower had little room to maneuver once the southerners had succeeded in establishing a framework for the debate. The sweeping accusations made and the unyielding tone used by southern senators in the debate over part III and jury-trial all but closed the door for anyone wanting to endorse the civil rights bill, without also endorsing racial integration and the complete uprooting of white supremacy in the South. Seventeen conservative Republicans broke ranks and voted with the Democrats to strike part III.⁴³⁵ Twelve to include the jury trial amendment.⁴³⁶

And then there were moderate Democrats. Democrats from the state's bordering on Dixie, like Arizona's Carl Hayden and Oklahoma's Mike Monroney and Robert Kerr, voted with the southerners on many occasions. As did Joseph Frear of Delaware and Theodore Green from Rhode Island, whose states geography did not imply natural allegiance toward the South. Frear was a staunch conservative, actively supporting Richard B. Russell's failed 1952 bid for the Presidential nomination.⁴³⁷

Carl Hayden, did not speak on the issue – but voted constantly with the Southern bloc on civil rights during June⁴³⁸, and July⁴³⁹ and was perceived as virtual co-member of the caucus. Hayden was of course also chairman of the Senate's Appropriations Committee, a position guaranteed by the seniority system championed by southerners, and protected the Democratic Senate Steering Committee, led by Texas Senator Lyndon Johnson and with Richard B. Russell as a prominent member.

⁴³³ Lawson, *Black Ballots*, 179.

⁴³⁴ Thurber, *Republicans and Race*, 106.

⁴³⁵ United States Congress, *Congressional Record Vol. 103, Part 9*, 12564.

⁴³⁶ United States Congress, *Congressional Record Vol. 103, Part 10*, 13296.

⁴³⁷ Fite, *Richard B. Russell, Jr., Senator From Georgia*, 275.

⁴³⁸ United States Congress, *Congressional Record Vol. 103, Part 7*, 9828.

⁴³⁹ United States Congress, *Congressional Record Vol. 103, Part 9*, 12564.

6.3. “We liberals are a divided group”

The ability of the southerners to build a broad coalition was mirrored by the inability of liberals to do the same. Several times during the debate, leading liberals lamented their own inability to organize effectively. “We liberals,” Wayne Morse said, “are a divided group,” and nothing illustrated that fact better than the inability of liberals to agree on the proper “procedure of the handling of this civil rights bill.”⁴⁴⁰

Liberal disunity was of course increased by the political geography of the United States in the mid-1950s. Representing “one-party” states that routinely re-elected its senators, the southern Democrats needed not fear that extensive cooperation with like-minded Republicans would erase party-differences or in any way affect their re-election. In the industrial North, party-competition was an entirely different matter, with liberal Democrats and Republicans regularly facing close elections. In an environment where securing the credit for liberal victories – and assigning blame for failures – was an intensely partisan matter, cross-party cooperation was no easy endeavor. Democrats, were not slow to blame the Attorney General and the administration for the confusion created by using old Reconstruction statutes as the legal framework for part III.⁴⁴¹

Perhaps the lack of proper organization and the problems created by partisan politics, helps explain what – at least in my view – represents the greatest liberal failure during the Senate debate over civil rights: their inability to develop a compelling narrative that framed the debate over H.R 6127 in an advantageous way. There were, as we have seen, a few determined attempts to voice a coherent and emotional reason why the Senate needed to pass the first modern civil rights law. Paul Douglas spoke at length on the systematic discrimination against black voters in the South on June 10th, and continued to stress the very real issues at stake during the following debate.⁴⁴² Hubert Humphrey was perhaps the only liberal who actively sought to re-frame the liberal position as one of *defending* constitutional principles, among them the right to vote and the equality before the law. “I will tell senators what the definition of a liberal is,” Humphrey said on July 15. “He is one who abides by the Constitution of the United States, including the 14th and 15th amendment.”⁴⁴³

⁴⁴⁰ Ibid., 11468.

⁴⁴¹ Ibid., 12456.

⁴⁴² United States Congress, *Congressional Record Vol. 103, Part 7*, 8601.

⁴⁴³ United States Congress, *Congressional Record Vol. 103, Part 9*, 11689.

But apart from a few speeches and some scattered comments, it is striking how little the Senate liberals did to frame the debate in a way beneficiary to them. There was, to take one example, no systematic attempt to define the bill as a voting rights bill, instead the southerners were allowed to define what the legislation really sought to achieve: “co-mingling of races,” “forced school-integration,” and so forth.

Richard Russell’s July 2 speech, Sam Ervin and Olin Johnston’s minority report, and a steady, never ending stream of long southern speeches elaborating the same points and accusations, made sure that the debate over H.R 6127 was held on southern premises: In the Senate debate over the civil rights act “constitutionality” was a question of states’ rights, jury trial and avoiding excessive federal power, not of adhering to the 14th and 15th amendment, “orderly Senate procedure” equaled giving committees the ability to bury legislation, not making sure legislation was allowed real debate, and jury trial in contempt cases was allowed to be established as at least as crucial a civil right as the right to vote. As efficient as the southerners were in establishing a cage from where the debate would not often escape, the inability of liberals to break the frame was as conspicuous. In particular, it is interesting how often the liberals allowed the debate to be turned into a seminar on the history of jury-trial and the President’s power over the Armed forces, with liberals arguing point-by-point with the southerners on the legal details involved – thus letting the southerners decide what question were really under debate. To mention only one example, on July 12, New York’s liberal Jacob Javits let himself be entertained for several hours in a colloquy on the Senate floor with Mississippi’s John Stennis, where the subject were a) the peculiarities of the jury-trial provision in the Taft-Hartley Act, and – incredibly – b) whether former Idaho Senator William Borah was really for or against jury trial in civil contempt cases. ⁴⁴⁴

Adding to the problem for the civil rights liberals in the Senate, friends of civil rights in the Northern media, did not always play a helpful role. On July 15, The New York Times wrote that it “not (..) be an unworthy compromise if the friends of democracy in the Senate agreed to limit the use of the injunctions in the proposed legislation to cases in which the right to register and vote was denied.” ⁴⁴⁵ Even James Reston, a long standing civil rights champion in the paper, admitted that the southerners rested their

⁴⁴⁴ Ibid., 11497.

⁴⁴⁵ New York Times, July 13 “SENATE MAKES A CASE FOR UNLIMITED DEBATE; In Talking on the Civil Rights Bill It Has Used Its Ancient Privilege To Clear Up Obscure Issues IN DEBATE OF HIGH ORDER,” <http://query.nytimes.com/mem/archive-free/pdf?res=9C06E6DD1038E73ABC4C52DFB166838C649EDE>, accessed April 30, 2017, <http://query.nytimes.com/mem/archive-free/pdf?res=9C06E6DD1038E73ABC4C52DFB166838C649EDE>.

opposition on “moral philosophy” making the debate a “clash of ancient but contending principles.” On July 18 Walter Lippmann followed suit in an article titled “Golden opportunity,” where he argued for a compromise where the southerners accepted the bill, but without title III: “By making such a compromise the southerners would be making a very big concession,” Lippmann said.⁴⁴⁶ Thus, leading columnists and liberal news-media by the middle of July actively advocated amendments, including the elimination of title III. Again it seemed like the southern combative rhetoric and effective framing of the debate, helped increase the willingness among liberals to strike a bargain, even if it meant removing the part of the bill most desired by them.

6.4. “We’re going to make that man elected President”

The Role of Lyndon Johnson in the making of the Civil Rights Act of 1957 has been much discussed. There is solid evidence that Johnson played a crucial role in the Hells Canyon-deal.⁴⁴⁷ Yet it is possible to argue that Johnson’s most significant contribution to the historic 1957 Civil Rights Act, was perhaps not what he *did* but what he *symbolized*.

Not since the Civil War had any southerner been elected to the office of President of the United States. The conspicuous absence of southerners in Presidential politics noted in chapter 3 had various reason. But most of them boiled down to race and the vicious and visible supremacist policies still dominating in a region where one leading politician complained that he lost a primary election because he allowed himself to be “out-niggered,” by another supremacist. Adding, “boys - I am not going to be out-niggered again.”⁴⁴⁸

In 1952 Richard B. Russell made a serious attempt to win the nomination for the Democratic Party, participating in – and winning – the Florida primary, besting Estes Kefauver. But the leader of the Senate’s southern bloc stood no chance at mobilizing delegates from the Northern states. President Harry Truman told Russell in no uncertain words why he could not win: “You know the left-wing groups in Chicago, new York, St. Louis and Kansas City must be kept in the Democratic Party if we are to win

⁴⁴⁶ United States Congress, *Congressional Record Vol. 103, Part 9*, 12050.

⁴⁴⁷ Goodwin, *Lyndon Johnson and the American Dream*, 150.

⁴⁴⁸ The politician in question was George Wallace, who lost the 1954 Alabama gubernatorial primary election to John Patterson largely because of Patterson’ emphasis on resistance to integration and civil rights. Wallace, of course, later became a supremacist icon and three times Presidential candidate. Bartley, *New South, 1945-1980*, 207.

and they will not vote for you.”⁴⁴⁹ The Convention shared the President’s view. While Russell won all the votes in Georgia, Louisiana, Mississippi, South Carolina, Texas, Virginia – and all but one half of a vote in North Carolina, he only got a few sparse votes from non-southern states. On the second ballot Adlai Stevenson prevailed with 617 ½ votes, with Russell distant third at 261 votes. Russell’s track-record on civil rights, “or civil wrongs” as he called them on the campaign trail, was *the* major source of Northern opposition to his candidacy.⁴⁵⁰

According to Gilbert Fite, Richard B. Russell’s motivation for running in 1952, was first and foremost to advance the southern cause. In part running would demonstrate how dependent the Northern liberals were on the solid Democratic South to regain majorities in Presidential and Congressional elections.⁴⁵¹ In part Russell feared another southern “walk out” if the Democratic Convention nominated another civil rights liberal, and the potential for losing the Democratic majority in Congress such party-split would generate. And in part he ran because he wanted to make the point that the South should not be excluded from presidential politics.⁴⁵²

Russell’s loss in 1952, made him all the more determined to help get another southerner elected President. According to both his biographer and several of Lyndon Johnson’s biographers, Russell found “his” candidate in the Texan – whose politics could be presented as moderate enough to stand a chance in a nominating contest.⁴⁵³ Johnson had been perceived as a New Deal liberal in the House, and ran for Congress on a solidly pro-Roosevelt platform.⁴⁵⁴ In the Senate Johnson had demonstrated a keen ability to form alliance with both the southern conservatives, and important liberals.⁴⁵⁵ His abilities as a campaigner, and his unmatched capabilities as a fundraiser in oil-rich Texas, also helped persuade Russell that Lyndon B. Johnson was a man who could not only run for President, but actually win.⁴⁵⁶ As Majority Leader, Johnson quickly established a reputation as an efficient legislator, and “master of the Senate,” providing him with a national platform, and access to the national media. Russell was not alone among the southerners to invest high hopes in the relatively young Majority Leader. William S. White noted that the southerners “had not only affection for Johnson, they

⁴⁴⁹ Stern, “Lyndon Johnson and Richard Russell,” 690.

⁴⁵⁰ Fite, *Richard B. Russell, Jr., Senator From Georgia*, 295.

⁴⁵¹ *Ibid.*, 273.

⁴⁵² Caro, *Master Of The Senate*, 490.

⁴⁵³ *Ibid.*, 471.

⁴⁵⁴ Robert A. Caro, *The Years of Lyndon Johnson: The Path to Power: Written by Robert A. Caro, 1991 Edition*, (Alfred A Knopf, 1991), 395.

⁴⁵⁵ Stern, “Lyndon Johnson and Richard Russell,” 691.

⁴⁵⁶ Caro, *Master Of The Senate*, 471.

also had a paternal interest in him and a curiously mixed and modified regional pride in him.”⁴⁵⁷

And for several liberal columnists, Lyndon Johnson also exhibited something else: an ability to overcome sectional divides. A southerner respected by the conservatives in the Senate, yet also liked by New Dealers and moderates, was a potential President who could, as Philip L. Graham put it “heal the regional divisions within the country.” (Stern p 692)

Despite his pro-New Deal record in the House and his friendship with key Roosevelt-advisors, Lyndon B. Johnson was still a southerner, elected Majority Leader through the effort of the Southern bloc.⁴⁵⁸ If Richard Russell’s 1952 bid had not demonstrated the futility in trying to capture the Democratic nomination for candidates perceived as opposing civil rights, Lyndon Johnson got to see it for himself four years later. While his attempt to capture the Democratic nomination in 1956 might have been half-hearted, the liberal opposition to him was not.⁴⁵⁹ The “disappearance” of the Brownell bill in the Senate hallways in July 1956, was blamed – not without justification – on the Majority Leader.⁴⁶⁰ According to Caro, liberal pressure-groups argued fiercely for “any other candidate than Johnson,” stating the need for Democrats to appeal to “Negro voters.” With a southern Senate-leader as their standard bearer, that would be hopeless⁴⁶¹ Johnson, despite the support of several moderate Northerners, was framed as an anti-civil rights southern sectional candidate, and, just as Russell in 1952, defeated by Adlai Stevenson.⁴⁶²

Robert Caro shows how Lyndon Johnson during the spring and summer of 1957 received numerous warnings from liberal friends informing him that only by making the Senate take action on civil rights, could he escape being seen as “another Dick Russell”. Jim Rowe wrote that without the passage of a civil rights program Johnson would be seen as a “Southern candidate...it will make it almost impossible to be nominated in 1960.” Philip Graham informed Johnson that making speeches would “not be enough,” a concrete legislative initiative on civil rights would have to be made if he was to be repositioned as something other than the “leader of the Senate southerners.” Tommy

⁴⁵⁷ White, *Citadel*, 199.

⁴⁵⁸ Goodwin, *Lyndon Johnson and the American Dream*, 107.

⁴⁵⁹ Caro, *Master Of The Senate*, 800.

⁴⁶⁰ *Ibid.*, 802.

⁴⁶¹ *Ibid.*

⁴⁶² *Ibid.*, 807.

Corcoran, hardly a liberal, according to Caro told Johnson on the phone that “If he didn’t pass a civil rights bill, he could just forget the 1960 nomination.”⁴⁶³

Important as such reminders might have been, the decisive signal came from Richard B. Russell. The evidence that Russell was maneuvering to protecting Lyndon Johnsons civil-rights record came already in 1956, when the Russell defended Johnsons refusal to sign the “Southern Manifesto.” Russell told other southerners that Johnson should be excused from signing because, because as John Stennis puts it “he was a leader and had a different responsibility”⁴⁶⁴ Russell also promoted Johnson among fellow Senate southerners as a candidate that would make an “infinitely better President than any of the other candidates...and his views are much closer to mine.”⁴⁶⁵

Richard Russell made clear indications he understood that defusing the civil rights-issue would be necessary for Johnson to stand a chance in 1956. According to Caro, Russell admitted this openly to Johnson-aide George Reedy during a trip to Europe in the autumn of 1956. “Russell told me ‘George we’re going to get that man elected President yet’ Then there was a long pause. ‘But we can never make him President unless the Senate first disposes of civil rights’”⁴⁶⁶ Proof of Russell’s willingness to see Johnson freed from being framed as a southern segregationist, also comes from other sources. Decades after the vote Strom Thurmond continued to argue that Richard Russell helped convince the Southern caucus to accept the amended civil rights bill because of his desire to see Johnson win the Presidency.⁴⁶⁷

How important was the Presidential ambitions of Lyndon Johnson for the way the southern caucus handled the civil rights bill in 1957? There are no signs in the Congressional Records of the Presidential election in 1960 being central to the calculations made. Yet, one would perhaps not expect such ambitions to be debated openly. The evidence presented by both Johnson’s and Russell’s biographers does indicate that Johnson’s ambitions were important to at least Richard Russell – whose dominant position within the Southern caucus is well-documented.

And there is something else. For the South in the mid-1950s was a region in transition. While the intensified struggle over civil rights brought to the forefront everything that was different in the segregated South, in other respects the south was becoming more and more like the rest of the nation. By the 1950s, economic growth in the

⁴⁶³ Ibid., 850.

⁴⁶⁴ Stern, “Lyndon Johnson and Richard Russell,” 682.

⁴⁶⁵ Ibid

⁴⁶⁶ Caro, *Master Of The Senate*, 835.

⁴⁶⁷ Stern, “Lyndon Johnson and Richard Russell,” 695.

South was on pace to turning the “Nation’s number one economic problem,” into what would become the “Sunbelt south” by the 1970s,⁴⁶⁸ removing at least some of what Bartley and Graham calls the “South’s uniquely un-American experience with poverty, failure and defeat.”⁴⁶⁹

In this period of change and growth in the South, there was an increased sense, at least among some southern leaders, that the southern states now could escape the role of being the Nations backward, underdeveloped and ignorant embarrassment. Lyndon Johnson, Doris Kearns Goodwin argues, was such a southern leader. Johnson perceived that with the southern economy booming, wages increasing and society changing, what remained for the South to be accepted as “normal” states, was solution that would settle, or at least decrease the explosiveness of the civil rights issue⁴⁷⁰ Other southern senators also understood that times were changing, and that new opportunities were presented to the southern states. Gilbert Fite argues that the southerners in 1952 chose deliberately not to exploit the Republican majority in the Senate to try to push a conservative agenda; opting instead to vote with Northern Democrats to defend New Deal and Fair Deal-programs, thus seeking to be recognized as valuable members of the National party.⁴⁷¹

The changes occurring in southern society helps explain a strange duality in the way southern senators talked about their regions place in the Union during the debate over H.R. 6127. At the one hand, as we have seen, southern senators insisted on defending the constitutional principle of states’ rights, and on portraying the civil rights bill as an unjust and vicious attack on the South. On the other hand, southerners yearned to point out the progress made in their home-states, including the progress in racial relations, and to underscore their sections contribution to the nation. Richard Russell’s defining July 2. speech can be used as an example. “Since Appomattox,” Russell said, “this country has engaged in four wars in which the sons of the South have sealed the compact of reunion with their blood.”⁴⁷²

In quotes such as those, and in the maneuvering of Richard Russell to position Lyndon Johnson as a viable southern candidate for President in 1960, we sense that perhaps the willingness to accept a watered-out civil rights bill, at least in part, was the

⁴⁶⁸ Bartley, *New South, 1945-1980*, 417.

⁴⁶⁹ Numan V. Bartley and Hugh Davis Graham, *Southern Politics and the Second Reconstruction* (Johns Hopkins University Press, 1975), 21.

⁴⁷⁰ Goodwin, *Lyndon Johnson and the American Dream*, 151.

⁴⁷¹ Fite, *Richard B. Russell, Jr., Senator From Georgia*, 303.

⁴⁷² United States Congress, *Congressional Record Vol. 103, Part 8*, 10775.

result of an underlying desire to gain a respect, recognition and a new position within the Union for a changing South.

6.5. “Our ass is in a crack”

But if pride was driving southern senators to compromise, another feeling was also present: fear. Fear of losing, not only a vote in the Senate, but everything. Despite all their over-blown rhetoric, there was, as we have seen, a core of truth in the southern allegations. Herbert Brownell had devised, and the House of Representatives passed, a very far-reaching civil rights bill. Part III of H.R 6127 would have empowered the Attorney General to litigate on a broad spectrum of cases. And an Attorney General like Herbert Brownell might have used that power, at least to an extent that would have made southern segregationists uncomfortable.

And there were indications that this time, losing was a real option. One problem evident for the southerners at the start of the civil rights debate in 1957, were the Republicans. With Eisenhower re-elected in a landslide and GOP-strategists keen to deliver on the President’s program, could the conservative Republicans in the Senate be trusted to stand with the South this time? As we saw earlier in this chapter, it turned out they could, in part because of the southerner’s ability to frame the civil rights issue in a way appealing to conservatives, and in part because of the way Eisenhower himself handled the issue. But that would not become apparent before Russell’s July 2nd speech and Eisenhower’s infamous press conference on July 3rd. When facing the choice of whether to filibuster the motion to let H.R 6127 go directly on the calendar – thus forgoing the ability to bury the bill in Eastland’s Judiciary Committee – there is reason to believe that the southerners were less sure of their ability to mobilize Republican votes. “Let’s face it” Lyndon B. Johnson told one member of the southern caucus, “our ass is in a crack – we’re going to have to let this nigger bill pass.”⁴⁷³

Of course, at later stages, when the Hells Canyons-deal was made and Republicans started abandoning the party line, the southerners *did* have more than enough votes to pass amendments to the civil rights bill. Still it was not entirely sure that those votes would be with them on a filibuster. We have already seen how several moderate senators supporting the southerners on part III and jury-trial explicitly argued for *some kind* of civil rights legislation. Even southerners like Kefauver, Gore and Lyndon Johnson supported the enactment of a “moderate” civil rights bill, creating a

⁴⁷³ Caro, *Master Of The Senate*, 952.

sense among Southerners that their ranks were thinning. “In today’s Senate,” Olin Johnston said “the size of our Southern group is declining.”⁴⁷⁴ And what was more; *if* the southerner insisted on filibustering even an amended civil rights bill, moderates sympathetic to their concerns would, as Lyndon Johnson predicted, “follow the extremists in the North because they have no place else to go.”⁴⁷⁵ Talking to several moderate Senators, William S. White of the New York Times, argued that filibustering would indeed be a dangerous strategy for the southerners this time.⁴⁷⁶

Scary as the predictions of diminishing numbers and lost allies were, one thing was even more frightening the southern senators: What if they won? What if they managed to sustain a filibuster and defeat the legislation? While Ervin argued that the southerners were compelled to recognize the fact that they could not possibly filibuster until the end of the 85th Congress, there were also other factors of legislative life. *If* the entire Southern bloc made a stand, and *if* they were able to muster enough allies to avoid early cloture, they would likely not have to last until January 1959 before the civil rights bill was withdrawn. And only 33 votes would be needed to defeat cloture. The southerners still had friends. More importantly, they still had power unrelated to rule 22. Defying the Senate South still meant defying committee leaders with the power to recommend, or bury, not only civil rights legislation, but bills, resolutions and appropriations desperately needed by senators from all sections of the country.

While one is left to speculate about whether the southerners would have been able to sustain a filibuster in 1957, one need not resort to guesses about the anxiety several southern senators felt about the consequences of winning. If they won through filibustering, what was sure to follow was an all out assault on Rule 22. “I do not believe it wise for us to filibuster the bill” said Russell Long “we should save the filibuster weapon for the day when it is desperately needed”⁴⁷⁷ As we saw in chapter 5, Sam Ervin specifically addressed this problem in his final speech on civil rights on August 29, warning his soother’s friends against filibustering the bill, since he did not “wish to lead any of my brethren in the Senate into temptation to change the rule which preserves the right to unlimited debate.”⁴⁷⁸ To Richard Russell, filibustering, while “political expedient” would be potentially threatening rule 22, be “a form of treason against the

⁴⁷⁴ Lawson, *Black Ballots*, 197.

⁴⁷⁵ Finley, *Delaying the Dream*, 164.

⁴⁷⁶ “SENATE BATTLE LINES FORM ON CIVIL RIGHTS; Republicans May Force the Fight to A Conclusion or Let It Go Over,” accessed April 29, 2017, <http://query.nytimes.com/mem/archive-free/pdf?res=9F00EFDE1431E63ABC4F53DFB166838C649EDE>.

⁴⁷⁷ Finley, *Delaying the Dream*, 161.

⁴⁷⁸ United States Congress, *Congressional Record Vol. 103, Part 12*, 16021.

people of the South.”⁴⁷⁹ The filibuster would remain the last line of defense. Soon it would be needed.

6.6. “Swapping the known devil for the suspected one”

Still there is one crucial piece missing in the puzzle. The battle over the 1957 Civil Rights Act was a political struggle. A struggle fought on two sides of a general election, and with perspectives toward coming congressional and presidential contests. And the people debating the bill were elected officials needing the support of their constituents in a time of great political upheaval. The civil rights debate in the Senate in 1957 was clearly about legislative strategy as well as about political ideology, it was influenced by both procedural calculations and hot emotions. But it was also about electoral strategy and politicians attempting to maximize their support in the electorate. Strom Thurmond was perhaps wrong on several accounts during the debate on H.R 6127, but was straight on the money in one account, when he during one of his speeches against the bill mentioned that “I do not believe I would be mistaken in suggestion that some mention of the efforts being made to pass this bill will be made during the congressional elections next year.”⁴⁸⁰

At first glance discussing how electoral concerns influenced southern senators thinking about civil rights in 1957, might seem like a pointless endeavor. If there ever was any group of elected official with no reason to fear the voters’ judgement, it would have been the Democrats elected to the Senate from the eleven former Confederate states in America. As we saw in chapter 3, the South was “one-party country, and nowhere did Democrats dominate southern politics so thoroughly as in Senate elections. All twenty-two representatives sent to the Senate in the 84th and 85th Congresses were Democrats. Serious challenges to sitting southern senators were few and far between.⁴⁸¹ Thus, whatever dangers and challenges the southern senators might believe the future harbored, losing their seats would not be among them.

But they could lose something else. Something that was almost as sacred to them, and certainly as important to their states; the gavel’s they wielded in the Senate’s standing committees. All the power originating in those chairmanships rested on one premise: That the Democratic Party controlled the majority in the Senate.⁴⁸² With a

⁴⁷⁹ United States Congress, *Congressional Record Vol. 102, Part 11*, 16477.

⁴⁸⁰ United States Congress, *Congressional Record Vol. 103, Part 9*, 11367.

⁴⁸¹ Key, *Southern Politics In State and Nation*, 148.

⁴⁸² See chapter 3.

Democratic majority, seniority would do its magic. Without it, the most senior southerner would be relegated to the status of “ranking member,” with no gavel, no control over the agenda, no right to recognize – or not recognize – other senators wanting so speak or introduce motions, no power to schedule ever-lasting hearings on bill’s that needed to be stalled, or hit the gas hard when speed was in order.

By the 1950s the premise of Democratic Senate majorities was no longer to be taken for granted. The years of Democratic electoral pre-eminence under the New Deal and war time unity was over. In 1946 Republicans won a majority the Senate, in 1952 they did it again – and this time there was also a Republican President that, as we discussed above, could be suspected of installing a dangerous sense of party unity in the GOP.

That left the southerners with a dilemma. A dilemma that given their ideological predisposition should be appreciated as quite substantial. On the one hand, part of the electoral problem was the signs of cracks in the solidity of the South when it came to Presidential politics. In 1952 Eisenhower carried the southern states of Texas, Tennessee, Florida, Tennessee and Virginia.⁴⁸³ In 1956 he elaborated on his southern gains and added Louisiana to the list.⁴⁸⁴ Eisenhower’s margin of victory, both in the popular vote and the electoral college, was great enough to ensure that he would have won even without the South. But when added to the 1948 rebellion where Louisiana, Mississippi, Alabama and South Carolina delivered its electoral votes for States Rights candidate Strom Thurmond, it painted a picture of unease among southern whites that could be traced back to the Democratic Party’s shift toward civil rights on a national level.⁴⁸⁵ That shift had become visible long before the dramatic events at the 1948 Convention when delegates from several southern states walked out in protest against a liberal civil rights platform. Beginning in the mid-1930s, black voters in the North increasingly abandoned the Republican party of Lincoln and found a new home in the party of Franklin Roosevelt. New Deal economic policies appealed to African-American voters, hit hard by the depression.⁴⁸⁶ Signs that the Democrats, on a national level, were willing to make use of federal measures to fight discrimination, like the establishment of the war time Federal Employment Protection Agency, solidified the African-American support for Northern Democrats in the 1930s and 1940s. Harry Truman’s 1948

⁴⁸³ Grantham, *The Life and Death of the Solid South*, 127.

⁴⁸⁴ *Ibid.*, 141.

⁴⁸⁵ *Ibid.*, 127.

⁴⁸⁶ *Ibid.*, 109.

campaign against the “do nothing Congress,” of course did nothing to reduce Democratic grip on the African American vote.⁴⁸⁷

These gains in the North corresponded to problems in the South. An article in the Henderson Daily Dispatch entitled “The South Will Resist” from July 1957, illustrates how many white southerners saw the development in the Democratic Party. “the aim of the [civil rights] bill” the newspaper wrote “is of course the South, and the back of that is the bid for Negro votes in the great population centers of the North, where the Negro vote is just about enough to tip the scales in close elections.”⁴⁸⁸ When Eisenhower broke the “Solid South” in 1952 and 1956 it was not only because of his landslide national margin and winning smile. A real frustration with the direction of the national Democratic party also played a significant role.⁴⁸⁹

But as civil rights became increasingly important to black voters, the problems caused by Democratic senators opposing civil rights legislation grew. By the mid-1950s there were clear signs that increasing number of black voters were frustrated with the party of FDR. Samuel Lubell in the Journal of Negro Education, in 1957 reflected on the dilemma African American voters faced. “The crucial struggle in the minds of Negroes during the last campaign was over incidents of racial violence in the South, and the economic attachment that they felt to the Democratic Party.”⁴⁹⁰ At the same time southern whites grew increasingly discontent with the liberalism of Northern Democrats. After interviewing both black and white southern voters for The Journal of Negro Education in July 1957 Samuel Lubell insightfully summarized the predicament of southern Democrats in Presidential politics “One of the more striking paradoxes of the whole [1956] election was this fact, that men like Wesley and Shivers, the Negro and the white Southerner, could *both* cast a protest vote against one another by voting for the same man, Dwight D. Eisenhower.”⁴⁹¹

This dilemma intensified with the politics of “massive resistance,” demonstrating the potency of the “white backlash” against *Brown v. Board of Education*. As we saw in chapter 3, the increased salience of race in southern politics cost left-leaning populists and moderates their governorships in Alabama and Florida in the mid 1950s.⁴⁹² In this situation, there was a real possibility for political re-alignment in the South. Particularly

⁴⁸⁷ Thurber, *Republicans and Race*, 28.

⁴⁸⁸ United States Congress, *Congressional Record Vol. 103, Part 9*, 11569.

⁴⁸⁹ Grantham, *The Life and Death of the Solid South*, 127.

⁴⁹⁰ Samuel Lubell, “The Future of the Negro Voter in the United States,” *The Journal of Negro Education* 26, no. 3 (1957): 408, doi:10.2307/2293424.

⁴⁹¹ *Ibid.*, 413.

⁴⁹² Bartley, *New South, 1945-1980*, 208.

if the Republicans could, as Eisenhower toyed with during the 1952 and 1956-campaign, effectively combine their anti-government conservatism with forceful defense of State's rights. As history showed, that would become the new reality some fifteen years later when the South largely departed from the Democratic Party in the 1968-election.

Precarious as the southern Democratic position was in Presidential electoral politics, the real danger for the power southern representatives wielded in the Senate was not the tendency for "Solidly Democratic states" to betray their party in Presidential elections. What menaced the southern Senate power-base was the threat of GOP control of Congress. And that threat was in part linked to existence of the Southern Senate bloc itself.

In their home states the well-known segregationism of the Senate's Russell's, Eastland's, Thurmond's and Ervin's, protected them for any real electoral danger. But in the states outside the South, the racial view of these men was a source of electoral liability, not strength. Of course the name of Strom Thurmond or James Eastland would not be on the ballot in New York, Illinois or Pennsylvania. But, both to newsmen, civil rights activist, and the informed voter, the power a Senate Democratic majority would provide such men, was clear as day. "In our 1956 campaign for Oregon Senator Wayne Morse," said Senator Richard Neuberger "we were constantly confronted with the challenge that a vote for Senator Morse was a vote to continue Senator Eastland as chairman of the Judiciary Committee."⁴⁹³ To Democratic Senate candidates running in close elections all over the North and West, being the party of southern Senate power was a real problem.

And it was increasing. "The group that shifted most to the Eisenhower-Nixon ticket was the Negro vote," George Gallup concluded in 1956.⁴⁹⁴ One Gallup poll suggested Eisenhower had climbed from being supported by 20 % of African Americans in 1952 to gain 38 % of the black vote in 1956.⁴⁹⁵

The development was picked up in the media. *The Chicago Defender*, a pro-Democratic news outlet declared that the "major realignment of the so-called Negro vote, which in large measures represent the balance of power, is almost certain, unless the

⁴⁹³ "Democrats' Dilemma: Civil Rights; A Senator Proposes a Gray to Resolve Party Differences over This Burning Issue.," accessed April 29, 2017, <http://query.nytimes.com/mem/archive-free/pdf?res=9E0DE7DD1431E63ABC4F53DFB166838C649EDE>.

⁴⁹⁴ Caro, *Master Of The Senate*, 842.

⁴⁹⁵ Thurber, *Republicans and Race*, 76–77.

democrats can free themselves of their Dixiecrats leaders.”⁴⁹⁶ Senator Richard Neuberger was not the only one faced with harsh criticism of southern Senate power during the 1956 election. In a speech during the 1956-campaing, NAACP-leader Roy Wilkins deployed exactly the same logic in a speech in New York. “Up here Senator Eastland’s name is not on the ballot. We did not make him chairman of the Senate Judiciary Committee, where he has life-and-death power over civil rights. But up here we can have something to say about the party that made Eastland chairman of a Committee which he can choke up. Up here we can strike a blow in defense of our brothers in the South, if necessary by swapping the known devil for the suspected one.”⁴⁹⁷

True or not - the data we now possess does not, I think, allow us to decide – the assertion that the “black vote” could determine the outcome of close Senate and Presidential elections was repeated over and over again after 1956. James Reston of the New York Times argued in an article on July 24, that there were 35 Congressional districts outside the South, where African American voter formed more than 10 % of the population.⁴⁹⁸ Certainly, many Republican though so. Hugh Scott, GOP congressman of Philadelphia wrote the Eisenhower-administration in Marc 1956 stating that “I think I ought to have the opportunity to introduce some key Civil Rights Bill. This seems desirable in the intent of the Administration and for my own Congressional District where I have 22.000 Negro votes.”⁴⁹⁹ Richard Neuberger, in the same article where he described how Eastland’s transgressions in the Judiciary Committee had been a topic in the Oregon Senate-campaign, also stated that it was being associated with being the Party of southern segregationists that cost Earle Clements of Kentucky his seat, despite his personal liberal views on civil rights.⁵⁰⁰ And if such stories did not convince Democrats of the frustrations civil rights activists felt over southern Senate obstruction, there appeared during the 1956 elections brightly colored posters in pre-dominantly African-American neighborhoods in several that perhaps would: “When you feed the head of a dog you nourish the whole body. Remember when you vote for Democratic senator, Representative or Alderman in New York City, Chicago, Detroit – or anywhere,

⁴⁹⁶ Lawson, *Black Ballots*, 157.

⁴⁹⁷ *Ibid.*, 161.

⁴⁹⁸ New York Times, July 23 “Politics and Civil Rights; An Appraisal of G.O.P. Chances to Break Democratic Allegiance of Negro Voters,” <http://query.nytimes.com/mem/archive-free/pdf?res=9B02E1DD1F39EE3ABC4C51DFB166838C649EDE>.

⁴⁹⁹ Lawson, *Black Ballots*, 157.

⁵⁰⁰ New York Times July 7 1957 “Democrats’ Dilemma,” <http://query.nytimes.com/mem/archive-free/pdf?res=9E0DE7DD1431E63ABC4F53DFB166838C649EDE>.

you vote to make EASTLAND and the Southern race-baiters chairmen of the important committees in Congress.”⁵⁰¹

In July Arthur Krock of the New York Times argued that Democrats “southern problem” was potentially even greater than losing narrow elections. Writing about the “Republican high command” Krock reported that the GOPs strategists were convinced that “they needed an aggregate position on an issue popular in the country at large to defeat the Democrats in 1958 and 1960. The drive for civil rights legislation was an obvious choice since the Democrats were split.”⁵⁰²

Some Republicans clearly thought that civil rights could be the issue breaking the Roosevelt-coalition where both southern conservatives and African-Americans in the North were crucial parts. “Give us an equal voting rights bill,” one Republican strategist told New York Times reporter James Reston, “and by 1960 we will break the Roosevelt coalition of the large cities and the South, even without Eisenhower.”⁵⁰³

All taken together, there was clear evidence that the southerners were in danger of damaging the electoral chances of their fellow Democrats in the West and North. The extent of that damage could perhaps not easily be measured, but evidence for black voter-flight toward Eisenhower between 1952 and 1956, seemed solid enough. And the narrow margins separating victory from defeat in many competitive Northern states, were real beyond doubt.

There are not enough clues in the Congressional Records for me to conclude with any certainty that these considerations were of material importance to the southern civil rights strategy in 1957. But based on the sources we have, it seems likely that helping Northern Democrats in coming elections, and thus helping protect the Democratic majority they relied on, played a part in shaping the southern strategy in 1957.

First there is solid evidence that moderate senators used the electoral situation to persuade the southerners of the need to pass *some form* of civil rights legislation. According to Robert Caro, Lyndon Johnson frequently warned the southerners that the absolute resistance to civil rights legislation was hurting the Democratic Party. “Look what happened in the last election; look at the vote in Harlem! And it’s hurting us because of what we’re doing here in the Senate, “Johnson said to his southern

⁵⁰¹ Campbell p 111.

⁵⁰² New York Times, February 6 1957 “In The Nation; The Administration’s Equal Rights Legislation,” http://www.nytimes.com/1959/02/06/archives/in-the-nation-the-administrations-equal-rights-legislation.html?_r=0, accessed May 7, 2017, <http://query.nytimes.com/mem/archive-free/pdf?res=9E04E2D6133EE63BBC4E53DFB4668382649EDE>.

⁵⁰³ “Politics and Civil Rights; An Appraisal of G.O.P. Chances to Break Democratic Allegiance of Negro Voters.”

colleagues, and then added “All the Republicans have to do is to take one seat. One seat! Then it’ll be a tie, and Nixon will break it, and we won’t ever get to organize the Senate again.”⁵⁰⁴ If the southerners fought, using the filibuster and every other conceivable parliamentary tactic to obstruct the bill, the only thing they would gain, William S. White wrote in the New York Times in July, was to ensure that the bill would be re-introduced *again* in the Congressional election-year of 1958. If so, civil rights and southern racial segregation would be sure to dominate the election, in all likelihood to the disadvantage of Democrats.⁵⁰⁵

Second there is clear indications that the line of argument did penetrate the minds of southern strategists. According to his biographer Karl E. Campbell, North Carolina Senator, and perhaps the chief legal mind in the Southern bloc, Sam Ervin, was convinced by the 1956-election that the South could never again win on civil rights using the old take-no-prisoners approach.⁵⁰⁶ Thus Ervin, according to Campbell, argued for a legalistic and amendment-based approach, that was labelled in the press as the “soft southern approach.”⁵⁰⁷

And there is, as mentioned above, clear evidence that southern Senate leaders understood that the landscape had changed, and that they would need to cooperate better with other Democrats if they were to be able to defend a Democratic majority in the Senate.⁵⁰⁸ While southern Democrats had used the previous period of Republican majority in Congress to cooperate with conservative GOP-senators to enact landmark conservative legislation, like the Taft-Hartley Act, southern Democrats in the 83rd Congress, when Republicans again were in control of the majority, and the 84th and 85th where Democrats held a slim majority, avoided handing out legislative victories to the Republicans.

⁵⁰⁴ Caro, *Master Of The Senate*, 863.

⁵⁰⁵ New York Times July 6 “SENATE BATTLE LINES FORM ON CIVIL RIGHTS; Republicans May Force the Fight to A Conclusion or Let It Go Over,” <http://query.nytimes.com/mem/archive-free/pdf?res=9F00EFDE1431E63ABC4F53DFB166838C649EDE>.

⁵⁰⁶ Campbell p 111.

⁵⁰⁷ Ibid p 110.

⁵⁰⁸ Fite, *Richard B. Russell, Jr., Senator From Georgia*, 304.

Chapter 7. “We could get other bills passed”

“No group of men could have worked harder in a nobler cause. Undismayed and unintimidated...we have fought the good fight until we were overwhelmed and gagged.”

RICHARD B. RUSSELL, U.S SENATOR⁵⁰⁹

As with every decent puzzle, the question of why the southern power in the Senate bent to allow the passage of the 1957 Civil Rights Act, can only be answered by pointing to several different factors- The southerners’ ability to secure critical amendments was crucial. Without the removal of part III and the insertion of jury trial there is every reason to suspect that they would have used every means available – including the filibuster – to defeat the proposal. The ability to secure majorities was the result of both high and low politics. Several scholars have emphasized the horse-trading involved in the Hells Canyon deal. But one should not underestimate the effect the southerners’ ability to re-frame the debate on civil rights in the Senate had on the outcomes of the key votes. The way southern senators combined raw emotional denunciations of the proposed legislation with cool-headed and disciplined narration of one consistent message was an impressive display of strategic political communication. It certainly granted the southerners the initiative in the debate - at least from early July - and made sure that it was the civil right of jury trial, and the constitutional rights of states, not disenfranchisement of black citizens and disgraceful violence and discrimination against African-Americans, that dominated the Senate debate on America’s first modern civil rights act. And we have seen that factors other than the ability to amend the bill help explain the southerners’ willingness to let this one pass. Pride played one part, leading key southerners to seek a way of handling this civil rights bill that could help elect a southerner President, and perhaps restore the South’s place in the Union. As did fear. The fear that this time a filibuster might not be sustained, while perhaps exaggerated, certainly helped make the decision not to go to all-out attack easier.

Yet perhaps a concern more soundly rooted in reason bears the lion’s share of the explanation of why the southerners let this bill pass. As argued in the last section,

⁵⁰⁹ Finley, *Delaying the Dream*, 277.

electoral considerations likely played an underappreciated role in the southern civil rights strategy. One does not need to buy Anthony Downs dictum that “politicians in a democracy formulate policy strictly as a means of gaining votes” to accept that there were good reasons why the southerners in the Senate would pay their respect to considerations of electoral strategy. In fact, perhaps *no* single political coalition in modern Senate history had so much to gain from keeping its party in the majority, and risked so much of its agenda spoiled if the voters allowed the other party to govern Congress. Only when the Democrats were in the majority were the southern chairmanships over committees secure. And only with Democrats in the majority were the southerners sure to influence the Majority Leader and his increasing power. Ironically, the one faction in the Senate accusing the others of playing electoral games with the civil rights bill was perhaps the one most keenly tuned in to the electoral ramification of the bill.

All taken together, the southerners accepted the 1957 Civil Rights Act in part because of their ability to influence its contents, in part because they hoped accepting it would help them reach other desired outcomes, and in part out of fear that obstructing a seemingly moderate – and amended – legislation would weaken their party, and thus ultimately undermine their own power in the Senate.

The legacy of the first civil rights law in the United States in the 20th century would not first and foremost be the enforcement of civil rights. Gutted by amendments, the provisions enacted through the new law by no means led to sweeping enforcement of civil rights statutes. It added “few new voters”⁵¹⁰ according to Timothy Thurber’s assessment. Perhaps the addition of a thousand new black voters in Louisiana could be explained by the efforts of the new civil rights division established by the 1957 Civil Rights Act, according to Steven Lawson.⁵¹¹ But the years following the enactment of the 1957 Civil Rights Act also saw several southern states effectively *reducing* the numbers of African American citizen’s eligible to vote⁵¹² – while the Justice Department remained reluctant to get involved in too many voting-rights litigations, fearing that the Supreme Court might question the constitutionality of the 1957 Civil Rights Act.⁵¹³

⁵¹⁰ Thurber, *Republicans and Race*, 107.

⁵¹¹ Lawson, *Black Ballots*, 212.

⁵¹² Finley, *Delaying the Dream*, 190.

⁵¹³ Lawson, *Black Ballots*, 206.

As a symbol the Civil Rights Act of 1957 fared far better. With the enactment of the 1957 Civil Rights Act the “walls of Jericho” were breached.⁵¹⁴ Senate insiders knew the reasons why the southerners in the Senate accepted the law, and even at times celebrated their success in amending the bill. But to those who did not follow the complicated dynamics of the Senate’s inner life, the enactment of the 1957 Civil Rights Act was proof at last that even this last bastion of segregationist power in Washington D.C. could be broken and *would* fall in time. “We didn’t really care what was in the bill” liberal House member Richard Bolling said, “as long as there was *something*. We felt that as long as we could get the first bill passed, we could get others passed.”⁵¹⁵

Bolling was right. Eighty-five years passed between the passage of the last of the Reconstruction-era civil rights laws and the 1957 Civil Rights Act. Only three more years would pass until Congress again would pass civil rights legislation. And less than a decade would pass until Congress enacted the landmark 1964 Civil Rights Act and the 1965 Voting Rights Act that would effectively end overt *de jure* segregation and qualify white supremacy in the south.

Of these events the eighteen southern segregationists in the Senate were blissfully ignorant in the autumn of 1957. Although there were, as discussed in the previous chapter, disturbing omens of problems to come, the spirit in the Southern caucus was generally good in September 1957. Southerners took pride in liberals complaining that the legislation passed was a “pitiful remnant of the original measure.”⁵¹⁶ Even fierce segregationists like James Eastland reckoned that the south had “obtained the maximum results” possible given the “meager amount of power our small group possessed.”⁵¹⁷

Yet, the aura of invincibility about the Southern bloc was seriously damaged. And while the power of southern segregationists in the Senate would linger - linger so long that the Southern bloc in fact would be able to obstruct the passage of President Lyndon B. Johnson’s final civil rights program in 1968– the passage of the 1957 Civil Rights Act perhaps removed some of the mystique of southern power in the Senate.

Nineteen fifty-seven did more than break the curse against civil rights in the Senate. It also taught the proponents of civil rights some hard lessons. One was the

⁵¹⁴ To borrow a Biblical re-phrasing used by Robert Mann in his *The Walls of Jericho*.

⁵¹⁵ Caro, *Master Of The Senate*, 782.

⁵¹⁶ William H. Chafe, *The Unfinished Journey: America Since World War II*, 7 edition (New York: Oxford University Press, 2010), 157.

⁵¹⁷ Finley, *Delaying the Dream*, 186.

acknowledgment that the battle over civil rights would ultimately be decided in the Senate. To achieve victory, the liberals would have to accept the rules of the Senate game. If the southern opposition to civil rights was to be overcome, the liberals would need to know the rules, the precedents and the customs of the Senate. They would need not only courage and determination, but legislative skill and strategy. No more could civil right bills be introduced in the final weeks of a session. Never again could there be doubt about the President's endorsement of his own legislation. No more could the liberals allow themselves to be disorganized and hesitant to accept leadership. No more could the liberals assume that they would have the votes, only to find that "a number of senators whom we had expected to with us" had defected. And if the southern resistance to civil rights legislation was to be finally overrun, it could only happen if Northern Democrats and Republicans worked together. It was no coincidence that the Democratic President overseeing the passage of the 1964 and 1965 Civil Rights Act secured Republican votes for cloture by promising the Senate Minority Leader that he, the President, would accept all the blame for failure, while the Republicans would be granted an equal share of the glory if legislation passed.

Neither was it a coincidence that the President making that promise, Lyndon B. Johnson, and the minority leader receiving the President's assurance, Everett Dirksen, were both veterans of the 1957 civil rights debate. As were Hubert Humphrey who presided over the Senate as Vice President, and Mike Mansfield, the Democratic Majority Leader.

For the southerners the final assault, which strategists like Richard B. Russell and Sam Ervin saved their precious filibuster-weapon to defend against, would still be a short decade away. For seven years, the southern bloc would continue to project its power in the Senate of the world's most powerful legislative chamber. In 1960 they would again successfully weaken a civil rights bill from the Eisenhower administration, and during Kennedy's time in office, opposition from the Southern bloc would make the new frontiersmen reluctant to offer major civil rights initiatives to Congress. Still the underlying challenges and contradictions in the Southern bloc's position not only remained, but grew. The southern segregationists were an increasingly small minority whose power was largely dependent on the electoral success of an increasingly liberal Democratic party. A conservative coalition in a time of social change, fighting not only against increasing numbers, but – it seemed – time itself.

Thus, we arrive at the final puzzle. For while the southerners succeeded in most of what they set out to do in 1956 and 1957, their success included the seeds of its own

undoing. The passage of the 1957 Civil Rights Act may have helped Democrats avoid losing African American votes, thus strengthening the party's electoral standing. But the southerners would arguably in the long run lose more than they gained from the increased support for the Democratic party in the 1960s. With broad Democratic majorities in both chambers of Congress, the southern conservatives would become an increasingly small minority in an increasingly liberal party. The passage of the civil rights bill in 1957 might also have helped make Lyndon B. Johnson electable as Kennedy's Vice President, increasing - ensuring, as it turned out - the chances of a southern President. But a southern President would not help the southern cause. On the contrary, Lyndon Johnson used his substantial legislative skill to *break* the final southern filibusters and pass the 1964 and 1965 civil rights laws. And, finally, while the Civil Rights Act passed in 1957 was broadly perceived as both weak and lacking, the substantial victories the southerners achieved paled against the symbolic defeat included in the passage of the first civil rights bill in the 20th Century.

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