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A Feuding House: An Examination of the Causes and Effects of the Decline of Bipartisanship in the United States Congress

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A Feuding House:
An Examination of the Causes and Effects of the Decline of
Bipartisanship in the United States Congress

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by

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Introduction

In October of 2016, a Gallup poll reported that Congress had an approval rating of 18%.¹ Compared to the President's approval rating, Congress is seen as ineffective and too bipartisan for many Americans. While there has always been a natural tension between the opposing parties, it has magnified within recent years. Within Congress itself, many members are seeing their political opposition even more unfavorably today than their counterparts did two decades ago. Carol Doherty of the Pew Research Center claims that it is the "intensity of negativity that's increased."² The 2008 election marked a new era as President Barrack Obama was elected with his encouraging bipartisan, post-racial words that would point to greater cooperation in Congress. Much of the legislation, however, during the 111th Congress was passed on straight party-line votes. The signature piece of legislation during this congressional term, the Patient Protection and Affordable Care Act, passed with all 218 Republicans in Congress voting against it. To get the legislation passed, Congressional leaders exhausted every trick in the book to force fence-sitting Democrats to vote for it, in many cases going against the ideological leanings of their constituencies. Consequently, many of them lost re-election. The Affordable Care Act offered few compromises for moderate Democrats, much less the Republicans. These actions sent shockwaves throughout the electorate, causing major shifts in the composition of Congress in both the 2010 and 2012 elections. Angered by being shutout of the

¹ Justin McCarthy, "Ahead of Elections, U.S. Congress Approval at 18%," *Gallup, Inc.*, Oct. 12, 2016, <http://www.gallup.com/poll/196268/ahead-elections-congress-approval.aspx?version=print>.

² Niraj Chokshi, "U.S. Partisanship Is Highest in Decades, Pew Study Finds," *The New York Times* (New York, NY), June 23, 2016.

process, many Republicans would treat their Democratic colleagues in kind. Very little significant legislation has been enacted into law since the 111th Congress, and even fewer pieces have passed with major bipartisan support. Since a unified, single-party, filibuster-proof government is unlikely and short-lived if it occurs, cooperation on both sides of the aisle will be necessary for any significant achievements to occur. The nature of the partisan passage of the Affordable Care Act is unlike the passage of similar major pieces of legislation, such as the Sherman Anti-Trust Act, the Social Securities Act, and the Civil Rights Act of 1964, all of which were passed with broad bipartisan support.

I argue that the decline in bipartisanship was caused by the polarization of the voting population, which was prompted by the rise of partisans in elected office. In the voting public, partisanship has increased, even as political party identification is declining. Party leaders, both elected and un-elected, have helped to shift the focus of the news media and elections to the uniform political ideologies of their respective parties. The current, un-apatetic American voting population were attracted to these shifts and became aligned with one of the ideologies themselves. It is the case that parties started to put the focus on ideologies, but they only fully shifted to this focus because the public became engaged. Thus, a shift in the current bipartisan landscape, will not only need to occur in Congress itself, but also in the understanding and perception of the American public. Congress will only change if they do not fear their constituents turning on them and voting them out of office. It may be impossible to return to the bipartisan days of the past, but an effort can and should be made to create

more cooperation in the legislative and most responsive branch of the federal government. As this paper, will show, there are meaningful ways in which Congress can make bipartisanship more likely.

Literature Review

There are currently, two dominant scholarly positions for explaining the apparent decline in bipartisanship in the United States Congress. The first camp argues that Congress reflects the engaged public, and as the public has become more polarized, so too has Congress' members. Consequently, the decline in bipartisanship occurred due to the ideological realignment of the parties.³ Six or seven decades ago, party identification weakly correlated with the ideological conscious of the voter. No longer are the parties dependent on the support of large voting blocs, such as the Democratic reliance on "white voters in the South and white Catholics and working-class voters in the North."⁴ Now, these parties are dependent on the ideological beliefs of their supporters, rather than the traditional regional, racial or religious blocs, with an important exception being the reliably Democratic bloc of African Americans.⁵ The elites of the parties became more partisan and their leadership lead to more polarized parties. Ergo, the engaged electorate began to grow and become more concerned with the new partisan nature of these elites. Modern data shows that "the more interested, informed, and politically active Americans were, the more likely they were to take consistently liberal or consistently conservative positions."⁶ As the process became more open, the electorate itself became more partisan.

³ Alan I. Abramowitz, *The Disappearing Center: Engaged Citizens, Polarization, and American Democracy* (New Haven: Yale University Press, 2010), 65.

⁴ *Ibid.*, 65.

⁵ *Ibid.*, 75.

⁶ *Ibid.*, 41.

Campaigns are now fought on the ability of the parties to mobilize their key voters, which are ideologically centered with their party.⁷ Voting once was a civic duty, but today voters are motivated by partisanship and their longing for their ideological centered partisan to be elected. Consequently, a candidate's ideological purity is what now attracts voters to the voting booth. At first glance, the rise of partisans as elected officials might be the reason for the lack of bipartisanship in Congress, but it is more likely that "few members of Congress are willing to risk offending their most active and knowledgeable supporters by being seen consorting with the enemy."⁸ As is the goal of most elected officials, congressional representatives will do what they must to remain in office.

A second argument made for the decline of bipartisanship is that the candidates themselves have become more partisan, but the general public as a whole is aligned with the center. Whereas it was once believed that political parties needed to nominate a candidate who was a moderate and would appeal to centrists and independents, they now nominate highly partisan candidates because there is "more enthusiastic support of partisans for their own candidates coupled with more intense opposition to the other party's candidates, and lower turnout among moderates."⁹ This camp cautions from arguing that the electorate itself was becoming more partisan, as studies have shown that on major issues, the participants are not as polarized on issues as their representatives.¹⁰

⁷ Abromwitz, *The Disappearing Center*, 84.

⁸ *Ibid.*, 169.

⁹ Morris P. Fiorina, *Culture War? The Myth of a Polarized America* (Boston: Longman, 2011), 29.

¹⁰ *Ibid.*, 76.

After changes that resulted in a more seemingly open political process, participation by the public became more available. Perhaps unknowingly, these actions would also open the door for more partisanship as “the people who participate are for the most part those who care intensely about some issue or some complex of issues.”¹¹ Their preferred candidates, and often the ones who win, are ones that will not compromise on these issues. This lack of compromise, coupled with the partisan nature, decreases the chances for bipartisanship. It is the parties themselves, however, who control the extent of the partisanship of their candidates that they nominate. Ultimately, the voting public “can only choose between the alternatives offered by the parties.”¹²

There is a third, and less widespread argument that postulates that the polarity within Congress is caused by the change in the structure of Congress itself. This camp argues that the leaders of the Congressional party, often the majority “use and exploit the rules and norms of the body to ramrod through legislation regularly on party-line votes.”¹³ Another factor is the alignment of the President with Congress. When the majority in both branches became the same, it “crystallized the minority and sharpened the partisan conflict,” which caused the Congressional parties to “become more unified and ideologically polarized.”¹⁴ While the decrease in bipartisanship was

¹¹ Fiorina, *Culture War?*, 199.

¹² *Ibid.*, 267.

¹³ Thomas E. Mann and Norman J. Ornstein, *The Broken Branch: How Congress Is Failing America and How to Get It Back on Track* (Oxford: Oxford University Press, 2006), 140.

¹⁴ *Ibid.*, 211.

ultimately caused by the entire membership of Congress, the members were guided by the leadership, whether that be the Speaker, committee chairs, or the President.

Methodology

To demonstrate the decline of bipartisanship in Congress, I will trace the change in the partisan nature of Congress during three distinct time periods. As my methodology, I will look at case studies of the passage of prominent and signature legislation during each of the three time periods. These time periods include the early 20th century, the New Deal era, and the civil rights era. In each of the case studies, I will examine the actions and views of congressional leadership, as well as the composition of the final votes for each piece of legislation. I will then compare the actions of Congress to polling data taken about that a particular piece of legislation. I hope to show through this that party leadership forced Congress' action, which caused a shift in the opinion of the public, thus changing the partisanship of Congress.

The first era is that of the 51st Congress and in particular the passage of the Sherman Anti-Trust Act in 1890. The Sherman Anti-Trust Act represents a significant piece of legislation, that was passed by a near unanimous majority. This period will be vital in demonstrating the behavior of Congress before a strong sense of ideological partisanship was introduced into the political parties.

The second period that will be analyzed is that of the Second New Deal, which will involve the 74th Congress. In particular, the piece of legislation that is the most significant is the Social Security Act. Because the New Deal is not defined by one piece of legislation, secondary legislation will be considered. This legislation includes the National Labor Relations Act and the Neutrality Act. When looking at this time

period, it will also be important to discuss Roosevelt's purge of the Democratic Party and its impact on the voting population.

The third period is that of the passage of the Civil Right Act of 1964, which occurred during the 88th Congress. It will be important here to look at the broad bipartisan support that this legislation received, and how it might have further deteriorated group politics. Democratic leaders had to maneuver around Southern Democrats, who found it difficult to reconcile their political ideologies with their commitment to their party identity.

Chapter One: Standing Up to the Giants

Shortly before the turn of the century, large corporations known as monopolies dominated the United States' industrial market. Monopolies had exclusive access to or supply of a good or service. These monopolies could control the marketplace because they had virtually no competition. This lack of competition flies in the face of free market principles, which the United States attempts to adhere to. This lack of competition also gives the corporation the ability to set their prices. If prices rise dramatically, the result can be burdensome on consumers. A form of monopoly, the trust, proved to be very effective at limiting competition while maintaining separate autonomous companies. The Sherman Antitrust Act, or just put the Sherman Act, was a bill designed to impose penalties on new enterprises that would try to create trusts. The passage of this act will prove that the 51st Congress was able to pass legislation in a bipartisan manner because of the low levels of ideological differences within Congress itself.

By the late 1800's many industries were controlled by a single trust. These trusts included the Standard Oil Trust, Sugar Trust, School Slate Trust, Envelope Trust, and even the Paper Bag Trust.¹⁵ Trusts were considered evil creations that were the cause for much of the economic and social suffering of average Americans. By the end of the 1880's, the public opinion of trusts was uniformly negative. One member of the public said that the trusts were "merciless and cruel exploiters, completely

¹⁵ Charles S. Dameron, "Present at Antitrust's Creation: Consumer Welfare in the Sherman Act's State Statutory Forerunners," *The Yale Law Journal* 125, no. 4 (2016): 1081.

selfish, living by no rules and guided by no ethics.”¹⁶ In essence, the public hated trusts.

A few years before the creation of the Sherman Act, opposition to trusts was present on both sides of the political spectrum. In his speech to Congress in 1887, President Grover Cleveland would proclaim:

“In speaking of the increased cost to the consumer of our home manufactures, resulting from a duty laid upon imported articles of the same description, the fact is not overlooked that competition among our domestic producers sometimes has the effect of keeping the price of their products below the highest limit allowed by such duty. But it is notorious that this competition is too often strangled by combinations quite prevalent at this time, and frequently called trusts, which have as their object the regulation of the supply and price of commodities made and sold by members of the combination. The people can hardly hope for any consideration in the operation of these selfish trusts.”¹⁷

At this point during the discussions, Democrats like Cleveland were pushing towards removing tariffs on foreign corporations, to increase competition and thus reduce the possibility of monopolies.¹⁸ Likewise, Republicans were also discussing the issue. Republican Congressman William McKinley would share a similar sentiment at the 1888 Republican Convention, where he said,

“we are uncompromising in favor of the American system of protection.... [T]he Republican party would effect all needed reduction of the national revenue by repealing the taxes upon tobacco and spirits.... If there should still remain a larger revenue that is requisite for the wants of the government we favor the entire repeal of internal taxes rather than the surrender of any part of our protective system at the joint behest of the whisky Trust and the agents of foreign manufacturers.... We declare our opposition to all combinations of capital organized in Trusts or otherwise to control arbitrarily the condition of trade among

¹⁶ Will Wilson, *The State Antitrust Laws*, 47 A.B.A. J. 160, (1961).

¹⁷ U.S. Congress, *Congressional Record*, 50th Cong., 1st sess., 1887.

¹⁸ Peter R. Dickson and Philippa K. Wells, “The Dubious Origins of the Sherman Antitrust Act: The Mouse That Roared,” *Journal of Public Policy and Marketing* 20, no. 1 (2001): 7.

our citizens and we recommend to Congress and the state legislatures ... such legislation as will prevent the execution of all schemes to oppress the people by undue charges ... or by unjust rates.”¹⁹

Whereas the Democratic strategy was to reduce the tariffs, Republicans sought to protect tariffs and look for other ways by which they could attack the trusts. Further complicating things, many of the generous donors and supporters of the Republican party were the owners of trusts themselves. For example, during the 1888 Republican Convention where there was an anti-trust sentiment being populated, the head of the Republican party, George Blaine, was absent as he was attending a gathering hosted by Andrew Carnegie, one of America’s most famous trust leaders.²⁰ One of his companies, the Carnegie Steel Company could control the price of steel by dominating the industry market.

As is often the case, state legislatures were the first to respond through legislation to the widespread public hatred of trusts. In 1888, Iowa became the first state to pass anti-trust legislation with their “Act for the Punishment of Pools, Trusts and Conspiracies”. Iowa’s law said that any corporation in Iowa that created a trust or similar agreement “to fix prices or limit output of certain commodities, such as coal, lumber, or oil, was guilty of a conspiracy to defraud,” and could be punished in either criminal or civil court.²¹ Shortly after the adoption of Iowa’s antitrust law, sixteen additional states passed similar legislation.²² It is important to note that the political

¹⁹ *New York Times*, June 22, 1888, p.1.

²⁰ Peter Dickson, “The Dubious Origins,” 7.

²¹ ABA SECTION OF ANTITRUST LAW, *State Antitrust Practice and Statutes* (4th Ed. 2009), Iowa 18-2.

²² Charles Dameron, “Present at Antitrust’s Creation,” 1081.

party makeup of these states varied, causing the legislation to be passed on strong bipartisan grounds.

The public support for legislation to halt the formation of trusts was becoming so widespread that federal lawmakers could no longer ignore it. In the late summer of 1888, Senator John Sherman of Ohio, who had failed to obtain the Republican nomination for President only a month before, introduced a resolution which directed all efforts to combat trusts to the Senate Finance Committee.²³ His resolution, went as far as to give the Finance Committee jurisdiction over any proposed legislation that dealt with trusts. Some have argued that Sherman's resolution merely served as a smokescreen to appease the anti-trust voters of the 1888 election, while others claim that it was a direct attack against trusts as called for by the newly established Republican platform.²⁴ Regardless of the motivation behind the resolution, neither Sherman or the Republicans in Congress produced antitrust legislation in the following months.

The first piece of antitrust legislation was instead proposed by Democratic Texas Senator John Reagan on August 14, 1888.²⁵ Senator Reagan's bill would charge any group of people with a high misdemeanor who joined,

"First. To create or carry out restrictions in trade. Second. To limit, to reduce, or to increase the production or prices of merchandise or commodities. Third. To prevent competition in the manufacture, making, sale, or purchase of merchandise or commodities. Fourth. To create a monopoly."²⁶

²³ U.S. Congress, *Congressional Record*, 50th Cong., 1st sess., 1888.

²⁴ Peter Dickson, "The Dubious Origins," 8.

²⁵ Charles Dameron, "Present at Antitrust's Creation," 1083.

²⁶ S. 3440, 50th Cong. § 1 (1888)

Senator Reagan and the Democrats attempted to get this legislation passed through the more-neutral Judiciary Committee, but Senator Sherman could route it through the Finance Committee because of his resolution. Very quickly after taking up Reagan's bill in the Finance Committee, Sherman introduced his legislation targeting trusts. The fundamental difference in Sherman's bill was that he did not make the creation of trusts a crime, rather his bill would nullify the charter of any corporation found in violation of the antitrust laws.²⁷ Possibly because of the Republican party's reliance on trust-friendly donors, Sherman's proposed bill was much easier on the trusts and has been described by some to be "a little amateurish."²⁸ The Senate Finance Committee produced a final bill that included Sherman's description of a trust, while at the same time using Reagan's punishment for the practice of building a trust. The Committee bill was a true compromise in which both sides won and lost.

Even though the Committee reported the legislation to the full Senate in September of 1888, no action occurred before the close of legislative business in March of 1889. In December of that year, President Benjamin Harrison gave his State of the Union speech in which he argued that trusts "when organized, as they often are, to crush out all healthy competition and to monopolize the production or sale of an article of commerce and general necessity, they are dangerous conspiracies ... and should be made the subject of prohibitory and even penal legislation."²⁹ Harrison's speech served as a call for action in the Senate.

²⁷ S. 3445, 50th Cong. (as introduced by Senator Sherman, Aug. 14, 1888).

²⁸ THORELLI, *supra* note 48, at 170.

²⁹ U.S. Congress, *Congressional Record*, 51st Congr., 1st sess., 1889.

In February of 1890, Representative William McKinley proposed a bill to the House Ways and Means Committee that would curb trusts through tariffs. Subsequently, Sherman's antitrust bill was brought back to the attention of Congress, as was Reagan's and a bill by Democratic Senator James George which included language exempting the farm industry. Because the Senate could not agree to any one of the three bills, they crafted a compromise bill that included "Sherman's provisions for civil liability, adopted Reagan's definition of 'trust'... and his provisions for criminal antitrust liability, and incorporated George's proviso shielding farmers and laborers from liability."³⁰

Republican Chairman George Edmonds of Vermont led an effort to strip the bill to its bare bones, when the compromise bill was referred to the Senate Judiciary Committee.³¹ The final bill contained only a combination of the provisions of both Senators Sherman and Reagan's original bills. Senator Edmond aimed to simplify the legislation and to make it as uncontroversial as possible.³² The Edmonds bill was approved by both chambers of Congress and went to a conference committee in May of 1890. For many in the Senate, the disagreements of the antitrust legislation centered around where Congress would get the authority to enforce the law, and what the proper penalty should be.³³ Senators Sherman, Reagan, and George each offered a

³⁰ Charles Dameron, "Present at Antitrust's Creation," 1087.

³¹ *Ibid.*, 1088.

³² William L. Letwin, "Congress and the Sherman Antitrust Law: 1887-1890," *The University of Chicago Law Review* 23 (1956): 257.

³³ Charles Dameron, "Present at Antitrust's Creation," 1090.

different constitutional provision in their arguments, which would satisfy most every member of Congress.

The controversial and debated question then became what the penalty for engaging in a trust should be. After a much-heated debate, it was determined to look to the states and compliment their already established antitrust legislation. When reporting the bill for final consideration, the conference committee even said that “whatever legislation Congress may enact on this subject, within the limits of its authority, will prove of little value unless the States shall supplement it by such auxiliary and proper legislation as may be within their legislative authority”.³⁴ The idea of looking to the states was palatable to both sides of the isle. In June of 1890, the conference bill was passed unanimously in the House of Representatives and by a margin of fifty-one to one in the Senate. President Benjamin Harrison signed the Sherman Antitrust Act into law on July 2, 1890.

The final form of the Sherman Act was very different from the bills proposed by Senators Sherman and Reagan in late-1888. The first lines of the Sherman Act declare that “every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.”³⁵ This declaration is a clear compromise between the definition of a trust in Senator Sherman’s bill and the penalty for forming one from Senator Reagan’s bill. The bill goes as far as to assess monetary fines to persons found guilty of creating trusts, reading that they “shall be punished by a fine not exceeding

³⁴ H.R.REP.NO.51-1707,at1(1890)

³⁵ *The Sherman Antitrust Act, U.S. Code 15* (1890), §§1 et seq.

five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the courts.”³⁶ The Sherman Act appeased the public hatred of trusts by effectively ending trusts.

Before the passage of the Sherman Act, it was a widely shared idea that the public hated trusts very fervently.³⁷ Even defenders of trusts recognized that the public opinion was against them saying that “the public mind has begun to assume a state of apprehension, almost amounting to alarm.”³⁸ An antitrust sentiment was being spread though all corners of society, including journalism where papers like the *New York Times* aired antitrust opinions often.³⁹ This public opinion is what prompted both the Republicans and Democrats to focus on antitrust policy in the conventions and elections of 1888. Some might argue that “any law might be acceptable if it really suppressed the worst abuses of the trusts, especially those like the Standard Oil, Sugar, and Whisky Trusts.”⁴⁰ Because the Sherman Act promised to do just that, many in the public were satisfied at the passage of the legislation. Immediately following the passage of the Sherman Act, the *New York Times* remained very supportive of the actions taken to curb trusts; however, that support would waiver in the following years.⁴¹

³⁶ *The Sherman Antitrust Act, U.S. Code* 15.

³⁷ William Letwin, “Congress and the Sherman Antitrust Law,” 223.

³⁸ George Gunton, “The Economic and Social Aspect of Trusts,” *Political Science Quarterly* 3, no. 3, (1888).

³⁹ William Letwin, “Congress and the Sherman Antitrust Law,” 223.

⁴⁰ *Ibid.*, 235.

⁴¹ Robert L. Bradley, Jr., “On the Origins of the Sherman Antitrust Act,” *Cato Journal* 9, no. 3, (2001): 741.

Throughout history, scholars have argued about the effectiveness of the Sherman Act. One scholar writes that “the Sherman Act’s capacious language helps explain the pinball-like trajectory of American antitrust law over its long life, a life that has seen various governing principles come and go like so many changes in political fashion.”⁴² Some have gone as far to say that any better law would have required that “congressmen would have had to be much more adept, much more remote from public opinion, and much more unanimous in their own views, than the lawmakers of a democracy ever can be.”⁴³

One of the best indicators of how legislation withstands time is how the Supreme Court has upheld it in its decisions. The first case related to the Sherman Act to be argued before the Supreme Court was *United States v. E.C. Knight Company* in 1895, in which Chief Justice Fuller argued that the Sherman Anti-Trust Act was constitutional, it just did not apply to manufacturing.⁴⁴ The Court would not uphold the actual dismantling of a trust until *Northern Securities Company v. United States*, in which they allowed the federal government to break up the Northern Securities Company’s railroad monopoly.⁴⁵ Finally, in 1911, Chief Justice White argued for the majority in *Standard Oil Company of New Jersey v. United States* that one of the most infamous trusts in the United States had to dismantle because it was an unreasonable combination of companies.⁴⁶ The Sherman Act has demonstrated that it could

⁴² Charles Dameron, “Present at Antitrust’s Creation,” 1114.

⁴³ William Letwin, “Congress and the Sherman Antitrust Law,” 222.

⁴⁴ *United States v. E.C. Knight Company*, 156 U.S. 1 (1895).

⁴⁵ *Northern Securities Company, et al., Appts. v. United States*, 193 U.S. 197 (1904).

⁴⁶ *Standard Oil Company of New Jersey v. United State*, 221 U.S. 1 (1911).

withstand the test of time. Within a couple decades it could accomplish what it was designed to do, with the help of additional legislation. The Sherman Act served as the foundation for Presidents McKinley and Roosevelt's aggressive 'trust-busting' agenda.

Finance Committee Chairman Edmonds exerted a lot of power over the passage of the Sherman Act. Edmonds rightfully recognized that stripping the bill to its bare bones would make it more palatable for a clear majority of Congress. His actions underscore the power of committee chairmen in Congress at the turn of the century. The power of committee chairs is present because they "are advantageously positioned to form ideas into law," because they have "control over the agenda, communications, and financial resources of the committee."⁴⁷ The role of committees in the legislative process gives committees power and "chairmen of major committees frequently used this power capriciously and arbitrarily to frustrate their opponents."⁴⁸ Chairmen often used these powers to shape the ideological features of legislation, like is the case with the Sherman Act.

The Sherman Antitrust Act passed with overwhelmingly bipartisan margins in both chambers of Congress. It serves as an example of how public opinion can cause both sides of the political spectrum to respond to a controversy. While it could be debated about the motives of Republicans for pursuing antitrust legislation, having been bankrolled by many proponents of trusts, the fact remains that they did respond

⁴⁷ Roger H. Davidson, Walter J. Oleszek, Frances E. Lee and Eric Schickler. *Congress and It's Members* (Los Angeles: CQ Press, 2014), 184.

⁴⁸ U.S. Senate, "Senate Committees," *Senate History*, <https://www.senate.gov/artandhistory/history/common/briefing/Committees.htm>.

to the controversy in a way that would appease the public. The almost unanimous support for the bill can be contributed to Senate Finance Chairmen Edmonds and his decision to offer a bill that was palatable to everyone. The question then becomes, whether or not other bills could pass with such bipartisan support.

Chapter Two: Recovery in the Face of Defeat

On a fall day in late 1929, the unthinkable happened. The United States stock market crashed, sending the country into years of economic and social peril. During this time, many average Americans could not afford the necessities of food and shelter. The country needed change, and the citizenry was hoping to get that change when Franklin D. Roosevelt was elected President and assumed the office in March of 1933. Roosevelt's administration set out to pass legislation and enact executive action aimed at alleviating some of the everyday American's economic suffering. These measures and new laws would eventually be known as the New Deal. Roosevelt knew that his administration was going to be judged by his first one hundred days in office and so there was an urgency to get things done. At the same time, he understood that he could do nothing without Congress. One of Roosevelt's top priorities was to get Americans back to work, therefore he guided the development and passage of the National Industry Recovery Act through Congress. Its passage demonstrates the bipartisanship in Congress during the New Deal era, as well as the role of the President in bringing Congress together.

Even before Roosevelt's administration began to put a focus on the industrial workforce, there was always a background understanding of the importance of such activities. Cabell Phillips notes in *From the Crash to the Blitz*, that "at all events, there was a considerable historical and intellectual background for the idea of corralling the business and industrial resources of the nation into a more disciplined force, subduing their anarchic tendencies, and infusing them with a minimal sense of social

responsibility.”⁴⁹ For decades, Americans had focused on legislation aimed at allowing easier creation of new business and industry. The Great Depression, however, marked a time where business slowed. It is estimated that business activity was only at half of what it had been in previous years.⁵⁰

It was clear that some type of legislation needed to be created, but there was disagreement about what type. Hugh Johnson, Secretary of Labor Frances Perkins, Assistant Secretary of Commerce John Dickinson, Chamber of Commerce executive Henry Herriman, and Democratic Senator Robert Wagner each had their own plan for boosting businesses and industry. The country needed a uniformed planned, however, so President Roosevelt brought these individuals together and “locked them in a room” to try and coerce a comprehensive plan from them.⁵¹ They produced a piece of legislation for Roosevelt’s approval, which was then sent to Congress. In a directive to Congress, President Roosevelt said, “my first request is that the Congress provide for the machinery necessary for a great cooperative movement throughout all industry in order to obtain wide reemployment, to shorten the working week, to pay a decent wage for the shorter week and to prevent unfair competition and disastrous overproduction.”⁵² For Roosevelt, Congress’ priority should be on stimulating job growth and getting Americans back to work.

⁴⁹ Cabell Phillips, *From the Crash to the Blitz, 1929-1939* (New York: Fordham University Press, 2000), 212.

⁵⁰ *Ibid.*, 213.

⁵¹ *Ibid.*, 216.

⁵² "66 Message to Congress Recommending Enactment of the National Industrial Recovery Act. May 17, 1933." *American Reference Library - Primary Source Documents* (January 2001): 1.

In Congress, opposition to the bill came from two fronts. The first was from the original progressives, amongst whom Democratic Senator Burton Wheeler and Republican Senator William Borah were the most vocal. They argued that the law would see “the weakening of the antitrust laws by permitting collusive action through trade associations.”⁵³ Senator Borah in particular would argue that “the suspension of the antitrust acts would infallibly promote the concentration of wealth and power.”⁵⁴ Senator Wagner, one of the bill’s original authors rebutted these sentiments by saying that the purpose of the bill was “to make sure the best judgment and the highest ideals of the industry govern its competitive activities, replacing the now low standard of sweatshop, cutthroat competition ... the bill does not abolish competition; it purifies and strengthens it.”⁵⁵

Another Senator, Democrat Bennet Clark, introduced an amendment that affirmed that “nothing in this title shall be construed to compel a change in existing satisfactory relationships between the employees and employers of any particular plant, firm, or corporation.”⁵⁶ This amendment would face strong opposition from the senators with strong worker rights sympathies and would eventually fail. On the other side of the argument were the more conservative senators, who “argued that the liberal labor provisions would bring the industrial establishment down in ruins.”⁵⁷ Some in the Senate favored what they considered milder legislation in the form of

⁵³ Cabell Phillips, *From the Crash to the Blitz*, 216.
⁵⁴ Author M. Schlesinger, Jr., *The Coming of the New Deal, 1933-1935* (Boston: Houghton Mifflin Company, 1958), 100.
⁵⁵ *Ibid.*, 101.
⁵⁶ *Ibid.*, 99.
⁵⁷ Cabell Phillips, *From the Crash to the Blitz*, 216.

Democratic Senator Hugo Black's proposed 30-hour work week. Much credit is given to Senator Wagner for his arguments about the bill's protection of collective bargaining for labor unions which helped the bill to pass.⁵⁸

Eventually, these arguments were rendered too weak to halt the passage of the National Industrial Recovery Act, as it passed the House of Representatives by a huge margin and was adopted by the Senate as well, where it was a much closer margin of forty-six to thirty-nine. The vote did not occur on partisan lines, as Republicans La Follette, Norris, and Cutting, and Democrats Black, Wheeler, and Costigan all voted against the bill. One important negative vote came from Democrat Huey Long, who said at the bill's passage "the Democratic Party dies tonight ... we will bury it."⁵⁹ Senator Long, and others, resented the move of the Democratic party led by President Roosevelt to a cozier positioning with industry. Long and his allies favored a shift of the Democratic party to a platform aligned with socialist ideals.

At the passage of the National Industry Recovery Act, President Roosevelt called it "one of the most important laws that have ever come from Congress."⁶⁰ The bill itself had two parts. The first part aimed at increasing the purchasing power of individuals so that they could consume more, thus feeding into the market.⁶¹ It also increased the number of restrictions on imports.⁶² It allowed for some exemptions to

⁵⁸ Cabell Phillips, *From the Crash to the Blitz*, 216.

⁵⁹ Author Schlesinger, *The Coming of the New Deal*, 101.

⁶⁰ Social Welfare History Project, (2011), "The National Industrial Recovery Act of 1933," *Social Welfare History Project*, Retrieved from <http://socialwelfare.library.vcu.edu/new-deal/national-industrial-recovery-act-of-1933/>

⁶¹ Benjamin Anderson, *Economics and the Public Welfare* (Indianapolis: Liberty Fund Inc., 1980), 326.

⁶² *Ibid.*

the antitrust laws previously passed by the Congress. Much to the ire of conservatives, the bill also allowed for collective bargaining.⁶³ The second title created the Public Works Administration, which was tasked with putting Americans back to work, working on government projects.⁶⁴ The first Title was intended to last only two years, however slightly before that time had elapsed, the Supreme Court ruled it unconstitutional in *A. L. A. Schechter Poultry Corporation v. United States*.⁶⁵

The National Industrial Recovery Act marked one of the various legislative accomplishments of Roosevelt's first new deal, but the recovery was far from over. A few years into office, Roosevelt would launch new strategies of recovery and security that would just be known as the Second New Deal. One of Roosevelt's first pieces of legislation that he would introduce in the 74th Congress was what he titled the 'Economic Security Bill.' Roosevelt's administration sent the bill to Congress on January 17, 1935, where was introduced by Senator Wagner and Democratic Representatives Robert Doughton and David Lewis.⁶⁶

By February 20, the bill had received hearings and had been voted out of the Senate Committee on Finance and the House Ways and Means Committee. It was in the subsequent committee that the bill was renamed the Social Security Act of 1935 at the bequest of Democratic Representative Frank Buck.⁶⁷ During one of the hearings, Democratic Senator Thomas Gore asked Labor Secretary Frances Perkins, "Isn't this

⁶³ Charles J. Morris, *The Blue Eagle at Work: Reclaiming Democratic Rights in the American Workplace* (New York: Cornell University Press, 2004), 19.

⁶⁴ Social Welfare History Project, "The National Industrial Recovery Act of 1933."

⁶⁵ *A. L. A. Schechter Poultry Corporation v. United States*, 295 U.S. 495 (1935).

⁶⁶ Social Security Administration, "1935 Congressional Debates on Social Security," *Social Security History*, <https://www.ssa.gov/history/tally.html>.

⁶⁷ *Ibid.*

socialism?"⁶⁸ This simple question underscores the fears of many of the opponents of the Social Security Act. President Roosevelt addressed this concern in one of his fireside chats, where he said

"A few timid people, who fear progress, will try to give you new and strange names for what we are doing. ... Sometimes they will call it 'fascism,' sometimes 'communism,' sometimes 'regimentation,' sometimes 'socialism.' But, in so doing, they are trying to make very complex and theoretical something that is really very simple and very practical. ... I believe that what we are doing today is a necessary fulfillment of what Americans have always been doing -- a fulfillment of old and tested American ideals."⁶⁹

He claimed that the legislation's goal was to reduce a number of dangers that could face the country down the road. Roosevelt pleaded with Congress for them to pass the Social Security Act expeditiously, and so they would.⁷⁰

On the floor, the Social Security Act met some more substantial friction than in committee, mainly from the Republicans. One Republican Congressman is noted as saying that "never in the history of the world has any measure been brought here so insidiously designed to prevent business recovery, to enslave workers and to prevent any possibility of the employers providing work for the people."⁷¹ Another claimed that "this bill opens the door and invites the entrance into the political field of a power so vast, so powerful as to threaten the integrity of our institutions and to pull the pillars of the temple down upon the heads of our descendants."⁷² These

⁶⁸ Nancy J. Altman, "President Barack Obama could learn from Franklin D. Roosevelt," *The New York Times* (New York, NY), Aug. 14, 2009.

⁶⁹ Franklin D. Roosevelt, "117 - Fireside Chat," *The American Presidency Project*, (1934), <http://www.presidency.ucsb.edu/ws/?pid=14703>.

⁷⁰ Nancy J. Altman, "President Barack Obama could learn from Franklin D. Roosevelt."

⁷¹ Nancy J. Altman, *The Battle for Social Security: From FDR's Vision to Bush's Gamble* (Hoboken, NJ: John Wiley & Sons, 2012).

⁷² *Ibid.*

opponents of the bill all hailed from the state of New York, and were joined by their New York colleagues in opposition to the bill. This is an example of how geographical alignment often motivated the positions of Congressmen even more than party identification. The bill was passed in the House of Representatives by a margin of three-hundred and seventy-two to thirty-three after five days of debate and in the Senate by a margin of seventy-seven to six, with debate lasting a little more than a month.⁷³ The bill then went to conference, where the agreed upon bill passed both chambers of Congress. The Social Security Act of 1935 was signed into law by President Roosevelt on August 14, 1935.

The bill passed on such large numbers, due in large part to the support of Southern Democrats. Some have argued that Southern Democrats, with their powerful positions in the committee structure, altered the legislation to make it more palatable to them. One scholar goes as far as to say that

“Southern politicians, reported one architect of the new law, were determined to block any 'entering wedge' for federal interference with the handling of the Negro question. Southern employers worried that federal benefits would discourage black workers from taking low-paying jobs in their fields, factories, and kitchens. Thus, neither agricultural laborers nor domestic servants—a pool of workers that included at least 60 percent of the nation's black population—were covered by old-age insurance.”⁷⁴

Clearly, much Southern opposition was racially motivated. As Linda Gordon explains, “Congress was then controlled by wealthy Southern Democrats who were

⁷³ Social Security Administration, “1935 Congressional Debates on Social Security.”

⁷⁴ Nelson Lichtenstein, Susan Strasser, Roy Rosenzweig, and Stephen Brier, *Who Built America? Working People and the Nation's Economy, Politics, Culture, and Society – Volume 2: Since 1877* (New York: Worth Publishers, 2000).

determined to block the possibility of a welfare system allowing blacks freedom to reject extremely low-wage and exploitive jobs.”⁷⁵

An alternative perspective to this does exist, however. Larry DeWitt argues that it was Treasury Secretary Henry Morgenthau, Jr. who convinced Congress to remove agriculture and domestic workers from the protection of the Social Security Act.⁷⁶ During his testimony before Congress on the Social Security Act, Morgenthau argued “that it would be a difficult problem to collect payments from scattered farm and domestic workers, often one to a household or farm, and from the large numbers of employees working in establishments with only a few employees.”⁷⁷ According to Morgenthau, it would have been impossible for the Treasury Department to implement the Social Security Act if they would have had to include these groups. It is for this reason that Dewitt believes members from both sides favored these exclusions.⁷⁸ Practical considerations of feasibility of collecting payments from these excluded groups dovetailed with powerful Southern Democrats motivated by race.

The passage of the Social Security Act of 1935 marked the first significant legislation of the 74th Congress and the first in Roosevelt’s second new deal. It serves as the groundwork for the administration of the Social Security program in the United States. One of its key functions is to give security to the unemployed as to prevent another Great Depression. The constitutionality of the legislation was not certain,

⁷⁵ Linda Gordon, *Pitied but Not Entitled: Single Mothers and the History of Welfare, 1890–1935* (New York: Free Press, 1994).

⁷⁶ Larry DeWitt, “The Decision to Exclude Agricultural and Domestic Workers from the 1935 Social Security Act,” *Social Security Bulletin* 70, no. 4 (2010): 63-64.

⁷⁷ *Ibid.*, 58.

⁷⁸ *Ibid.*, 63-64.

however, and was debated during its passage.⁷⁹ During the legislative process, the Supreme Court ruled the first title of the National Industrial Recovery Act, unconstitutional, and would soon rule the same of the Agricultural Adjustment Act in *United States v. Butler*.⁸⁰ Some Congressmen were concerned that the Social Security Act would be treated the same, but the Attorney General assured them that it was distinguishable.⁸¹ He would be proven right as the Supreme Court upheld the constitutionality of the Social Security Act in *Steward Machine Company v. Collector of Internal Revenue*.⁸² The Social Security Act has endured the test of time even as it plagues lawmakers who must continually think of ways to fund it.

There is a final event that occurred during the New Deal era which greatly affected bipartisanship in Congress. In the summer of 1938, during the primaries for Congressional offices, President Roosevelt sought to purge the Democratic party of the remaining conservatives. President Roosevelt was angry that these Democrats had not gone along with his progressive agenda and stalled his New Deal legislation. Among these legislators were Senators Walter George of Georgia, Ed Smith of South Carolina, Guy Gillette of Iowa, and Myllard Tydings of Maryland.⁸³ President Roosevelt created an elimination committee inside his administration to spearhead efforts to support the opponents in each of the primaries.⁸⁴ But he knew that the President could not interfere in Congressional elections, which is why he reasoned

⁷⁹ Nancy J. Altman, *The Battle for Social Security: From FDR's Vision to Bush's Gamble*.

⁸⁰ *United States v. Butler*, 297 U.S. 1 (1946).

⁸¹ Nancy J. Altman, *The Battle for Social Security: From FDR's Vision to Bush's Gamble*.

⁸² *Steward Machine Company v. Collector of Internal Revenue*, 301 U.S. 548 (1937).

⁸³ Susan Dunn, *Roosevelt's Purge: How FDR Fought to Change the Democratic Party* (Cambridge: Harvard University Press, 2010).

⁸⁴ *Ibid.*

that "he did not intend to go into any State in the capacity of President, but as the head of the Democratic Party."⁸⁵ People at the time adopted the title purge because it was a politically charged term that was reminiscent of Stalin's purges in the Soviet Union.

Roosevelt's purge proved unsuccessful, as many of his preferred candidates lost.⁸⁶ Journalist Thomas Stokes would comment that Roosevelt's purge "did not liberalize the Democratic Party...only ripped it wider apart."⁸⁷ Some go as far to say that it "was a reckless, ill-conceived, badly managed strategy that weakened Roosevelt's party leadership and embolden Southern conservative Democrats to cooperate more with Republicans in weakening or defeating liberal policy proposals."⁸⁸ The purge serves as an example of the mindset that would reaper in later years that representatives in Congress needed to be ideologically aligned with their party. While he may not have been successful of creating a uniform progressive Democratic party in Congress, he could ensure the continuation of liberalism in the national Party by controlling the national convention.⁸⁹

Both the National Industrial Recovery Act and the Social Security Act of 1935, passed on strong bipartisan grounds. The National Industrial Recovery Act moved through the Senate on a slim margin, but opposition to it was bipartisan and people on both sides of the aisle spoke against and for it. While it could be the case that the

⁸⁵ Mark Sullivan, 1938, "Should Presidents Actively Participate in Congressional Primaries," *Congressional Digest* 17, no. 10: 255.

⁸⁶ Sean J. Savage, *Roosevelt: The Party Leader, 1932-1945* (Lexington KY: University Press of Kentucky, 1991), 153.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, 157.

bipartisanship in both instances could have been provoked by the disastrous environment of the Great Depression, many of the Senators voted similarly before the events of 1929. Congressmen were more aligned with their geographies, as Midwesterners, Southerners, and Northerners were all concerned about different aspects of the legislation. Unlike the case with the Sherman Act, the power to move the legislation was with the President and his allies. Even though he exerted great influence over the Congress in pushing his policy, he noticed that it was not infinite, thus his attempt to purge the Democratic party ended in failure. The New Deal era serves as an example of how legislation in Congress transcended the bounds of partisan politics, where it would battle on a more regional field. Those regional boundaries would become more important, however, in later years.

Chapter Three: A Battle for Civil Rights

The Sherman Antitrust Act, the National Industrial Recovery Act, and the Social Security Act of 1935, each represents legislation aimed at controlling the beast that is the economy. In the mid-1960s, Congress had to deal with a completely different beast as it was faced with the task of integrating America. Since the Supreme Court's ruling in *Plessy v. Ferguson* that justified "separate but equal," segregation had spread to nearly every aspect of American life. People were treated differently in schools, government services, and businesses based solely on the color of their skin. Beginning with Roosevelt, much of the civil rights action that had taken place nationally, occurred with executive action alone.⁹⁰ One such action was Executive Order 8802, which prohibited discrimination based on race in all areas of the federal defense industry.⁹¹ After the Supreme Court's decision in *Brown v. Board of Education* to desegregate schools and its resulting backlash and protests, it was clear that Congress needed to act with legislation to ensure uniform civil rights for all Americans.

Two years into his administration, President John F. Kennedy sent a message to Congress in which he would say,

"the [black] baby born in America today ... has about one-half as much chance of completing high school as a white baby born in the same place on the same day – one-third as much chance of completing college – one-third as much chance of becoming a professional man – twice as

⁹⁰ Robert D. Loevy, *The Civil Rights Act of 1964: The Passage of the Law That Ended Racial Segregation* (New York: State University of New York Press, 1997), 14.

⁹¹ Executive Order 8802 of June 25, 1941, Prohibition of Discrimination in the Defense Industry, *Code of Federal Regulations*, [http:// docs.fdrlibrary.marist.edu/od8802t.html](http://docs.fdrlibrary.marist.edu/od8802t.html)

much chance of becoming unemployed—... a life expectancy which is seven years less—and the prospects of earning only half as much."⁹²

Kennedy's administration then sent a bill to Congress, which outlined his moderate goals, for their consideration by the summer of that year. Immediately, proponents of the bill knew that they would face challenges in the more conservative House Judiciary Committee, as well as the Rules Committee.⁹³ The bill was debated for a couple months in a House Judiciary Subcommittee, which gave it time to begin earning bipartisan support.

Many Congressmen believed that the bill did not go far enough in securing the rights of African Americans. Emboldened by the March on Washington, House Judiciary Committee Chairmen Democrat Emanuel Celler revealed at a press conference that the subcommittee had voted through "a very strong bill," that not only included the President's proposal, but also further measures that some progressives were pushing for.⁹⁴ During all of the committee debates, House leadership was trying to do whatever was possible to sway enough Republicans to their side to offset the nearly one hundred Southern Democrats who would surely vote against the bill.⁹⁵ The full Judiciary Committee would report the bill to the full Congress, but only after a compromised version was presented, spearheaded by both the Republican Ranking Member William McCulloch and Minority Leader Charles

⁹² Robert Loevy, *The Civil Rights Act of 1964*, 50.

⁹³ *Ibid.*, 56.

⁹⁴ *Ibid.*, 58.

⁹⁵ *Ibid.*, 158.

Halleck.⁹⁶ With the news that President Kennedy had been assassinated, the bill was paused in the Rules Committee.

Lyndon Johnson assumed the Presidency after Kennedy's assassination and kept civil rights action on the forefront of his agenda. In his first address to Congress, he said that "no memorial oration or eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the Civil Rights bill for which he fought so long."⁹⁷ Unfortunately, Rules Committee Chairman, Southerner Howard Smith was not inclined to pass the bill through his committee, so that it could see a vote of the full House.⁹⁸ At the beginning of the following year, Speaker John McCormack and Majority Leader Carl Albert forced the bill through the Rules Committee. After only a couple of days of debate on the floor, the bill passed the House of Representatives two hundred ninety to one hundred thirty, with many Southern Democrats voting in opposition.⁹⁹ The Southern Democrats in the House realized early in the debate that they had been defeated, therefore they did not protest much.

The bill then moved to the Senate, where Democratic Senate Majority Leader Mike Mansfield successfully moved it to the Senate Calendar, avoiding the Senate Judiciary Committee, where it would have surely died at the hands of Chairman James Eastland from Mississippi.¹⁰⁰ The fight was far from over, however, as Southern

⁹⁶ Robert Loevy, *The Civil Rights Act of 1964*, 60.

⁹⁷ Tom Wicker, "Johnson Bids Congress Enact Civil Rights Bill with Speed; Asks End of Hate and Violence," *The New York Times* (New York, NY), Nov. 28, 1963.

⁹⁸ Robert Loevy, *The Civil Rights Act of 1964*, 61

⁹⁹ *Ibid.*, 65.

¹⁰⁰ *Ibid.*

Democrats and their allies were preparing to filibuster the bill to its death. The proponents of the bill, led by Republican Thomas Kuchel and Democrat Hubert Humphrey, the Senate whips, would lead an organized effort to defeat the filibuster.¹⁰¹ They were largely successful at keeping their members together and united, and preventing a cloture motion from happening too soon. Organized campaigns to rally support behind civil rights legislation kept public support energizing Senators to continue their fight. The proponents were constantly looking for new allies to join them in hopes of beating the necessary sixty votes to end cloture. Through careful negotiations and some minor changes to the bill, Senator Humphrey would gain the support of Republican Senate Minority Leader Everett Dirksen.¹⁰² Senator Dirksen's support was important as it brought twenty-five Republican votes in line to vote for the bill.

On the opponents' side, rhetoric was the tool of choice to defeat the bill. Democrat Richard Russell gave a floor speech in which he said, "we will resist to the bitter end any measure or any movement which would have a tendency to bring about social equality and intermingling and amalgamation of the races in our [Southern] states."¹⁰³ Southern Democrats and their allies would surely do just that with countless hours of talk and constant quorum calls. It seemed as though the filibuster would last forever. Majority Leader Mansfield was determined to ensure he had two-thirds of the Senators backing him before he called for cloture, so he would not be forced to

¹⁰¹ Robert Loevy, *The Civil Rights Act of 1964*, 65.

¹⁰² *Ibid.*, 71.

¹⁰³ Noah Remnick, "The Civil Rights Act: What JFK, LBJ, Martin Luther King and Malcolm X had to say," *The LA Times* (Los Angeles, CA), Jun. 28, 2014.

compromise if the cloture vote failed. Proponents of the bill were having a difficult time rounding up the votes needed until a group of clergy from various faiths began demonstrations at the Lincoln Memorial. Of the event, Senator Humphrey said, “the secret of passing the bill is the prayer groups ... just wait until [senators] start hearing from the church people.”¹⁰⁴ The Senate whips then reached the necessary total of votes. Shortly before the debate ended, Democratic Senator Robert Byrd of West Virginia, delivered a speech in opposition to the bill that lasted 14 hours.¹⁰⁵ After a triad of amendments were given votes to quell Senator Bourke Hickenlooper and other Midwestern Republicans, a vote for cloture came to the floor.¹⁰⁶ Speaking for reaching cloture, Minority Leader Dirksen said that “there is another reason why we dare not temporize with the issue which is before us. It is essentially moral in character. It must be resolved. It will not go away. Its time has come.”¹⁰⁷ With all hands-on-deck, proponents of the bill met the two-thirds majority requirement and sent the bill for a final vote.

Senate Majority Leader Humphrey gave the first speech in formal debate, in which he said,

“We are participants in one of the most crucial eras in the long and proud history of the United States and, yes, in mankind’s struggle for justice and freedom which has gone forward since the dawn of history. If freedom becomes a full reality in America, we can dare to believe that

¹⁰⁴ Robert Mann, *When Freedom Would Triumph: The Civil Rights Struggle in Congress, 1954-1968* (Baton Rouge: Louisiana State University Press), 191.

¹⁰⁵ U.S. Senate, “Civil Rights Filibuster Ended,” *Senate History*, https://www.senate.gov/artandhistory/history/minute/Civil_Rights_Filibuster_Ended.htm.

¹⁰⁶ Robert Loevy, *The Civil Rights Act of 1964*, 74.

¹⁰⁷ Robert C. Byrd, *The Senate, 1789-1989: Classic Speeches, 1830-1993* (Washington, D.C.: Government Printing Office, 1994).

it will become a reality everywhere. If freedom fails here in America, the land of the free – what hope can we have for it surviving elsewhere?"¹⁰⁸

For Humphrey and many others, it was a momentous occasion to be able to reach formal debate on civil rights legislation as it had never been possible to reach cloture before. Humphrey's goal in his eloquent prose was to win over Minority Leader Dirksen and his Republicans, who had voted for the cloture motion, to once again vote for the final passage of the Civil Rights Act.¹⁰⁹

Just as there was bipartisan support for the bill, there was also bipartisan opposition to the bill. During a speech on the Senate floor, Republican Barry Goldwater "I am unalterably opposed to discrimination of any sort, and I believe that though the problem is fundamentally one of the heart, some law can help – but not law that embodies features like these, provisions which fly in the face of the Constitution and which require for their effective execution the creation of a police state.... I shall vote 'no' on this bill."¹¹⁰ Republicans like Goldwater wanted to make it clear that their opposition to the bill stemmed from their belief that Congress did not have the constitutional authority based on the Commerce Clause to enact such laws, and not from a racist ideology. Southern Democrats were less covert in their opposition, which more often than not stemmed from the very racist ideology that Republicans were trying to avoid. Strom Thurmond, a Democratic Senator from South Carolina said that "Passage of this bill will visit the heel of oppression on all the people, vitiate their constitutional shield against tyranny, and materially hasten the

¹⁰⁸ Robert Mann, *When Freedom Would Triumph*, 185.

¹⁰⁹ Robert Mann, *When Freedom Would Triumph*, 186.

¹¹⁰ Noah Remnick, "The Civil Rights Act."

destruction of the best design for self-government yet devised by the minds of men."¹¹¹ Southern Democrats often veiled their motives behind rhetorical prose rooted in the theme of liberty. Rather than being concerned about individual liberty, Southern Democrats were seeking liberty for the state from federal interference. This defense of liberty differed from the sentiments of Republican Senators such as Goldwater who cared about maintaining constitutional limits on Congress' power.

Bipartisanship was also present for the proponents of the bill. For example, Democrats Paul Douglas and Edmond Muskie, and Republicans Kenneth Keating and Clifford Case were present for over one hundred votes that occurred in the ten days of debate, always voting for civil rights.¹¹² Their bipartisanship would pay off as the bill passed the Senate on June 19th, with a vote of seventy-three to twenty-seven.¹¹³ All seventeen Southern Democrats voted in the negative where they were joined by six Republicans and a couple stray Democrats.¹¹⁴ The Senate bill passed the House the following month, with Rules Committee Chairmen Smith being one of the only negative votes for the bill. At the passage of the bill in the House, Georgian freshman Representative Charles Weltner said, "I shall add my voice to those who seek reasoned and conciliatory adjustment to a new reality."¹¹⁵

¹¹¹ Noah Remnick, "The Civil Rights Act."

¹¹² Robert Loevy, *The Civil Rights Act of 1964*, 74.

¹¹³ *Ibid.*, 74-75.

¹¹⁴ *Ibid.*, 67.

¹¹⁵ *Ibid.*, 75

President Lyndon Johnson signed the Civil Rights Act of 1964 into law only a couple of hours after the House had their final vote on July 2, 1964.¹¹⁶ Just after signing the law, Johnson gave a speech in which he said,

“This Civil Rights Act is a challenge to all of us to go to work in our communities and our states, in our homes and in our hearts, to eliminate the last vestiges of injustice in our beloved country. So tonight I urge every public official, every religious leader, every business and professional man, every working man, every housewife – I urge every American – to join in this effort to bring justice and hope to all our people, and to bring peace to our land.”¹¹⁷

The President captured the sentiment of the nation in these phrases. Outside of the racist ideologies of the minority of Americans, in particular, those in the South, the majority of people were overjoyed at the signing of such monumental legislation.

The Civil Rights Act accomplished three main goals. First, it protected the voting rights of all people. Second, it rejected discrimination of any form in any public place or places that engaged the public. Finally, it extended the protection of the equal employment opportunities to everyone.¹¹⁸ During Reconstruction, similar legislation was proposed, only to be struck down by the Supreme Court in *The Civil Rights Cases*.¹¹⁹ A challenge to the Civil Rights Act of 1964, would come almost immediately after the bill became law when *Heart of Atlanta Motel, Inc. v. United States* was argued before the Court. This time, however, the Supreme Court upheld the Civil Rights Act, with the power of enforcement in the private sector coming from the Commerce

¹¹⁶ Ibid.

¹¹⁷ Noah Remnick, “The Civil Rights Act.”

¹¹⁸ U.S. Senate, “Civil Rights Filibuster Ended.”

¹¹⁹ *The Civil Rights Cases*, 109 U.S. 3 (1883).

Clause.¹²⁰ Similar rulings were made in *Katzenbach v. McClung* and *Alexander v. Holmes County Board of Education*.

While the passage of the Civil Rights Act is significant, it predicts and certainly prompts a change in the makeup of the electorate. Post-Civil War, African Americans supported the Republican Party. The south remained loyally Democratic. But this started to change after the Great Depression. Things began to change when President Roosevelt saw the African American voter block as a key for the Democratic Party's continued success. He drew them in with his economic policies, and in true progressive fashion, he would push the Democratic party towards civil rights. This would only alienate the Southern Democratic Congressmen. These tensions were exacerbated during the Civil Rights Act debates.

President Johnson recognized the danger for his party to be the one spearheading the civil rights campaign. In response to a prediction that Southern Democrats would leave the party, Johnson said, "I know the risks are great and it might cost us the South, but those sort of states may be lost anyway."¹²¹ The Civil Rights Act did indeed drive out many Southern Democrats from the Democratic party, removing the question of regional ideologies above party ideology. Outspoken Senator Strom Thurmond of South Carolina was one of the most high-profile officials to switch to the Republican side. In response, Republican Senator Karl Mundt said, "Southern Democrats and rural Republicans in this country have much in common

¹²⁰ *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964).

¹²¹ Robert Mann, *When Freedom Would Triumph*, 155.

... we need to do some political engineering so we can work and vote together."¹²² Even though Republicans gained seats in the Democratic South, Democrats arguably won the most as the percentage of Americans identifying as Democratic jumped seven percent in the election of 1964.¹²³ Regardless of the immediate outcome, the events of 1964 did something more important as well. For much of the 20th century, Republicans and Democrats were very similar on many top issues, but 1964 marked a dramatic polarization of parties, that would change the political landscape of the country.¹²⁴

The passage of the Civil Rights Act demonstrates a very important change in the bipartisanship in Congress. No longer was it the case that a bill could sail through Congress. Accommodations had to be made to attract coalitions of Senators to vote for bills. This gave more responsibility and power to the hands of congressional whips, who are tasked with securing votes for a given piece of legislation. With the Civil Rights Act, there were Republicans and Democrats who supported it, and there were those who did not, making both the opposition and support bipartisan. Unlike the New Deal legislation, the President did not exert as much control over the process for the flow of the legislation through Congress. The power at this point was in the hands of the Majority and Minority Leaders, who could route legislation around committees and rally their members to vote their way. It is also important to note the power of the people. When the public, sometimes led by Civil Rights leaders such as Martin Luther

¹²² Philipp Adorf, *How the South Was Won and the Nation Lost* (Bonn, Germany: Bonn University Press, 2016), 50.

¹²³ John B. Gates, 1987, "Partisan Realignment, Unconstitutional State Policies, and the U.S. Supreme Court, 1837-1964," *American Journal Of Political Science* 31, no. 2: 259.

¹²⁴ Arthur C. Paulson, *Realignment and Party Revival : Understanding American Electoral Politics at the Turn of the Twenty-first Century* (Westport, Conn : Greenwood Publishing Group, 2000), 97.

King, Jr. or by the clergy, put pressure on Congressmen, they reacted. This is more evident in the House where the Representatives are more responsive to their constituents.

Conclusion

The realignment that occurred after the passage of the Civil Rights Act of 1965, marks the beginning of the party ideological alignment in the United States Congress. Other events over the course of the past few decades would further strengthen party identification in Congress. After nearly forty years as the minority party in the House of Representatives, Georgia Congressman Newt Gingrich and Texas Congressman Dick Amey launched a national campaign to elect Republicans and gain the majority. Their campaign was focused on the implementation of their 'Contract with America'.¹²⁵ The 'Contract with America' was a detailed set of legislative goals that Republicans promised to enact if they became the majority. From an electoral standpoint, the 'Contract with America' was a campaigning success, ensuring the election of fifty-four new House members, and nine new Senators.¹²⁶ The 'Contract with America' is different than other electoral stunts, as the new majority was committed to seeing its goals through. A *New York Times* reporter wrote, "perhaps not since the start of the New Deal, to which many of the programs now under attack can trace their origins, has Congress moved with such speed on so many fronts."¹²⁷ The 'Contract with America' is not merely a legislative agenda, but represents the unification of the majority party under a uniform political ideology.

¹²⁵ Jeffrey B. Gayner, "The Contract with America: Implementing New Ideas in the U.S.," *The Heritage Lectures* 549, 195.

¹²⁶ *Ibid.*

¹²⁷ R. W. Apple, Jr., "The 104th Congress: The Overview; Republican Blitz Shakes Congress," *The New York Times* (New York, NY), Sept. 23, 1995.

Over the next fourteen years, Democrats would regain their strength in the Congress, until they reached their peak in 2008. By 2008, Democrats had a huge margin in the House and a filibuster proof margin in the Senate. With the events surrounding the passage of the Affordable Care Act, the political landscape was yet again shifting. The midterm elections of 2010 saw the rise of the Tea Party movement. The Tea Party candidates were opposed to a larger federal government, and were concerned about the increasing national debt. They were ideologically more conservative than the Republicans already in Congress, but would caucus with them once in Congress. While not in the margins that they were hoping for, Tea Party candidates won five Senate seats and forty House seats in the elections of 2010.¹²⁸ Their size within Congress forced the Republican party to shift to the right, for them to meet legislative goals that Democrats refused to budge on. This shift further increased the partisan divide between the two sides of Congress.

Today, both parties refuse to work together on most high-attention legislation and any bipartisanship that occurs in Congress is weak, at best. So, how did we get here? When the Sherman Antitrust Act was passed through Congress, the legislation was passed on bipartisan grounds. Republicans and Democrats certainly did not agree on how to deal with trusts, but leaders in Congress produced a bill that was mild and palatable to both sides. Likewise, when the New Deal legislation came before Congress, President Roosevelt forced compromise to create legislation that both sides could agree on. Roosevelt's failed actions toward purging the Democratic

¹²⁸ Alexandra Moe, "Just 32% of Tea Party candidates win," *NBC News*, Nov. 3, 2010, http://firstread.nbcnews.com/_news/2010/11/03/5403120-just-32-of-tea-party-candidates-win.

Party, would preempt the ideological tensions that would happen in the Democratic Party in the latter half of the century. By the time of the passage of the Civil Rights Act, these tensions were boiling over. Ideological differences prevented many Congressmen from supporting the legislation. The years following the passage would see the ideological separation of the two parties in Congress. This ideological gap would only grow through the events and elections of recent years.

An important aspect of this narrative is the role of public opinion. The public was unified on the distrust of the trusts, and so all Congressmen had to demonstrate that they were doing something in order to gain votes. After the Great Depression, all average Americans were hurting, therefore it was easy for Congressmen to support recovery efforts. The Civil Rights Act demonstrated a change in public opinion. While many in the South supported their Congressmen's opposition to the bill, others all throughout the country were energized with support over it. For the first time, these supporters applied such large amounts of political pressure on their Congressmen, through rallies, marches, and protests, that their Congressmen were forced to respond. This change could have occurred because of the easier access to news and protests. Today, as partisanship in Congress has increased, so too has that access to public officials and the news. Other factors that could have contributed to the bipartisan efforts of the New Deal era include the role of the President, as President Roosevelt greatly influenced the passage of legislation in the wake of the Great Depression.

Congress' current lack of bipartisanship has slowed the movement of significant legislation to a halt. I would argue that there are two things that can be done to significantly increase the amount of bipartisanship. Power needs to be given back to committee chairs to enable them to craft legislation that works for both sides. At the same time, the concept of compromise needs to be understood by all Congressmen, where both sides leave satisfied and disappointed. Second, political parties need to become more reserved in congressional races. Electing representatives who subscribe to a definite, all-encompassing platform removes the ability of subject and regional coalitions, which greatly aids to bipartisanship. An example of a current bipartisan group in Congress, is a group of Congressmen, both Democrats and Republicans, who are joined together over their faiths.¹²⁹ While this coalition probably will not yield any significant legislative power, it serves as an example of the types of bipartisan groups that could be formed if representatives were not forced to uphold the comprehensive party platform. Accomplishing these things will be difficult and may not even be possible, however if the country is going to heal from its partisan wounds then Congress is going to have to find some way to become more bipartisan.

¹²⁹ Virginia Foxx, *God Is in the House: Congressional Testimonies of Faith* (Salt Lake City: Ensign Peak, 2016).

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