

Oregon Concept Paper February 27, 2006 1:45 PM

February 27, 2006 1:45 PM

"Congress and the Status of Blacks:  
Inclusion and Exclusion in Historical Perspective"

Matthew Holden, Jr..<sup>a</sup>

### **Overview of the Proposed Paper:**

I propose here a concept paper to examine how the Congress of the United States has dealt with the African presence in the full two hundred years. The fundamental question of every polity is membership. What persons or groups are members to the fullest, what are partial members, what are acceptable aliens having many legal privileges but being denied some, and what have no standing at all, being mere resources at the disposal of others?

### **I. THE HYPOTHESIS OF THE COUNTER-ATTACK**

The basic assumption is the conflict is inevitable between groups. Some will win and some will lose. In politics, a in military engagement, counter-attack *fundamental*. When the first

---

<sup>a</sup>. Henry L. and Grace M. Doherty Professor Emeritus of Politics, University of Virginia. Contact address: Department of Politics, University of Virginia, Charlottesville VA 22904-4787, U. S. A. Email: [mh3q@virginia.edu](mailto:mh3q@virginia.edu) or [MatthewHPolSci@aol.com](mailto:MatthewHPolSci@aol.com). Phone: 434-977-6300. Fax: 434-977-6400.

Some of what appears below has previously been presented in " , " Lecture, Department of Political Science, Rice University, 1998?; " , " CLIO, 1998?; and "Toward A Political Science of American History: Thoughts from Four Episodes," Political Chronicle 11: 2 (February 1999), 32-48. Some thoughts, particularly as they relate to inclusion and exclusion, are also developed in "The Politics of Inclusion-and-Exclusion: The Role of Institutions," in R. A. W. Rhodes, Bert A. Rockman, and Sarah Binder (eds.), Oxford Handbook of Political Institutions (Forthcoming).

defeat will have occurred, some members of the losing group will continue to assert their views, from which they have never receded, no matter how extreme those views may seem to others. *If opportunity presents, they will they will counter-attack. If successful, they will revert to, as much of the status quo ante as they dare.*

## 2. THE ROLE OF THE REPRESENTATIVE BODY

The role of the popular representative body as the vehicle for initiatives and counterattacks in dealing with the question of membership is our question. It is to be expected that the popular representative body will, in fact, be resistant to the inclusion, incorporation, or integration of new participants on an equal basis in the body politic.

As to the composition of the population, it is doubtful if any one positively wanted more persons of African origin. This might be tested by the exercise of powers over immigration. [John Hope Franklin.] ]

## 3. "JIM CROW" NOT OBVIOUSLY PREDICTABLE

When the United States began operating under the 1787 Philadelphia Constitution, the ultimate Jim Crow regime was not foreordained. Racial prejudice was, of course, widespread. But institutionalized racism as we came to know it was not the mental command of all intelligent persons. Rather, the U. S. began with the simultaneity of slavery, the doctrine that free Africans had some legal rights, and even with the concept that slavery itself

Oregon Concept Paper February 27, 2006 1:45 PM

had been placed "on the course of ultimate extinction."

(Elliot's Debates, New Hampshire)

They still had, under the property qualification rules, the formal right to vote in at least five states. (Fox, 1918, ; Keyssar, 2004, ; Holden, In Preparation.)

#### 4. THREE INITIATIVES AND THREE COUNTER-ATTACKS

##### The First Initiative and the First Counter-Attack

Congress developed as an institution from which those adverse to the African American interest were able to launch three major counter-attacks in the span of two hundred years. The first Congress was elected in 1788.

The first interest group petition to the new Congress was that of the Quakers against slavery. (di Giacomantonio, 1995, 169-197.) The report says that "the committee, after several conferences with the memorialists, and an attentive consideration of the subject are very clearly of opinion that the facts disclosed in the said representation are exclusively of judicial cognizance; and that it is not competent to the legislative authority of Congress to do any act in relation to the matter thereof."

When representative bodies deal with policy, one of the implicit - - and sometimes explicit - - issues concerns the internal process and norms, and how "hard" or "soft" legislative factions are in dealing with each other. The conclusion is not the impressive point so much as the process that the report

indicates and the tone that it adopts.

This negative, but far different from the incandescent anger found forty years later in "gag rule" debates about whether Congress could even receive petitions on slavery. (Miller, 1996.)

Political learning took place at once. The Quakers persisted in their interest, but narrowed their scope to the trans-Atlantic slave trade. They asked Congress to prohibit "the trade carried on by citizens of the United States, for the purpose of supplying slaves to foreign nations, and to prevent foreigners from fitting out vessels of the slave trade in the ports of the United States." (U. S. Congress. House Document 44, February 11, 1794.)

Debates about the slave trade seemed to accentuate the doubtful standing of blacks as a particular group subject to being a mere disposable item of commerce.

This had, perhaps, rather less to do with the status of Africans in the domestic polity. It somewhat more to do with foreign policy, chiefly in United States relations with Britain and with Spain. Issues with Britain were especially important, as the United States still needed to settle the Canadian border questions, as well as the right of the British Navy to police U. S. ships in the Atlantic. (Bemis, 1928, IV-VI.)

Four years before the Declaration of Independence inveighed against the King for foisting the slave trade upon America, Lord

Oregon Concept Paper February 27, 2006 1:45 PM

Mansfield had ruled that a man called Somersett, who had been brought from the West Indies, could not be seized and returned. (Heward, .) Slavery continued in the British West Indies at the time we are discussing. But the British Navy was assigned to slave trade suppression. At this time, the United States flag was in common use for ships transporting people from Africa, whether illegally to the United States or Cuba, Brazil and other places where such importation was still legal. ; Howard, 1963; Soodalter, 2006; and, Spears, 1978.)

As a partial digression, The American role in the trans-Atlantic slave trade, subsequent to 1808, warrants a much closer study within the concepts of political science. Du Bois's dissertation book, on the suppression of the slave trade, is a provocative discussion.(Du Bois, 1896.)<sup>2</sup>

---

<sup>2</sup>. However, having said that the book is "provocative," it is better to say that it causes me to think. I have never seen a review or any other discussion of it in any political science journal, except a review in the Political Science Quarterly within the first year after its publication. I am unaware that any political scientist has taken it up until the new work being produced by my theorist-colleague K. Lawrie Balfour. Balfour approaches her study from the side of normative political theory.

From my somewhat different perspective, there is a good deal to be learned from a political science inquiry that employs the conventional tools and concepts of legislative politics, public administration and executive politics, and judicial decision-making.

William S. Howard's book (see citation in the references) contains a sharp attack on DuBois. Tom Henderson Wells has supported Howard ( ), while William R. Leslie ( ) has criticized Howard and supported Du Bois.

Oregon Concept Paper February 27, 2006 1:45 PM

On the main point about the slave trade, the Webster-Ashburton Treaty (Bemis, ; Remini, ) that settled the Oregon boundary and other issues, also provided (Article VIII) for both Britain and the U. S. to put naval patrols in the Atlantic. In 1843, the African Squadron was organized. (Paullin, 187.) The African Squadron seems never to have been very successful (Howard, 1963) and was abolished in 1859.

THE SECOND INITIATIVE AND THE SECOND COUNTER-ATTACK: Patron, Client, and Weak Ally

The Civil War (1851-1865) is the evidence of the great failure to resolve the slavery question. With the freeing of the enslaved people, the question was what to do next. After the Civil War, the Union-maintaining and power-seeking Republicans found it imperative to extend the franchise to the freed Africans.

After a brief period of controversy, when Andrew Johnson was President, Republican Congressional leadership took charge. Senator George Boutwell, a Republican from Massachusetts (Brown, 1995, 193-194; and Boutwell, 1967, 393-394) was very clear. Boutwell said the white people of the South were against the Government. "We know that the Negro is in favor of its existence, and therefore, for all the purposes of voting, whether he can read and write or not, he is a safe depository of power; and therefore I am in favor of allowing him to vote, without going into an inquiry whether he can read and write, because his

Oregon Concept Paper February 27, 2006 1:45 PM

power at the ballot box is now essential to us, just exactly as his power in the field with the bayonet was essential to us during the war." ( Boutwell, op. cit., 397-398.)

In the end, Boutwell and his allies lost. Edwin L. Godkin wrote that "he did not oppose enfranchising those blacks who could prove their fitness by a 'moral as well as an educational test.'"( Godkin, 1865, in Armstrong, 1974, 73.) This had nought to do with any black civic failures during Reconstruction. The letter was written four days after Lee's surrender to Grant at Appomattox. It expressed a distrust of blacks as people. Something very similar is true of Godkin's sometime collaborator, Charles Francis Adams, Jr.(Kirkland, 1965, 29-30.)

Those who did not think the African Americans were inadequate or worse at least had other things to do. This left the field open. The counterattack of the Confederates who were fully back into the political process within a decade after Appomattox was successful. African American voters were driven from the polls by rifle clubs and massacres were perpetrated that, on a deaths per thousand of population basis, vastly exceeded the deaths perpetrated on 9/11. (Holden, 2005.)

The last notable Congressional effort directly to protect the franchise was in the Federal Elections Bill of 1890. The concept was to allow a Federal judge to appoint registrars for Federal elections, under specified conditions. No stable Congressional majority supported force to protect the African

American franchise.

The Third Initiative and the Third Counter-Attack

The third initiative came almost sixty years ago, and came to an intense moment about forty years ago.<sup>1</sup> Racial issues, restated as "civil rights," began to receive the simultaneous attention of Congress and President by 1948. Nine years passed before the Congress adopted the first civil rights bill of the 20<sup>th</sup> century. Another seven years until the congress adopted the Civil Rights Act of 1964. Another year passed and Congress adopted the Voting Rights Act of 1965. Thus, seventy five years after the Federal Elections Bill of 1890 was killed, Congress adopted a new measure in implementation of the Fifteenth Amendment. Three years later came the Civil Rights Act of 1968.

There probably has never been a long period in which a clear Congressional majority favored active policies of racial equality.

The basic changes as to inclusion/exclusion are, first, that the African American interest is somewhere in the fourth or fifth box of Figure 1. But major changes have occurred on the other side. Two changes are noteworthy here.

(1) The United States Senate which, for more than ninety years, was the citadel of white supremacy. In turn, due to changes in the Democratic party outside the South, the Senate

---

<sup>1</sup>. It might be plausible to place the anti-lynching effort of the 1900s-1930s as a third initiative and to regard the civil rights effort here assumed as the fourth initiative.

Oregon Concept Paper February 27, 2006 1:45 PM

became for a time body in which civil rights support was strong. The reversal of Democratic strength outside the undoes that change.

(2) The significant change in the Congressional process, just over twenty five years ago, is the emergence of African Americans as explicitly, participated, as normally expected interests in high level politics or high level policymaking. They are not now those whose interest is evaluated by external parties (white political leaders) who discuss what to do "to," "for," "about," "in behalf of," or "in order to control" African Americans. It represents a new stage in American political history.(Barber, 1980; Walton, 1994;)

Whether the Caucus lacks the ability to project a significant middle- to long-term strategy, in contrast to achieving short-term tactical coordination is a separable issue.

The third counter-attack is the product of the intellectual, as well as tactical victory of the heirs of the Goldwater ascendancy.

#### INCLUSION AND EXCLUSION AS A GENERIC PROBLEM

There are many special features of the African American situation that a political science of American history could analyze. We could also try to fit the hypothesis of initiative and counter-attack into the generic problem of the inclusion/exclusion.

This can conceivably be applied both to (a) people from outside the core groups of a society and (b) different kinds of persons who already have some standing within the core groups.

The United States is in its third linguistic-cultural regime. English-speaking Protestants dominated the regime at the foundation of the republic. (Jay:9) English-descended Catholics came at least within the scope of the electorate by the 1803s (Stokes and Peffer?). German and Irish Catholics were sufficiently incorporated by the end of the Civil War that Christian was a more adequate definition. Jews as a class and the Southern, Central, and Eastern Europeans were substantially incorporated since the election of Franklin Delano Roosevelt in a regime of New England pluralism.

It is almost simplistic to have to argue that the question of the natural and legitimate primacy of "the white race" did not apply only to persons of African derivation. That such matters applied to Native

Oregon Concept Paper February 27, 2006 1:45 PM

Americans ( ), Chinese ( ), Japanese ( ) and Filipinos ( ) is almost too obvious to need any documentation. The same statement applies to a variety of Hispanic groups since the incorporation of half of Mexico into the United States and the incorporation of Puerto Rico into the United States.

The volume and variety of newer Spanish-speaking populations gives "immigration" a particular force, as does the volume and complexity of newer migrations from Asia and, in fact, from all over the world. **Labor in America, though that has been the subject of an other chapter in this volume.**

Special attention to Catholics and Jews in America

White ethnic variety

As a demographic fact, it will come to have some pertinence of Muslims, and possibly to some others in the near term.

**Rapid growth in the female political presence since the 1970s, after a long relatively low-sloping trajectory.**

Oregon Concept Paper February 27, 2006 1:45 PM

Conceptually, it is possible to think of reductions of status differences in the following manner. The most basic changes would be those in law, with regard to physical control (whether a man has the legally understood right to administer physical punishment), being given in marriage and leaving a marriage (divorce), control over children, control over property, the right to make contracts without having someone else's approval, and so forth. Americans in the 21<sup>st</sup> century, and even in the later 20<sup>th</sup> century, do not (or did not) think much about these matters, taking them for granted generally.<sup>2</sup>

The matter much more acutely discussed did relate to the franchise, which was debated (from the 1870s onward), often in some entanglement with issues as to the rights of African American men, until the adopted of the constitutional amendment that grants the vote.

"Culture" of "Diversity" as the Norm and

Other Groups Claim the Protection of Diversity

Even before the 911 experience focused world attention on Muslim populations in Europe, there would have been grounds (which can be sketched here) to perceive exclusion as more intense in the United Kingdom and Australia than in the United States. Continental Europe?

+What will be the dynamic if the nation-state loses capability?\*

REFERENCES

William M. Armstrong (ed.), The Gilded Age Letters of E. L. Godkin, Albany: State University of New York Press, 1974

K. Lawrie Balfour. 2005 "Black World, White Nation: Reading Du Bois's *Suppression of the African Slave-Trade*," Meeting of the Association for Political Theory, St. Louis, October 21-22.

John Thomas Barber, An Analysis of Source Agenda-Setting Power: Black Congressional Leaders and the National Media, Ph. D. Dissertation, Mass Communications, Howard University, 1980, DA VOL. 52-01A, Page 0011, Abstract. )

Samuel Flagg Bemis, ed., The American Secretaries of State and Their Diplomacy, New York: Alfred A. Knopf, 1928, Volumes 4, 5, and 6.

Biographical Directory of the United States Congress, 1774-1989, Washington: Government Printing Office, 1989.

George Boutwell, Speeches and Papers Relating to the Rebellion and the Overthrow of Slavery, Boston: Little, Brown and Company, 1867.

Thomas H. Brown, "Boutwell, George, S.," in The Encyclopedia of the United States Congress, (Edited by Donald C. Bacon, Roger H. Davidson, and Morton Keller), New York: Simon & Schuster, 1995, Vol. 1.

Oregon Concept Paper February 27, 2006 1:45 PM

John C. Calhoun,

W. J. Cash, The Mind of the South,

William L. Clay, Just Permanent Interests, New York: William Morrow and Company, 1996/?.

Christian Science Monitor, Friday, May 9, 1930.

William diGiacomantonio, "For the Gratification of a Volunteering Society': Antislavery Pressure Group Politics in the First Federal Congress." Journal of the Early Republic, 13 (Summer 1995), 169-197.

W. E. Burghardt Du Bois. 1896. The Suppression of the African Slave -Trade to the United States of America, 1638-1870, New York: Longmans , Green, and Co.

Dixon Ryan Fox. 1918. "The Negro Vote in Old New York," Political Science Quarterly. Boston: Ginn and Company.

John Hope Franklin, "Race and the Constitution in the Nineteenth Century," in John Hope Franklin and Genna Rae McNeil (eds.), African Americans and the Living Constitution, Washington: Smithsonian Institution Press, 1995.

Edwin L. Godkin, Letter, April 13, 1865, in William M. Armstrong (ed.), The Gilded Age Letters of E. L. Godkin, Albany: State University of New York Press, 1974.

Oregon Concept Paper February 27, 2006 1:45 PM

Robert Alan Goldberg. 1995. Barry Goldwater, New Haven: Yale University Press.

Edmund Heward. 1979. Lord Mansfield. Chichester: Barry Rose (Publishers.)

Matthew Holden, Jr. 1987. Congress and the Afro-Americans: A Working Paper. Charlottesville, VA: Institute of Government, University of Virginia.

Matthew Holden, Jr. (Ed.) 1994. The Challenge to Racial Stratification, (National Political Science Review, Volume 4).

\_\_\_\_\_. In Preparation, Pertinent Chapter available upon request to the author. The Divisible Republic in the 21<sup>st</sup> Century,

\_\_\_\_\_. 2005. The Reputation of Isaiah T. Montgomery: The Greatness of a Compromised Man.

The Matthew Holden, Jr. Archives. 1987. Tabulation of Bills and Resolutions Relative to Afro-Americans, the 57<sup>th</sup> through the 80<sup>th</sup> Congresses (1901-1948), Charlottesville, VA: P. O. Box 5623.

William S. Howard, American Slavers and the Federal Law: 1837-1862, Berkeley: University of California Press, 1963.

James Weldon Johnson, Along this Way, 367.

Charles Flint Kellogg. 1967. NAACP, Baltimore, Johns Hopkins Press.

Alex Keyssaar,

Edward Chase Kirkland, Charles Francis Adams, Jr., 1835-1915:

Oregon Concept Paper February 27, 2006 1:45 PM

The Patrician at Bay, Cambridge: Harvard University Press, 1965,.

Gerhard Loewenberg and Samuel C. Patterson, Comparing

Legislatures, Boston: Little, Brown and Company, 1979,..

William Lee Miller, Arguing About Slavery: The Great Battles in  
the United States Congress, New York: Alfred A. Knopf, 1996.

Charles Oscar Paullin. 1968. Paullin's History of Naval  
Administration, 1885-1911: A Collection of Articles from the U.  
S. Naval Institute Proceedings, Annapolis: U. S. Naval Institute.

Alex Poinsett. 1997. Walking With Presidents: Louis Martin and  
the Rise of Black Political Power, Lanham, Md: Madison Books.

R. A. W. Rhodes, Bert A. Rockman, and Sarah Binder (eds.)  
(Forthcoming). Oxford Handbook of Political Institutions

Ron Soodalter. 2006. Hanging Captain Gordon: The Life  
and Trial of an American Slaver, New York: Atria Books,

.

John R. Spears. 1978. The American Slave-Trade: An  
Account of Its Origin, Growth, and Suppression.

Williamstown: Corner House Publishers, (Original edition,  
New York: Charles Scribner's Sons, 1900.)

Ronald T. Tataki. 1971. A Pro-Slavery Crusade: The  
Agitation to Reopen the African Slave Trade. New York:  
Free Press.

U. S. House of Representatives. 1st Congress. 2nd

Oregon Concept Paper February 27, 2006 1:45 PM

Session, H. Doc. #13, Abolition of Slavery, March 5, 1790, 12

\_\_\_\_\_. 3rd Congress. 1st Session. H. Doc. 44, "Slave Trade," Communicated to the House of Representatives, February 11, 1794.

\_\_\_\_\_. 57th Congress, H. Res. 165, "Resolution for the Appointment of a Select Committee to investigate the Suffrage laws of the Several States," Photograph of typescript copy, with date stamp March 13, 1902, provided by courtesy of Kristen Wilhelm, Archival Programs Branch, Center for Legislative Archives, National Archives, Washington, D. C., January 27, 1998. A slightly different version existed as H. Res. 10, 58th Congress. )

Frederick Carl Walton, The Congressional Black Caucus: An Historical Analysis of the Relationship Between Political Access and Legislative Success, Ph. D. Dissertation, Political Science? History?, Indiana University, 1994, DAI VOL. 55-12A, Page 3978.)

Denton R. Watson, Lion in the Lobby: Clarence Mitchell, Jr.'s Struggle for Civil Rights Laws, New York: William Morrow and Company, Inc.

Nancy J. Weiss, The National Urban League: 1910-1940, New York: Oxford University Press, 1974, 145.

Tom Henderson Wells. 1967. The Slave Ship Wanderer, Athens: University of Georgia Press.

Oregon Concept Paper February 27, 2006 1:45 PM

Ida B. Wells. .

Walter F. White. A Man Called White. 1948? New York: Viking Press.

Harvey Wish. .

Eugene Zangrando. 19 . The NAACP Crusade Against Lynching, 1900-1950, Philadelphia: Temple University Press., 1980.

2.