

On the Right Side of History? Examining the use of Conservative Rights Discourse as a Tool for Fomenting Popular Opposition to Civil Rights

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***Abstract:** In this paper, I review the growing southern history literature examining the impact of the Civil Rights Movement on the white southerner (Chappell, 1994; Kruse, 2005; Sokol, 2006; Lassiter, 2006; Walker, 2009), in order to better understand how rights discourse shapes the world view of the average citizen. I find that white moderates were largely ambivalent to the cause of racial equality, and came to support an end to segregation mostly out of a desire to bring order to their lives. In the aftermath of the Civil Rights movement, many white voters remained ambivalent to racial equality, and used rights discourse to successfully oppose policies such as affirmative action and school busing. This discourse re-framed racial inequality as a product of individual choices, not racial discrimination. It succeeded because it was able to mask discriminatory stereotypes, making opposition to civil rights more palatable to a popular audience. I conclude the paper by applying these lessons to the current debate over gay rights. I find that the Gay Rights Movement has also been limited by a need to appeal to moderates. This has forced them to embrace conservative institutions such as marriage and the military, and as a result limited the scope of change that this movement is likely to achieve.*

I have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Council or the Ku Klux Klanner, but the white moderate, who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice... Shallow understanding from people of good will is more frustrating than absolute misunderstanding from people of ill will. Lukewarm acceptance is much more bewildering than outright rejection.

—Martin Luther King Jr. “Letter from a Birmingham Jail”

Scholars have long sought to understand how law can be used to bring about social change. Indeed, this was one of the primary impulses behind the development of the field of law and society. This scholarship has yielded some valuable insights about how rights discourse can be used as a tool for mobilizing activists (Scheingold, 1974; Zemans, 1983; Burstein, 1991; McCann, 1994; Haltom and McCann, 2004). However, this work has often overlooked the ways in which rights discourse impacts the average citizen, who does not engage in political activism. In response to this perceived shortcoming, a number of socio legal scholars have pushed for a focus on the “common place of the law” (Ewick and Silbey, 1998; Engel and Munger, 2003). This work is important because it is this largely silent majority who determines the scope of change that a society will embrace. The Court is loath to get too far ahead of the public on cultural issues, and typically weighs the mood of the country heavily when deciding cases with important social ramifications. As a result, it is the shifting opinions of the average citizen, not the social activist or the political elite, which allows for (or prevents) lasting change. This paper explores this phenomenon by examining the average white southerner’s reaction to the Civil Rights Movement.

Understanding the attitudes of the average citizen is difficult work precisely because these people are not typically politically active. These are not individuals who can be found chanting slogans at the front of the picket lines, or engaging crowds of activists with fiery rights-based appeals. Many do not even have fully formed opinions about the political movements of

their day, and they rarely express these opinions publicly. However, a growing literature on southern history has examined the impact of the Civil Rights Movement on the average white southerner (Chappell, 1994; Kruse, 2005; Sokol, 2006; Lassiter, 2006; Walker, 2009). In this paper I review this literature in an attempt to understand how the opinions of the “white moderate” have influenced the long term trajectory of the Civil Rights Movement. This exploration yields key insights about how rights discourse can shape the world view of the average citizen, and determines the outcomes of movements for social change. I conclude the paper by applying these insights to the current debate over gay rights.

In the first part of this paper, I review the literature examining the average white southerner’s reaction to the Civil Rights Movement. While much of the historical literature on the Civil Rights Movement has focused on the violent response of ardent segregationists, most white southerners reacted to civil rights in a more moderate way. White southerners were largely supportive of Jim Crow at the outset of the Civil Rights Movement, and they often justified their support for segregation using the language of “white rights.” However, most southern whites did not support using violence to preserve Jim Crow. The extreme, violent reaction to civil rights perpetrated by the White Citizen’s Councils, the Ku Klux Klan, and racist southern officials like Bull Connor, alienated these moderates and gradually drove them to support integration. In this way, white moderates came to support an end to Jim Crow segregation not because they supported the cause of racial equality, but out of a desire to bring order to their lives. This shows that while rights have power, that power can be undermined if that rights language is accompanied by violence.

In section two of this paper, I discuss what this literature can tell us about how the attitudes of the white moderate have shaped the long term trajectory of the struggle against racial

discrimination in America. I examine how the Republican Party was able to capitalize on the ambivalent racial attitudes of the average white voter to rise to prominence in the years following the Civil Rights Movement. This was done by re-framing racial inequality not as a product of discrimination, but as a result of individual choices. Rights language played an important role in this process, helping to mask the way implicit discriminatory stereotypes and structural inequality continue to generate racially disparate outcomes, and making opposition to civil rights more palatable to a popular audience. This allowed conservatives to effectively block attempts to address these problems through policies such as school busing and affirmative action. It also helped to fuel support for tougher sentencing laws and welfare reform, which have been aimed primarily at poor African American communities. These actions have successfully blunted the impact of the Civil Rights Movement. While it has had a positive impact on middle class African Americans, it has done very little to improve the lives of poor blacks.

In the final section of this paper I apply these insights to the current debate over gay rights. I argue that we can see a similar dynamic shaping this debate. While gays and lesbians have gained rights recently, those rights have come in the form of access to conservative institutions such as marriage and the military. This is similarly reflective of middle class values. It suggests that the Gay Rights Movement is likely to improve the lives of middle class gays and lesbians who are able (or willing) to participate in these institutions, but will have little impact on the lives of poor or working class gays who do not (or cannot) do so. In fact, it may further stigmatize these individuals by making the unequal treatment they receive seem like legitimate consequences of their “deviant” individual choices, not the result of discrimination.

I. The White Moderate's Reaction to the Civil Rights Movement

Most standard accounts of the Civil Rights Movement spend little time discussing the white reaction to civil rights. Those that do so have tended to focus on the more extreme elements of white southern opposition (see for example, McMillan, 1971; Bartley, 1974; Dittmer, 1991; Eskew, 1997; Eagles, 2000; McWhorter, 2001). The growing literature focusing on the white moderate's response to the Civil Rights Movement offers a necessary corrective to this approach. This contribution is important in part because it helps us to understand how so many people came to accept segregation, an institution which is abhorrent to most Americans today, as a necessary part of their lives. It can also help us understand why these attitudes eventually began to change. A focus on the more extreme elements of opposition to civil rights depicts southern racism as a cruel and violent institution motivated by white hatred of the other. While this perspective accurately describes the views of some, it paints an incomplete picture of the southern reaction to civil rights. This allows us to dismiss opposition to racial equality as a product of a bygone era, the work of bigots motivated by hatred and disgust. The truth is that the racial attitudes of most white southerners at this time were much more complicated, and that these same impulses continue to shape the fight for racial equality in America today.

Understanding the White Moderate's support for Segregation

Following the end of reconstruction a complex system of formal laws and informal racial mores emerged in the South which strictly governed interactions between blacks and whites. This "southern way of life" permeated every aspect of the lives of southerners, and powerfully shaped their sense of self. Most white southerners could not imagine a world without segregation. They saw these racial mores as the foundation of southern society, and believed the

system protected the best interests of all southerners, including African Americans. This system of segregation was also designed to preserve deep seated sexual norms against interracial relationships and to protect white women from “lustful black men.”¹ Most white southerners clearly harbored racist attitudes towards African Americans, but much of this racism was based on a sense of paternalism, not outright hatred.² The average white southerner believed that segregation protected the interests of African Americans by preventing interracial violence, and by keeping blacks, who they believed to be inherently inferior, from having to compete directly with whites (McGerr 2003, 182-218).

In the North, blacks and whites lived in separate worlds, and had almost no interactions. In the South however, African Americans and working class whites often lived and worked in close proximity to one another. They regularly came into contact with each other in public places, and blacks frequently interacted with whites while working as domestic servants in their homes. Most whites came away from the brief conversations they had with African Americans in these settings feeling that they understood how blacks felt about segregation. They believed that African Americans were happy living in their own communities, and that they did not desire to integrate with whites (McGerr, 2003, 182-218). This twisted logic ignores the reality that blacks were treated unequally under Jim Crow, instead recasting segregation as a voluntary separation of the races conducted largely on equal terms. This belief was crucial to preserving

¹ Stereotypes of black men as sexually rapacious creatures with an uncontrollable lust for white women were a frequent theme in popular culture of the day. These images were often presented to viewers in the form of the “Black Buck” or “Black Brute” character. Such characters appear for example in D.W. Griffith infamous 1915 film “The Birth of Nation,” in which valiant southern Klansmen are depicted as saving the South from blacks who gain control of the region during reconstruction (Rogin, 1996, 14).

² This is not meant to suggest that racism based on paternalism is more desirable than racism based on hatred. In fact paternalism is often a more difficult attitude to combat, because it is ostensibly motivated by a desire to help, rather than to harm, the target population.

segregation, because it allowed the average white southerner to feel that this system was a product of choice, rather than discrimination, making it seem more legitimate.³

The myth that African Americans were complicit with regard to segregation persisted long after the Civil Rights Movement began. White southerners reacted to African American calls for equal rights not by reconsidering their preconceived notions of them, but by dismissing the Civil Rights Movement as being perpetrated by “outside agitators” coming into the region from the North. These agitators included a wide range of conservative bogeymen such as northern liberals, Communists, and the NAACP (Eagles, 2000; Sokol, 2006, 56-113).⁴ In addition to allowing white southerners to dismiss the Civil Rights Movement, this populist logic also helped them to create an identity of themselves as “cultural warriors” valiantly standing up for fundamental aspects of their way of life, against elite scheming. This identity continues to be an important component of conservative opposition to social change today (Goldberg-Hiller and Milner 2003; Dudas 2008; Mello 2015).

White southerner often used rights discourse to reinforce this conception of themselves as under attack. Many thought of the Civil Rights Movement as infringing on their fundamental rights. They argued, for example that segregation protected the economic interest of small business owners who feared that serving blacks would risk alienating their white customer base (Kruse 2005; Sokol 2006), and home owners who feared that allowing blacks to buy homes in

³ This was obviously a gross misunderstanding, one that was made possible by the fact that white southerners did not recognize that the deferential behavior African Americans showed towards them was a product of the racial norms of the day, not a genuine expression of their views.

⁴ Labeling civil rights activists as “Communists” was a favorite tactic of many on the Right. Organizations such as the John Birch Society spread rumors that Martin Luther King Jr. and other members of the Southern Leadership Conference were Communists. George Wallace gave a number of speeches to northern audiences exposing the supposed links between King and Communism. J. Edgar Hoover was so convinced that King had ties to Communism that he bugged his phone in an attempt to document his Communist sympathies (Carter, 1995, 158-160).

their neighborhood would drive down property values (Kruse 2005; Lassiter 2006).^{5 6} They also argued that whites should have the right to choose whom they freely associate with, and should not be forced to eat with black diners, or attend school with black students, if they do not desire to do so (Kruse 2005; Sokol 2006; Lassiter 2006).

This rights discourse had powerful constitutive impact on white southerners. Whites often argued that newly integrated facilities and neighborhoods were being taken from them by the government and given to blacks. This logic invokes a concept of civil rights as a zero sum game, in which granting rights to African Americans necessarily takes rights away from others (Kruse, 2005). According to this conception, African Americans were selfishly pushing an excessive campaign of civil rights with no regard for its impact on the rights of whites. This right discourse was based on an overtly racist logic. These arguments assumed that since blacks were fundamentally inferior to whites, integration would necessarily have a negative material impact on the lives of white southerners. However, the use of rights discourse obscures this discriminatory logic somewhat. It elevates the opposition to civil rights, making it less about opposing new rights for blacks, and more about protecting the rights of whites. This belief led many whites to say that they “were not racist,” and did not oppose granting rights to African Americans, but that they opposed the Civil Rights Movement because they did not think that those rights should come at the expense of other, more fundamental constitutional rights (Kruse 2005, Sokol 2006; Lassiter 2006).

⁵ The irony here is that blacks would often pay more than whites for homes that were located in “white” neighborhoods because they perceived them to be of better quality (Kruse 2005, 65).

⁶ This logic created a self fulfilling prophecy. Since whites felt that allowing blacks into “their” neighborhoods would reduce the quality of those areas, prices did decline. Since the government assumed that neighborhoods which transitioned from primarily white to primarily black would inevitably become slums, they often reduced funding for public accommodations such as parks and schools that were located in those areas. They also re-zoned these areas to allow for the construction of housing projects and multi-family units, further driving down home values (Kruse 2005, 73-77).

While this rights discourse had powerful constitutive appeal, its instrumental value was more limited. During the Civil Rights Movement, southern leaders such as Lester Maddox and George Wallace used a combination of rights-based and racist appeals to build a popular identity of themselves as heroically fighting to preserve the southern way of life (Sokol 2006; Kruse 2005). This discourse had considerable instrumental value when used within the confines of the Deep South, helping these leaders to gain popularity and win the governorships of Georgia and Alabama respectively. But this rights discourse had little appeal outside of the Deep South. This is because the overtly racist language that it was paired with alienated northern voters and undermined its effectiveness. Even though segregationists like Wallace were careful to never openly condone racial violence, their bombastic discourse was seen by most as tacitly approving of, if not outright encouraging, its use as a means of preserving segregation. Clearly, pairing overtly discriminatory language with rights discourse undermines its effectiveness. However, when these rights-based appeals are stripped of their overt racism, they are able to function more effectively.

Understanding How White Southerners Came to Support Integration

One of the primary reasons that segregation survived as an institution in the South for so long was that people believed it brought order to their lives. Even white moderates who accepted Jim Crow as unjust often argued that it was necessary for “keeping the peace” between the races (McGerr 2003, 182-218). The Civil Rights Movement defeated this logic in large part by bringing disorder to the region. Civil rights activists often targeted areas such as Birmingham, Alabama, where they knew that southern law enforcement officials had a reputation for brutality and violence. This was done in the hopes that provoking a violent

reaction from whites would spark a backlash and garner both local and national sympathy for the cause of civil rights (Chappell, 1994; Klarman, 2004). This strategy was generally successful.⁷ The violence of white extremists repulsed northern audiences, but perhaps more importantly; it repulsed most white southerners as well, causing them to grudgingly embrace steps to end segregation. Thus, white moderates were motivated to end segregation, not by a desire for racial equality, but because they came to believe that preserving segregation through violence would be more disruptive to their lives than supporting integration. In this way they became what Jason Sokol calls, “accidental radicals” (Sokol, 2006, 137).

The fact that most southern whites came to embrace desegregation without necessarily being convinced of the value of racial equality has had an important impact on the efficacy of the Civil Rights Movement. While whites accepted that integration needed to occur, most still believed that blacks were not equal to them, and they still clung to old fears that integration could lead to the breaking of taboos against interracial relationships.⁸ This inequality came to be seen, not as a product of racism, but instead as stemming from a variety of personal and moral failings rampant within the African American community. This belief shaped the way integration was carried out. Many southern governors responded to the Court’s order to desegregate in *Brown v. Board of Education* (1954) by attempting to move away from a system of formal racial segregation in schools, to one in which black students were excluded from predominately white schools based on supposedly race neutral factors, such as higher rates of illegitimacy, poverty, crime, and lower levels of academic achievement (Walker 2009).

⁷ In fact, the 1961 campaign in Albany Georgia is frequently cited as King’s greatest failure in large part because police Chief Laurie Pritchett made a conscious effort to subvert this strategy by instructing his men to make mass arrests while avoiding the type of violent tactics used by people such as Sherriff Connor in Birmingham (Chappell, 1994, 122-146; Sokol, 2006, 64-83).

⁸ It was not until 1967 that the Supreme Court ruled anti-miscegenation laws unconstitutional; at that time, 16 southern states still had such laws on their books (*Loving v. Virginia*, 1967).

Southern politicians such as Mississippi Governor J.P. Coleman developed “pupil placement” programs based on these principles which effectively prevented all but a few African Americans from attending predominately white schools (Walker, 2009, 12-48). The logic behind such programs was that most blacks were not yet ready to integrate, and would only lower the standards of white students if admitted to their schools. In this way, whites used notions of individual responsibility to highlight black deficiencies, while ignoring the role that the system of formal racial discrimination had played in creating them. Such tactics would later become a mainstay of the conservative conception of *de facto* segregation as a natural byproduct of market factors, not racial discrimination (Crenshaw, 1988; Hall, 2005; López, 2006, 143-162).

Perhaps the best example of this moderate approach to integration occurred in Atlanta. Atlanta had a history of defusing tensions by addressing racial issues through peaceful negotiations between black and white city leaders, earning it a reputation as the “city too busy to hate” (Kruse, 2005, 19-41).⁹ When a growing movement towards massive resistance to desegregation threatened to close public schools in Atlanta, a coalition of middle class whites negotiated a compromise that allowed for the token integration of four Atlanta high schools beginning in 1961. Black students had to apply for transfers to these schools, and only a handful of students with the best academic records were allowed to attend (Lassiter, 2006, 96). The plan was to achieve citywide integration by gradually transition to a “neighborhood schools” model over a twelve year period. Most whites responded to this plan by moving to the more segregated suburbs. The city encouraged this activity by using settlement patterns to ensure that the schools that desegregated would do so only after most whites living in the area had moved. The white

⁹ While Atlanta’s race relations were good, relative to other areas of the South at that time, the city was not free from racial tensions. Encroachment from black citizens into “white” neighborhoods was met with intimidation and violence during the 1950s and 1960s (Kruse, 2005, 42-78), and sit-ins designed to force integration of public accommodations generated a violent response from many white citizens in 1960 (Kruse, 2005, 180-204).

students who remained in newly integrated schools were usually granted permission to transfer elsewhere, and most chose to do so (Lassiter, 2006, 94-118). As a result of these policies, by 1970, Atlanta had shifted from a majority white to a majority black city, and many formerly all white public schools had been de-segregated and then promptly re-segregated as white students abandoned the now predominately black institutions (Kruse, 2005, 164-169).

II. Long Term Impact of the White Moderate on the Civil Rights Movement

Opponents of the Civil Rights Movement often used rights discourse to defend the Jim Crow system of formal segregation in the South, but these arguments never garnered widespread national appeal. By the 1970s, New Right conservatives were beginning to adopt a new approach designed to blunt the impact of the Civil Rights Movement by giving tacit approval to the idea of racial equality, while at the same time attempting to limit the scope of change. These new “white moderates” did this by narrowing the definition of equal rights to encompass only formal legal equality. Doing this allowed them to argue that racism *was* a problem in America, but one that had always been confined to the South, and was now solidly in the past (Hall, 2005). With the dismantling of Jim Crow, many argued that the Civil Rights Movement had accomplished its goals. They believed that we now lived in a “colorblind” society in which race should no longer be taken into account when designing government policies (Crenshaw, 1988; López, 2006, 143-162).

This characterization ignores the harmful effects of the nation’s legacy of racial discrimination and the persistent problem of implicit racial prejudice, and instead recasts the achievement gap between white and minority populations as a product of a lack of personal responsibility and poor work ethic. As a result, structural inequality is seen as a natural and just

byproduct of market forces, not as an illegitimate consequence of racial discrimination. When viewed in this light, efforts to ameliorate inequality by providing targeted benefits to minority populations are seen as attempts to inject race into a “post racial” society (Crenshaw, 1988; López, 2006, 143-162). Rights discourse becomes a powerful tool for white moderates bent on pursuing this strategy. These individuals frequently decry such policies as examples of “reverse racism,” which unfairly discriminate against whites (Sowell, 1984; Roberts and Stratton, 1995). Such arguments allow them to co-opt the mantle of equal rights by framing themselves as the rightful defenders of the legacy of the Civil Rights Movement, and framing those who support providing targeted benefits to historically oppressed minority groups, as mandating equal outcomes at the expense of equal opportunities for white Americans.

The Suburban Strategy

The Republican Party has been one of the key beneficiaries of this new approach. Many have documented how, in the aftermath of the Civil Rights Movement, conservative candidates such as Barry Goldwater used racial appeals to make inroads for the Republican Party in the South (Edsall and Edsall 1992; Carter 1996; Mayer 2002; Lowndes 2008). This approach has often been called the “southern strategy,” but this is a problematic misnomer. Calling this approach a southern strategy mistakenly casts racial politics as a game played only in the South, and ignores the fact that this strategy was just as effective with white voters in the North. In reality this approach was less “southern” and more “suburban” (Lassiter 2006). Republican leaders used rights discourse to appeal to suburban middle class whites who felt threatened by efforts to combat structural inequality. These white moderates succeeded where their

predecessors had failed, because they shunned violence, avoided overtly racist language, and used rights discourse to mask the discriminatory stereotypes which undergirded their arguments.

Goldwater was the only Republican candidate to try a true southern strategy. During his 1964 presidential campaign, he opposed the Civil Rights Act, arguing that it violated the free association rights of white Americans (Perlstein, 2001, 461). Goldwater clearly understood the strategic value of this approach. He famously explained his desire to appeal to southern states by arguing that he was, “hunting where the ducks are” (as quoted in Lowndes, 2008, 61).¹⁰

Goldwater’s southern strategy was a failure however. His rejection of the Civil Rights Act caused many in the North to perceive him as supporting racism (Lassiter, 2006, 230-232).

Though he won the five Deep South states of Alabama, Louisiana, Georgia, Mississippi, and South Carolina, his racial politics cost him votes, not just in the North, but in the Border South states as well. As Richard Nixon himself later remarked to his biographer, “Goldwater ran as a racist candidate and he won the wrong [southern] states” (as quoted in Carter, 1996, 27).

One of the first people to attempt to use racial appeals to sway northern audiences was George Wallace. During his 1968 Presidential run as a member of the American Independent Party, Wallace worked to construct a populist identity of himself as part of a virtuous middle class under assault from permissive elites above, and lazy dependants below. This virtuous middle was depicted as under siege from a number of deviant “outsiders,” including liberal judges, Washington bureaucrats, lazy welfare recipients, criminals, protestors, and rioters (Kazin, 1995, 221-242). Wallace’s outsiders were actually code words meant to elicit a clear racial identity in the voter’s mind, but he left these identities unsaid, allowing his audience to fill in the

¹⁰ It is a bit ironic that Goldwater, a man of Jewish ancestry, came to embrace the cause of white racial resentment. It is unclear how passionate he really was about racial issues. Goldwater had been a supporter of civil rights early in his career: he was a member of the NAACP, and had voted for the 1957 Civil Rights Bill (Critchlow, 2007, 50). He is said to have struggled mightily with his decision to vote against the 1964 Civil Rights Act, and did so only because he felt that he had a constitutional obligation to do so (Perlstein, 2001, 363-365).

appropriate racial stereotype themselves. By not addressing race directly, Wallace made these racial appeals more palatable, allowing his supporters to embrace his racial logic while simultaneously denying the racial implications of this discourse (Lowndes, 2008, 100). Despite his clever rhetorical tactics, Wallace was never able to overcome his reputation as an ardent segregationist, and was never a serious threat to win the Presidency. Some scholars have suggested that Wallace was the most influential loser of twentieth century politics however (Leshner, 1994; Carter, 1995; 1996). His approach would eventually be adopted by the Republican Party establishment, who were able to capitalize on his coded racial appeals without carrying the baggage of being associated with support for segregation.

Goldwater and Wallace were some of the first to use white racial resentment as part of a presidential campaign, but Nixon was the first candidate who was able to win with this strategy. In his 1968 and 1972 campaigns, he deftly maneuvered on the issue of race, appealing to the concerns of whites through subtle racial cues, and establishing a successful electoral strategy for future Republicans to follow. Nixon had always expressed support for African American civil rights generally and for the Civil Rights Act in particular. He understood however, that many working-class whites in both the North and the South felt threatened by the Civil Rights Movement. Under the advice of his strategist Kevin Phillips, he crafted a careful message that appealed to the racial concerns of northern whites without using overt appeals to racism.¹¹ Nixon argued that he was representing the interests of the “forgotten Americans,” and later the “silent majority.” He contrasted this virtuous majority with various deviants, including

¹¹ Phillips would later go on to write the influential book, *The Emerging Republican Majority*, based in large part on voting patterns he observed during the 1968 election. He observed that northern working-class whites living in close proximity to African American communities felt the most threatened by the Civil Rights Movement. He argued that Republicans could form a winning electoral coalition by playing to the concerns of these whites, who were uncomfortable with things like open housing laws and new union rules that were bringing more blacks into their neighborhoods and onto their job sites (Phillips, 1969).

irresponsible protestors, violent rioters, and undeserving welfare recipients (Mason, 248-255). Nixon also promised to bring more law and order to the nation, an argument which played on the fears of many Americans who believed that race riots, anti-war protests, and the increasingly militant black power movement had left the nation teetering on the brink of anarchy (Perlstein, 2008). While these arguments had the appearance of being race-neutral, the promise of law and order was interpreted by many Americans as a promise that Nixon would crack down on racial minorities, who were seen as causing most of the unrest (Carter, 1996, 29-30; Beckett, 1997; Alexander 2010). Nixon also called for welfare reform, arguing that entitlement programs created a culture of dependency, decreased personal responsibility, and increased crime. Again, this promise was directed at racial minorities, who were often depicted as lazy individuals who preferred to rely on such entitlement programs than to work (Gilens, 1999; Hancock, 2004).

Nixon was the first Republican candidate to successfully implement this racial strategy, but his role in helping to create the modern Republican Party is often forgotten, both because of his reputation as a moderate and his ignominious exit after the Watergate scandal. Instead, Ronald Reagan is typically credited with the birth of the modern Republican Party. An ability to capitalize on white racial concerns was a central component of Reagan's appeal. He kicked off his presidential campaign in 1980 by declaring, "I believe in states' rights" while speaking to a crowd in Philadelphia Mississippi, a town made infamous by the fact that three civil rights workers were murdered there by the Ku Klux Klan in 1964. The speech sent a clear signal that Reagan would support whites who opposed civil rights— a message that was not lost on his white audience. Like Nixon, Reagan also used coded racial appeals to tap into white racial resentments while still appearing to be race neutral. He relied on a number of racial stereotypes to communicate his message throughout his political career. For example, he would often tell

tales of “Chicago welfare queens driving around in Cadillacs,” and “strapping young bucks buying T-bone steaks with food stamps.” While these images were not overtly racist, they clearly evoked racial stereotypes (Gilens, 1999; Hancock, 2004).

The White Moderate at Court

The rights discourse used by white moderates has had a similarly powerful impact on the Supreme Court’s treatment of race. By the 1970s most southerners had grudgingly accepted the integration of public schools, but the goal of creating “unified” school systems with racially balanced institutions remained elusive. Frustrated by this lack of progress, the NAACP filed suit against the city of Charlotte, arguing that the city’s school districts should be forced to address its persistent pattern of residential segregation by implementing a program of two-way busing between the city and its surrounding suburbs (*Swann v. Charlotte-Mecklenburg*, 1971).

Opponents of the busing plan argued that attempts to overcome residential segregation were beyond the scope of *Brown*, because residential patterns were the product of market forces, not racial prejudice. They argued that *Brown* was designed only to combat the effects of *de jure*, not *de facto* segregation. They also argued that these programs violated their fundamental right to send their children to the school of their choosing. These mostly white suburbanites believed they had worked hard so that they could afford a nice home in a good neighborhood, and had thus earned the right to send their children to good schools (Lassiter, 2006, 121-123; 137-143). The unstated implication of this argument is that African Americans and other racial minorities who lived primarily in poor neighborhoods had not worked hard enough to earn this same right.

Lawyers for the NAACP combated these arguments by pointing out that the distinction between *de facto* and *de jure* discrimination was an artificial one. They showed that the city of

Charlotte, like many other American cities, had taken actions which helped to create its segregated residential patterns. They showed, for example, that the city had purposely built highways and industrial belts in ways that created physical buffers between identifiably white and black neighborhoods, and that residents in low income areas who had been displaced by these construction projects were frequently relocated to public housing units built in the identifiably black sections of the city (Lassiter, 2006, 134-135). African American families also faced pervasive discrimination from real estate agents and banks, which often steered them away from identifiably white neighborhoods.¹² Based on this evidence, a unanimous court ruled that school districts could use busing as a means of achieving integration.¹³

While *Swann* was a major victory for proponents of integrated public schools, its impact was significantly undermined by the Court just three years later in *Milliken v. Bradley* (1974). The *Milliken* case involved a plan to desegregate schools in the Detroit metropolitan area which was modeled after the one the Court had approved in Charlotte. This time however, the Court issued a controversial 5-4 decision, finding that suburban areas could not be included in busing plans. The Court justified this decision by finding that the city had failed to prove that suburban residential patterns were the product of *de jure* discrimination. The court reasoned that this was the case because, unlike in the South, Northern school districts had never had a policy of formal racial segregation. The ruling effectively protected suburban populations in the North from

¹² Until 1950, the National Association of Real Estate Boards (NAREB) code of ethics explicitly stated that realtors should not introduce racial groups that will lower property values into “white” neighborhoods. Banks also believed that an influx of black residents to white neighborhoods would lower property values, and, as a result, frequently denied loans to black families who wished to buy homes in white neighborhoods in order to protect the value of loans they had already given to white homeowners (Kruse, 2005, 60-61).

¹³ While the Court’s ruling did allow districts to use busing as a remedy for segregation in public schools, it did not mandate that every district do so. The ruling provided plenty of ground for District Courts to invalidate individual busing plans by finding that districts could not mandate a strict racial balance and that length and distance of the bus rides should be weighed against the goals of integration (Lassiter, 2006, 170-174).

busing and hastened white flight away from the cities. As a result, most students still attend schools with largely segregated populations today (Orfield and Lee, 2007).

Another area of civil rights policy that has been the subject of fierce opposition from white moderates is affirmative action. One of the biggest early proponents of affirmative action was Lyndon Johnson. Johnson saw this policy as a means of combating the racially disparate effects of poverty. In a 1965 speech at Howard University, he spoke of the need to provide targeted benefits to African Americans in order to help them overcome economic hardships imposed on them by centuries of racial discrimination. He stated that, "...You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and say, 'you are free to compete with all the others,' and still justly believe that you have been completely fair" (Johnson, 1965). The concept of providing targeted government benefits to historically oppressed minority groups was nothing new. Working-class whites benefited immensely from a plethora of New Deal government policies introduced during the 1930s and 1940s to combat the crippling effects of the Great Depression, and sustain economic growth after World War II. Such policies included Social Security Insurance; access to affordable home loans through the FHA; protections for organized labor; and benefits to veterans provided by the GI Bill. Many historically oppressed white ethnic groups including Italian and Irish Catholics, and Jews used these policies to help assimilate into the American middle class. Most African Americans were denied access to these same benefits however (Katznelson, 2005).¹⁴

¹⁴ Roosevelt needed votes from southern Democrats in order to pass his New Deal programs, and these Democrats insisted that they would only support such policies if they did not infringe on Jim Crow. In order to comply with these demands, agricultural and domestic workers, two occupations that were dominated by African Americans, were prohibited from accessing social security and denied legal protections that would have allowed them to form labor unions (Lieberman, 1998). Black soldiers were also prevented from serving in lucrative frontline positions, and therefore denied access to the same benefits given to white veterans after the war (Katznelson, 2005, 80-141).

While many supporters of racial equality see affirmative action as an essential means of combating the problems of structural inequality, many opponents believe that this policy inherently disadvantages deserving whites. Opponents of affirmative action often argue that it unfairly rewards “undeserving” minority groups at the expense of more qualified citizens who have worked hard and earned such opportunities (see for example Sowell, 1984; Roberts and Stratton, 1995). They believe that providing benefits to individuals based on race, instead of on merit, creates an “entitlement society,” and undermines the value of self-reliance, which is a key part of the moral foundation of America. Such policies, they argue, actually do more harm than good to the economically disadvantaged, because they take away incentives for hard work and personal responsibility—skills they see as essential for escaping the “trap” of poverty (see for example Murray, 1984; McWhorter, 2000). Once again, this argument ignores the harmful legacy of discrimination, and instead re-frames inequality as a product of individual choices.

The Supreme Court has been heavily influenced by these arguments. One of the first affirmative action cases to come before the Court was *Regents of the University of California v. Bakke* (1978). Here a deeply divided court issued a somewhat convoluted decision which continues to shape affirmative action policy today. In his majority opinion, Justice Powell found that universities have a compelling interest in creating a racially diverse student body, and can consider race a “plus” factor when evaluating applications, but that the University of California’s admissions policy was unconstitutional, because it mandated strict racial quotas. While this decision allowed universities to take race into account when making admissions decisions, its logic re-framed the debate over affirmative action and has limited the future effectiveness of these policies. By evaluating the law using “strict scrutiny,” Powell gives credence to the conception of affirmative action as reverse racism. The strict scrutiny standard had previously

only been used to evaluate laws which discriminate against “discrete and insular minorities,” a distinction which would seem to exclude whites. Powell questions this logic however. In his opinion, he puts the word white “majority” in scare quotes, and argues that the term “whites” actually includes a number of ethnic minority groups who have suffered from a history of discrimination. This conception blurs the distinction between race and ethnicity, ignoring the fact that while it has always been possible for white ethnic groups to assimilate and become considered part of the white majority, this same opportunity has never been available to African Americans.

Instead of justifying affirmative action as a necessary means of ameliorating the effects of racial discrimination, the Court re-frames it as a policy designed primarily to promote the value of diversity, by finding that the First Amendment grants universities the right to design race conscious admissions policies. This conception allows white Americans to see themselves as the ones standing up against racial discrimination, and puts supporters of affirmative action in the more difficult position of having to prove that a desire to promote racial diversity is a compelling enough reason to justify this discrimination. For now, the Court has continued to view racial diversity as a “compelling government interest” (*Grutter v. Bollinger*, 2003 and *Fisher v. University of Texas*, 2013). A number of justices have expressed their opposition to this position however, and some policies have been struck down for not being “narrowly tailored” to achieve this goal (*Gratz v. Bollinger*, 2003).

III. What the White Moderate Can Teach us About Gay Rights

The legacy of the Civil Rights Movement continues to shape the way we think and talk about equal rights in America today. The current debate over gay rights has not occurred on a

tabula rasa, but has instead built on an existing framework of cultural traditions, and been mediated by frames of collective meaning established during this previous conflict. As such, understanding how the white moderate responded to efforts to promote racial equality can also help us to understand the current response to gay rights, and consider its future implications. As was the case with the debate over African American civil rights, the current debate over gay rights has been shaped powerfully by the opinions of moderates. Both pro and anti-gay activists have used rights discourse to try and appeal to an American public made up primarily of moderate heterosexual citizens. These efforts have had mixed results. Though the American public has increasingly come to tolerate the idea of gay rights, many have yet to completely accept all gays and lesbians as full and equal citizens. This has important implications for the present and future debate over gay rights in America.

The American Gay Rights Movement formed in the wake of the 1969 riots at the Stonewall Inn in New York City.¹⁵ As with African Americans before them, gays and lesbians living in America at this time faced a system of codified, state-sanctioned discrimination.¹⁶ The Gay Rights Movement used demands for equal rights to mobilize supporters against this discriminatory treatment. By the mid 1970s, they had won a few early victories; passing anti-discrimination statutes in large cities with sizable gay and lesbian populations, and in a smattering of liberal “college towns” across the country.

¹⁵ Early “homophile” organizations such as the Mattachine Society and the Daughters of Bilitis predate Stonewall, but they were mostly concerned with creating tolerance for gay individuals who wanted to live a quiet, closeted lifestyle (Adam, 1987, 60-68). Stonewall signaled a dramatic departure from this approach. It was a powerful demonstration of gays and lesbians publicly and aggressively demanding their rights (Chauncey 2004, 23-58)

¹⁶ At this time most states had laws which prohibited sodomy, and they often used these laws as a pretext for harassing and arresting anyone who congregated in identifiably “gay” establishments. There were very few laws protecting gays and lesbians from discrimination in areas like housing and employment, and gay individuals frequently risked being fired from their jobs or evicted from their homes if their sexual orientation was made public.

These small victories provoked a quick response from the Religious Right, which was beginning to emerge as an effective force in American politics at this time. The most infamous early campaign against gay rights was the one led by Anita Bryant against Miami-Dade County's gay rights ordinance in 1977. Bryant was a popular singer and former beauty pageant winner, who had become a national celebrity as a spokesperson for Florida Orange Juice. After Miami passed its gay rights ordinance she formed "Save Our Children Inc.," a political organization dedicated to its repeal, and put the law before voters via a popular referendum. Much like the initial response to racial equality from southern whites, Bryant's Miami campaign used a mix of rights-based arguments and overtly homophobic and discriminatory stereotypes to sway voters. Bryant was an Evangelical Christian who saw homosexuality as immoral, and she often framed her opposition to gay rights as an outgrowth of her Christian faith—an argument that was not common at that time.¹⁷ Bryant, whose children attended a local parochial school in Dade County, also raised fears that this new law would require such institutions to hire openly gay school teachers, infringing on her "parental right" to control her children's moral education. She complained that such protections would help to "normalize" homosexuality and make it easier for gays and lesbians to "recruit" children into their "sinful" lifestyle (Clendinen and Nagourney 1999, 291-311; Fejes 2008, 85-114). These portrayals implicitly, and sometimes explicitly, played on longstanding conceptions of gays and lesbians as dangerous sexual predators who want to seduce and molest innocent children.

Bryant's anti-gay initiative passed overwhelmingly with nearly 70% voting to repeal the law. This success inspired a number of similar campaigns. One of the most notable was the one launched by John Briggs, a State Senator from Orange County, who introduced Proposition 6 in

¹⁷ Most churches deemed acts of "sexual deviance" immoral at this time, but few had a defined policy against homosexuality in general. Anti-gay politics did not become a focal point of the Religious Right until the 1980s (Herman 1997, 25-59)

1978. The “Briggs Initiative” would have prohibited public school boards in California from hiring teachers who “publicly admit to being homosexual or promote a homosexual lifestyle.”¹⁸ Borrowing from Bryant’s strategy, Briggs sought to build support for his initiative by depicting gays and lesbians as threats to children (Clendinen and Nagourney, 1999, 377-390). Opposition to the initiative was fierce however. California has a large gay community which launched a well organized and effective campaign against the measure. This is in contrast to Miami, where the campaign against Bryant’s measure had been remarkably disorganized and ineffective (Fejes 2008, 115-151). In California gay rights activists were able to capitalize on the overtly homophobic discourse used by Bryant and others like her. They used this language to depict opponents of gay rights as extremists pushing a law that was hurtful and unnecessary (Stone 2012, 41-62). This proved to be an effective strategy. Conservative stalwarts like Reagan publicly denounced the Proposition as “unnecessary” and Californians voted overwhelmingly against it. This shows, once again, that while overtly discriminatory appeals may resonate with the conservative base, they have the effect of alienating more moderate voters.

More recent campaigns against gay rights have abandoned overtly discriminatory appeals in favor of an exclusively rights-based approach (Herman, 1997). This strategy was first used successfully to pass Colorado’s Amendment 2 in 1992.¹⁹ During this campaign, conservatives convinced voters to support a constitutional amendment prohibiting gays and lesbians from being recognized as a “protected class,” by framing gay rights as excessive, “special rights.” While this discourse did not use overtly homophobic language, it still communicated the message that

¹⁸ Unlike Bryant, who was fueled by genuine moral beliefs, Briggs’ opposition to gay rights may have been more strategically motivated. He saw this initiative as a way to gain attention and propel a successful campaign for Governor. The initiative did garner attention, but Briggs failed to gain traction as a candidate for governor and dropped out of the race before the general election (Clendinen and Nagourney, 1999, 378).

¹⁹ Amendment 2 was ultimately ruled unconstitutional. The Court found that the law was motivated solely by a “bare desire to harm a politically unpopular group,” and lacked any “legitimate” government interest (*Romer v. Evans*, 1996).

gays and lesbians are deviant others, pushing for excessive rights which infringe on the legitimate rights of responsible, disciplined citizens (Schacter, 1994; Goldberg-Hiller and Milner, 2003). A similar strategy has also been used to frame opposition to same-sex marriage. Anti-gay activists have successfully passed ballot measures prohibiting same-sex marriage in 34 states.²⁰ They have typically justified these ballot measures as necessary for protecting parental rights and religious liberty. While this language is not overtly discriminatory, the parental rights argument in particular still plays on longstanding conceptions of gays and lesbians as a threat to children (Mello, 2015).

Support for extending marriage rights to gays and lesbians has been increasing of late. More than 54% of Americans now say they are in favor of same-sex marriage (Gallup 2014). During the 2012 elections proponents of marriage equality won four out of five same-sex marriage ballot measure campaigns, their first such victories in this arena. In 2013, the Supreme Court invalidated Section 3 of the Defense of Marriage Act, which defined marriage as between one man and one woman at the federal level (*United States v. Windsor*, 2013). Today, 17 states allow same-sex couples to marry, and many others are considering doing so as well.

The success of the drive for marriage equality has not been without cost for gays and lesbians, however. Focusing the Gay Rights Movement on the narrow goal of obtaining the right to marry is problematic, because this goal is not something that is a priority for all gays and lesbians. Many gay individuals do not marry or form families either by choice or circumstances. Many reject marriage because they believe it is replete with problematic assumptions about the value of the traditional nuclear family model, or because they believe it re-enforces a binary notion of gender or sexuality which they seek to reject (Warner, 1999). Attitudes towards

²⁰ Two of those states later overturned these laws and legalized same-sex marriage. The Supreme Court overturned California's Proposition 8, legalizing same-sex marriage in the state in 2013 (*Hollingsworth v. Perry*). Mainers ratified a ballot measure legalizing same-sex marriage in 2012.

marriage are also heavily influenced by socio-economic factors. Marriage rates have declined considerably in America, and it has increasingly become an institution used primarily by middle class and college educated individuals (Fry, 2014). This suggests that gay marriage, like the drive for racial equality, may end up primarily benefiting the middle class, and may have little tangible impact on the lives of poor and working class gays and lesbians, for whom marriage is less of a priority (Stein, 2013).

The fact that the Gay Rights Movement's recent victories have come by way of winning access to conservative institutions such as marriage and the military—the “Don't Ask Don't Tell” policy was repealed in 2011— indicates that the opinions of moderate Americans continue to place limitations on the scope and effectiveness of movements for social change. Those who choose to get married, or join the military are typically thought of as responsible citizens who embody core American values. This shows that rights are not assets that are given to everyone equally without conditions. Instead, they should be understood as contingent resources, given only to those who prove they deserve them by exhibiting behavior that meets the approval of the majority population. Thus, the Civil Rights Movement benefited the “deserving” African Americans who worked hard and earned the right to live a middle class lifestyle, but not the “undeserving” blacks who sought government assistance through welfare, affirmative action, or school busing programs. The current debate over gay rights appears to be unfolding in a similar manner. As same-sex marriage becomes more common, it threatens to divide gays and lesbians into those who are deemed acceptable because they choose to marry and form traditional nuclear family units— as heterosexuals do— and the “deviant” gays who defy these roles, and are thus justifiably stigmatized.

IV. Conclusion

The Civil Rights Movement is typically celebrated as the best example of the liberating power of rights. Examining this movement from the perspective of the white moderate however, complicates this view. It suggests that while the Civil Rights Movement succeeded in eliminating *de jure* discrimination, it was never able to create widespread support for the cause of racial equality. Many “moderate” voters continue to show a willingness to accept racial inequality, so long as this inequality is seen as a legitimate product of individual choices, rather than as a consequence of illegitimate racial discrimination. Rights discourse has played a powerful role in helping to create this conception by obscuring the harmful effects of implicit racial discrimination, and lending legitimacy to the arguments of those who oppose efforts to address it. This suggests that rights discourse can be used just as effectively to defend status quo power structures as it can to challenge them.

Rights discourse has always been an important component of opposition to civil rights. From the beginning, ardent opponents of the Civil Rights Movement reached for the language of “white rights” to defend the system of legal segregation in the South. This initial defense of Jim Crow had important constitutive impact on the white southerners who made these arguments. It elevated their cause beyond a simple defense of white racial superiority, to one rooted in deep-seated constitutional principles. This helped to construct an image of white southerners as heroically defending their rights from dangerous and deviant outsiders. Southern politicians such as Wallace and Maddox used this rights language mobilize supporters and gain power in the Deep South states of Alabama and Georgia. These appeals failed to resonate with a more moderate audience however, because they combined this rights discourse with overt appeals to racism, and tacit support for violence.

In the 1960s, New Right conservatives such as Nixon began to take a more nuanced approach to the issue of racial equality. They gave tacit support to the cause of civil rights, but argued that specific programs such as affirmative action, or school busing, which were designed to help promote racial equality, violated the rights of white Americans. This conception frames rights as a zero-sum game in which new rights necessarily trade off with existing ones (Kruse, 2005). As a result, programs designed to provide targeted benefits to African Americans are seen as making excessive and illegitimate demands which infringe on the legitimate rights of the majority. While the rights of the majority are seen as the product of hard work and self reliance, the rights of minority populations are depicted as illegitimate rewards given on the basis of race alone. Using rights in this way causes white moderates to see themselves as the true victims of racial oppression, not as supporting racism. Though Nixon and others like him were careful not to use discourse which was overtly racist, their arguments were built on implicit discriminatory stereotypes of African Americans as lazy, undeserving, and menacing “others.” If made in isolation, such arguments would be rejected as discriminatory, but because these stereotypes were masked by the discourse of rights, supporters were able to embrace this logic without consciously endorsing racism. This shows that rights are most effective when used to mask discriminatory stereotypes, and are less effective when made in conjunction with them.

Reflecting on the white moderate’s reaction to the Civil Rights Movement can tell us much about the current debate over gay rights. As with the Civil Rights Movement before them, initial opposition to gay rights was fueled by a combination of overtly homophobic and rights-based appeals. While these arguments resonated with their conservative base, this overtly discriminatory language alienated moderates. As anti-gay activists became more sophisticated however, they shunned overtly discriminatory arguments in favor of a more rights-based

approach. Opponents of same-sex marriage have often used this tact, framing themselves as defenders of parental rights and religious liberty, rather than as a recalcitrant majority bent on stubbornly denying rights to gays and lesbians. While the movement for marriage equality has gained momentum of late, most states still prohibit the practice.

Those who seek to bring about social change ignore the opinions of moderate citizens at their peril. This is a fact that many in the Civil Rights Movement were well aware of. As the epigraph at the beginning of this paper shows, King's "Letter from a Birmingham Jail" includes a rather prescient warning of the dangers posed by the "white moderate." King rightly recognized this group as the "greatest threat to freedom," because he realized that it was the white moderate, not the more extreme defenders of segregation, who would ultimately determine the scope of change that society would embrace. As we have seen, the Civil Rights Movement has not impacted all African Americans equally. While many middle class blacks have been able to use newly won rights to gain greater acceptance, policies designed to benefit poor and working class African Americans have failed to garner widespread support, because they are thought to benefit "undeserving" populations. This shows that rights are not granted to everyone equally, but are instead given only to those citizens deemed by the majority to be deserving of them. This greatly limits the types of rights that the American public is willing to accept. The Gay Rights Movement's recent focus on marriage rights is a reflection of this dynamic. The American public has shown an increasing willingness to accept gays and lesbians, so long as they conform to widespread notions of good citizenship, by taking part in "acceptable" activities like getting married or joining the military. Those who do not do these things however, will be seen as "deviant" and are likely to continue to face discrimination in the future.

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