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Chapter 7

Partisan Entrepreneurship and Policy Windows: George Frisbie Hoar and the 1890 Federal Elections Bill

Richard M. Valelly

The rise, fall, and aftermath of the 1890 Federal Elections Bill demonstrate that entrepreneurial defeat, not just accomplishment, has politically formative effects. Little known and poorly understood because it was never enacted, the Elections Bill and its history nonetheless carry an important lesson: failure's repercussions can be pronounced when talented politicians pushing a transformative idea nearly pull it off—the materialization of a grave threat to one side can incite an even more radical reaction. When Senator George Frisbie Hoar (R-Mass.) led the Republican Party's 1889–91 effort simultaneously to revive African American voting rights and the Southern Republican parties, he built on existing law and exceptionally favorable (if today obscure) Supreme Court precedents. Impressed and alarmed by the boldness of his stroke, Democrats struck back. Indeed, they repealed the Reconstruction-era federal elections statutes altogether.

The cycle began in 1888, when the Republican presidential platform began with a call for "effective legislation to secure the integrity and purity of elections. . . . We charge that the present Administration [the Cleveland Admistration] and the Democratic majority in Congress [the House] owe their existence to the suppression of the ballot by a criminal nullification of the Constitution and laws of the United States."[1] Then, during the 51st Congress, 1889–91, when Republicans exercised unified control of national government for the first time since 1883, Hoar, a longtime advocate of black voting rights, coordinated the Republican party's consideration of the Elections Bill. The measure implemented Article I, Section 4 of the Constitution, granting Congress the authority to manage its own elections. The bill transferred the administration of U.S. House elections from the states to the federal judiciary, bypassing Southern Democratic governors and state elections officials.

After House passage on July 2, 1890, the Republican elections initiative

triggered a Senate showdown in late 1890 and early 1891—a thirty-three-day filibuster—that is still studied for its political lessons. The Democratic filibuster cracked the Republicans' cohesion, leading a silver Republican bloc to hijack the floor for a full nine days to enact a silver coinage measure. When Republicans regained control they sought to abolish the filibuster. But the bill instead died on January 26, 1891, when a silver Republican exploited the absence from the floor of a fifth of the Republican caucus. He adroitly moved that the Senate consider new business, a motion that carried—after a dramatic delay of several days to verify the count, which was 35 to 34. Table 1 shows the vote on whether to continue debate (that is, to table the motion for new business).[2]

TABLE 1. SENATE VOTE OF JANUARY 26, 1891, TO CONTINUE DEBATE ON THE FEDERAL ELECTIONS BILL

Party	*Yeas*	*Nays*	*Not voting*	*Total*
Republican	34	6	11	51
Democrat	0	29	8	37
Total	34	35	19	

Source: Xi Wang, *The Trial of Democracy: Black Suffrage and Northern Republicans, 1860–1910* (Athens: University of Georgia Press, 1997), 249, table 6.3. Note that the actual date of the vote was January 26, 1891, but Senate procedure produced a vote on the "*legislative* day" of January 22.

End of story? Not quite. Democrats might have moved on to other issues, such as monetary and tariff policy. But they chose differently. Despite the passage of eighteen months time, Democrats actually ran against the Federal Elections Bill in 1892. The national 1892 platform of the Democratic party denounced the Harrison administration's "tendency to centralize all power at the Federal capital" and immediately turned in the first sentence of the platform's second paragraph to "*the policy of Federal control of elections, to which the Republican party has committed itself*" (emphasis added), warning that it was "fraught with the gravest dangers, scarcely less momentous than would result from a revolution . . . establishing monarchy on the ruins of the Republic." For their part, Republicans did back off a bit, putting the issue lower in the platform. Nonetheless the GOP platform proclaimed, "We demand that every citizen of the United States shall be allowed to cast one free and unrestricted ballot in all public elections . . . the party will never relax its efforts until the integrity of the ballot . . . shall be guaranteed and protected in every State."[3]

The issue of Southern elections administration defined national interparty conflict in 1892. As matters happened, Democrats gained unified control from 1893 to 1895 (previously achieved during the antebellum Buchanan administration.) They promptly used *their* window of opportu-

nity to repeal the federal elections statutes that enforced the Fifteenth Amendment. A House committee report demanded that "every trace of reconstruction measures be wiped from the books." If the Republicans were going to trot out a new statute, then Democrats were simply going to get rid of federal election statutes.[4]

The cycle that stretched from 1888 to 1894 in the end resembled a "boomerang"—to use Theda Skocpol's term from a different policy context.[5] Hoar's policy entrepreneurship had supremely high stakes. If the bill had passed—again, it failed by only one vote—then the formal-legal disenfranchisement of Black Southerners might have stalled. Instead, Hoar and his copartisans touched off a Democratic drive to dismantle the federal elections statutes—thereby destroying much of what Hoar and many other Republicans had long fought for. The damage to African American interests was incalculable. Not until the 1957 Civil Rights Act did Congress reenter the field of voting rights for blacks.

How best to dissect this remarkable sequence of political events?[6] My contribution is to apply John Kingdon's idea of a *policy window,* from his classic analysis, *Agendas, Alternatives, and Public Politics.*[7] The "Republican policy window" from the 1868 through the 1888 presidential elections shows that the window for Hoar was relatively large. I frame who Hoar was and what he brought to the Federal Elections Bill, the statutory and judicial precursors that augmented its threat to the Democratic party, and the regulatory scheme it envisioned—built on a system the Supreme Court had emphatically approved. The impact of the bill on Southern politics alone would have been zero-sum for the Democratic party, but it had other bleak implications as well for Democrats. These events illustrate my primary concern: what can happen to an entrepreneur's goals when she or he engages zero-sum party conflict.

The Size of the Policy Window

To measure Reconstruction and post-Reconstruction policy windows—as they might have been perceived—I devise two scores (see Table 2). The first score sums the *change* in Republican strength, positive or negative, in the Electoral College vote (expressed as percentage points), the positive or negative *change* in the numerical spread in the Senate, and the positive or negative *change* in the numerical spread in the House, and then divides by 100 to yield a figure between 0 and 1. The second score comes from summing the *margins,* expressed in percentages for the Electoral College vote and numerical spreads for the Senate and the House, and dividing by 100. Both measures show that there was a substantial jump in the party's electoral vitality between 1884 and 1888. Substantial policy opportunities occurred for the first time since Reconstruction.

TABLE 2. REPUBLICAN POLICY WINDOWS, 1868–88

	1872	*1876*	*1880*	*1884*	*1888*
Size of change	.64	.17	.31	.15	.52
Size of margin	1.95	-.14	.5	-.43	.57

Source: Patricia Heidotting Conley, *Presidential Mandates: How Elections Shape the National Agenda* (Chicago: University of Chicago Press, 2001), 58–61, table 4.2; Kenneth C. Martis, *The Historical Atlas of Political Parties in the United States Congress 1789–1989* (New York: Macmillan, 1989), 127–43.

Who Hoar Was

What personal intellectual and political history did George Frisbie Hoar bring to this policy window? Although it was not obvious until late in the game, Hoar's factional influence peaked before the 1889–91 period. High noon had come for Hoar when he led the Half-Breed Republican faction that organized the 1880 Republican national convention and influenced the Garfield-Arthur administration.[8]

Nonetheless, going into the 1889–91 cycle Hoar was a formidable player. For one thing, his unswerving support for high tariffs and protection of home industries—and his slashing attacks on the Mugwumps in 1884—made it far easier for his colleagues to entertain his preoccupation with African American rights. Hoar stood for a happy harmony of interests. Without strong Southern Republican parties, the Republicans could never really be certain of the regular electoral and legislative majorities necessary for tariff legislation and revision. High tariffs, industrialization, partisan strength, and Fifteenth Amendment enforcement all went together.[9]

Hoar also knew more than most about election law. He was one of the House Republican appointments to the special electoral commission set up by Congress in 1877 to resolve the crisis of the 1876 presidential election. He chaired the Senate Committee on Privileges and Elections from 1881 through the 51st Congress. During his Senate career, 1877–1904, he "served as bill manager for numerous important measures," including shepherding the Electoral Count Act of 1887 (the measure that affected the 2000 election crisis in Florida) across three Congresses.[10]

Finally, Hoar never got ahead of his colleagues philosophically. He expressed, and may have actually held, a belief in so-called Anglo-Saxon superiority. But he also publicly insisted that white status resulted solely from favorable historical circumstances. Racist feelings were also socially dysfunctional: "in all these race difficulties and troubles, the fault has been with the Anglo-Saxon. . . . The white man has been the offender." For Hoar, the whole point of American fundamental law and democratic principles was inclusion and political progress for all citizens.[11]

Statutory and Judicial Precursors of the Federal Elections Bill

Hoar had yet another major advantage: the availability of potent electoral-regulatory tools that could be turned toward the effective protection of Black voting rights. The conventional wisdom is that all hope for Black suffrage succumbed to the overthrow of the Reconstruction governments, the apparent hostility of the Supreme Court to elections statutes targeted at the South, and, of course, the Compromise of 1877. But in actuality rich possibilities for Black voting rights survived.[12]

Statutory Foundations

Woodrow Wilson's *Congressional Government* unwittingly describes the devices that had this potential. Wilson rails against "The federal supervisor who oversees the balloting for congressmen," a form of electoral regulation that for Wilson "represents the very ugliest side of federal supremacy."[13] This now cryptic literary relic offers a startling window into a once thriving legal-electoral reality. Federal supervisors? Of House elections? When did all this happen? Why?

The so-called very ugliest side of federal supremacy had three statutory foundations: the Immigration and Naturalization Act of 1870 and two federal elections bills enacted back-to-back in 1871 and 1872. It also had extremely strong support from the Supreme Court, something Wilson did not mention in *Congressional Government.* Let us briefly examine each statute, and the Court decisions that strengthened these federal laws.

Reacting in 1870 to the largest fraud ever devised in American electoral history—the production by Tammany Hall of sixty thousand naturalization papers a month before the 1868 elections in New York state, which tainted 16 percent of the state's presidential vote[14]—a Republican Congress placed federal elections administration in cities under direct national control with the 1870 Naturalization Act. It criminalized fraud in the naturalization and citizenship process. Under this statute, federal judges could also, in response to citizen petition, provide (in cities with upward of twenty thousand inhabitants) for bipartisan temporary federal supervision of elections to the House. In such cities, furthermore, Congress authorized the U.S. marshal for the district in which the city was located, "to appoint as many special deputies as may be necessary to preserve order at any election at which representatives in Congress are to be chosen . . . to preserve order . . . and to arrest for any offense or breach of the peace committed in their view."[15]

Then, in the 1871 Federal Elections Act, Congress judicialized the new regulatory scheme. Any two citizens of a city with a population in excess of twenty thousand could petition a federal judicial circuit for special bipartisan supervision of the House election in the district where the city was lo-

cated. The federal supervisors were authorized to assure that no eligible person was omitted from the rolls and to strike the names of unauthorized voters. They were also permitted to assemble and maintain their own registration lists. On election day they and their deputies, as appointed by the U.S. marshal, physically surveilled the polling places from the time they opened until they closed, and could personally inspect and count ballots as they chose. Anyone caught interfering with any voter's right to vote could be brought immediately before a federal judge or commissioner.[16]

In about two years, then, midway through Reconstruction, Congress established an electoral-regulatory structure for U.S. House elections in urbanized districts. It did not operate everywhere; it affected (at most) about 14 percent of U.S. House districts.[17] With the 1872 Civil Appropriation Act, Congress subsequently extended the urban regulatory scheme to rural House districts—if only in part. Under Chapter 1425 of the Civil Appropriation Act of June 1872, any ten citizens of any congressional district could petition for federal *observers* (as opposed to the supervisors provided by the 1870 and 1871 statutes).[18]

Jurisprudential Foundations

This largely Northern system of federal electoral regulation received genuinely emphatic Supreme Court approval. In *ex parte Siebold*, 100 U.S. 371 (1879), the Court dealt with a case in which Baltimore elections officials physically prevented federal supervision of the federal elections in Baltimore in the fall of 1878. In *ex parte Clarke*, 100 U.S. 399 (1879), a companion to *Siebold*, the Court dealt with the prosecution of a Cincinnati city councilman who flagrantly mishandled ballots in violation of both Ohio and U.S. law during these federal elections. What the Court did was stunning: *it denied writs of habeas corpus in both cases.* The regulatory jailing of state and local elections officials was perfectly constitutional.

To accomplish this breathtaking result, the Court rested these 7-2 decisions on a centralizing and muscular reading of Article I, Section 4, of the Constitution, which states that "the Congress may at any time by law make or alter" regulations for the "times, places, and manner of holding elections for Senators and Representatives." Consequently, the Enforcement Act of May 31, 1870, and the supplement passed February 28, 1871, regulated "elections of members of the House of Representatives and were an assertion, on the part of Congress, of a power to pass laws for regulating and superintending said elections, and for securing the purity thereof, and the rights of citizens to vote thereat peaceably and without molestation." In violating these statutes, the petitioners violated the Constitution.

Several things were claimed by counsel for the Baltimore city elections judges (or so the opinion said). But all were wrong. The false propositions were the following: Congress had to completely superintend national elec-

tions or not at all, since "concurrent sovereignty" in electoral regulation was intrinsically impossible; it could not punish state and local elections officers for interfering with federal officials because the former were not required to protect federal interests; punishment of state and local officials amounted to double jeopardy; federal marshals could not act in states or cities, because law enforcement was a state and local prerogative; and Congress could not require federal circuit courts to appoint elections supervisors, who were executive, not judicial, officers. The opinion for the Court denied all of these propositions.

Article I, Section 4, had a "natural sense" that was "the contrary of that assumed by the counsel of the petititoners." Specifically, Congress could legislate as it saw fit, and if that resulted in "concurrent sovereignty" then the "paramount character" of the federal regulations "has the effect to supersede those made by the State, so far as the two are inconsistent, and no farther." The opinion went to on to add, "Let a spirit of national as well as local patriotism once prevail . . . and we shall hear no more about the impossibility of harmonious action between the national and State governments in a matter in which they have a mutual interest." As for prosecution of state and local elections officials, the United States had a constitutional interest in "the faithful performance . . . of their respective duties. This necessarily follows from the mixed character of the transaction, State and national. A violation of duty is an offence against the United States, for which the offender is justly amenable to that government. No official position can shelter him from this responsibility." After putting to one side the issue of double jeopardy, the majority opinion then exploded: "It seems to be often overlooked that a national constitution has been adopted in this country, establishing a real government therein, operating upon persons and territory and things." Thus it was "an incontrovertible principle, that the government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it. . . . Why do we have marshals at all, if they cannot physically lay their hands on persons and things in the performance of their proper duties?" The alternative was to "drive the national government out of the United States, and relegate it to the District of Columbia, or perhaps to some foreign soil. We shall bring it to a condition of greater helplessness than that of the old confederation." As for the appointment of an elections supervisor by a federal circuit court, Congress could properly lodge that power in a federal circuit court.

The opinion for the Court in *Siebold* ended on a strongly nationalist note: "The true doctrine . . . is this, that whilst the States are really sovereign as to all matters which have not been granted to the jurisdiction and control of the United States, the Constitution and the constitutional laws of the latter are . . . the supreme law of the land; and when they conflict with the laws of the States, they are of paramount authority and obligation."[19]

It is hard to imagine a stronger endorsement of the federal electoral-regulatory scheme than the one which the Court provided. *But could these ideas help Black voters in Southern congressional districts?* If they did not, then there could never have been a Federal Elections Bill. The missing link is the remarkable 1884 case *ex parte Yarbrough,* 110 U.S. 651.

The case facts were unhappily familiar. Jasper Yarbrough, several kin, and other white males were involved in a Klan-like conspiracy to intimidate black voters in a U.S. House election in Georgia. The defense argued that there was no valid indictment or process under two former pieces of the federal elections acts (by then placed in the *Revised Statutes,* per the code revision of 1874). One section criminalized any conspiracy against a citizen's enjoyment of any right under the Constitution; the other criminalized conspiracy to obstruct voting in national elections. These sections of the code, the defense claimed, were simply unconstitutional.[20]

The defense's position was legally quite promising. Several Court decisions seemed to advantage it. These decisions came from black voting rights cases that got to the Court during and after the collapse of Reconstruction.[21] But in *Yarbrough* the Court broke free from these earlier cases, taking its cue instead from the ideas in *Siebold* and *Clarke.* The Court in fact *strengthened* Fifteenth Amendment enforcement by fusing it to the congressional regulatory power contained in Article I.

Speaking for a now unanimous Court, Justice Miller denied the defense's petition for a writ of habeas corpus. At stake was whether Congress could constitutionally protect the national electoral processes that selected representatives to Congress. Article I of the Constitution gave it ample authority to do so, and it was power that Congress had repeatedly exercised. "If this government is anything more than a mere aggregation of delegated agents of other states and governments, each of which is superior to the general government, it must have the power to protect the elections on which its existence depends, from violence and corruption. If it has not this power, it is left helpless before the two great natural and historical enemies of all republics, open violence and insidious corruption." To then draw the inferences that followed from this point, Miller took two tacks: description of how Congress always protected federal officers in the conduct of their duties, and of how Congress came to protect the elections which gave it form.

With respect to the protection of federal officers, Miller noted that Congress early on criminalized "offenses against person and property committed within the District of Columbia, and in forts, arsenals, and other places within the exclusive jurisdiction of the United States," but that "it was slow to pass laws protecting officers of the government from personal injuries inflicted while in discharge of their official duties within the states. This was not for want of power, but because no occasion had arisen which required such legislation." Miller then went on to trace congressional action to "protect government officers while in the exercise of their duty in a hostile com-

munity," touching on federal legislation to strengthen customs enforcement in the wake of the "nullification ordinance of South Carolina," and legislation to protect enrolling officers who enforced conscription during the Civil War.

With respect to congressional protection of the institution's electoral foundations, Congress had, similarly, "been slow to exercise the powers expressly conferred upon it in relation to elections by the fourth section of the first article of the Constitution. . . . It was not until 1842 that Congress took any action under the power here conferred" (a reference to the federally established requirement that each member of the House "should be elected by a separate district"). In February 1872, Congress again acted under its Article I, Section 4 power to require "all the elections for . . . members to be held on the Tuesday after the first Monday in November in 1876, and on the same day of every second year thereafter." Congress also required the two chambers of state legislatures to meet in joint convention and to continue meeting until they successfully chose a U.S. senator. Similarly, Congress "fixed a day, which is to be the same in all states, when the electors for president and vice-president shall be appointed."

Miller then asked, "Can it be doubted that Congress can, by law, protect the act of voting, the place where it is done, and the man who votes from personal violence or intimidation, and the election itself from corruption or fraud?" He added that "it is only because the Congress of the United States, through long habit and long years of forebearance, has, in deference and respect to the states, refrained from the exercise of these powers that they are now doubted." But if Congress needed "to make additional laws for the free, the pure, and the safe exercise of this right of voting, they stand upon the same ground, and are to be upheld for the same reasons."

Miller then turned to the right to vote—as distinct from the prior topics of congressional protection of federal officers and federal elections. Could the right to vote be federally protected? This was an obvious and necessary move for Miller to make; after all, the Constitution placed the power to set suffrage qualifications in the states. But Miller emphasized that matters had changed. "The fifteenth amendment . . . by its limitation on the power of the states in the exercise of their right to prescribe the qualifications of voters in their own elections, and by its limitation of the power of the United States over that subject, clearly shows that the right of suffrage was considered to be of supreme importance to the national government, and was not intended to be left within the exclusive control of the states." He then quoted the entire amendment, including Section 2, which reads "The Congress shall have power to enforce this article by appropriate legislation." Miller thus suggested that the Fifteenth Amendment was part of the general pattern of growing federal control which he had just described, and which dated to the United States' response to the nullification ordinance.

Miller agreed that the amendment "gives no affirmative right to the col-

ored man to vote," but then announced that "it is easy to see that under some circumstances it may operate as the immediate source of a right to vote." After giving an illustration involving Delaware (where the Fifteenth Amendment automatically invalidated the state's constitutional "whites only" restriction), Miller held that "In such cases this fifteenth article of amendment does, *proprio vigore* [with its own force], substantially confer on the negro the right to vote, and congress has the power to protect and enforce that right."

Furthermore, the Fifteenth Amendment affected all national electoral processes.

> This new constitutional right was mainly designed for citizens of African descent. The principle, however, that the protection of the exercise of this right is within the power of Congress, *is as necessary to the right of other citizens to vote as to the colored citizen, and the right to vote in general as to the right to be protected against discrimination.* The exercise of the right in both instances is guarantied by the Constitution, and should be kept free and pure by congressional enactments whenever that is necessary. (emphasis added)

In a concluding passage, Miller sounded a warning: "If the recurrence of such acts as these prisoners stand convicted are too common in one quarter of the country, and give omen of danger from lawless violence, the free use of money in elections, arising from the vast growth of recent wealth in other quarters, presents equal cause for anxiety. If the government of the United States has within its constitutional domain no authority to provide against these evils . . . then, indeed, is the country in danger." Miller ended by writing, "The rule to show cause in this case is discharged, and the writ of habeas corpus denied."[22]

It is essential to step back and fully recognize the result: a *unanimous* Court ruled that in order to protect the electoral processes that made it a national representative assembly, Congress could protect the right to vote of any citizen, Black or white. Congress could therefore directly criminalize any *individual* behavior—not just the state and local official behavior of *Siebold* and *Clarke*—that tainted the integrity of national elections. To enforce such criminal law, the United States could constitutionally deploy and protect federal officials in the states and localities.

In 1888, just before the 51st Congress took up the Federal Elections Bill, one final signal came from the Court—and it too was unambiguously nationalist. In *ex parte Coy*, a 7-2 majority held that the United States properly fined and jailed elections officials in Indianapolis and elsewhere in Indiana for interfering with the U.S. House electoral process. The state and local elections officials claimed that they were immune from punishment under the federal statutes because their admittedly corrupt handling of ballots was intended only to influence the results of state and local elections, not the House election. The Court dismissed the claim, and it did so on the

ground that during the elections the state and local elections officials had, for all intents and purposes, become officers of the United States and were subject to the jurisdiction of the United States.[23]

By this point it should be obvious how potent the Federal Elections Bill's constitutional, statutory, and judicial antecedents were. The first was an Article I, federal electoral-regulatory system devised by the Republican party during the Reconstruction. The second was strong Supreme Court approval for this Article I system—approval which it reiterated in 1888, just before the 51st Congress. The third antecedent was Supreme Court endorsement of a conceptual and legal fusion of the Article I system to the Fifteenth Amendment's implications for the protection of voting rights for African Americans. For some time a majority of the Court had been quite uncomfortable with federal electoral regulation to protect black voting rights that was based on the Civil War Amendments. But the entire Court appeared quite certain, some six years before Congress considered the Federal Elections Bill, that the United States could criminally enforce the Fifteenth Amendment against private action in U.S. House elections under Article I. The possible consequences for Southern election administration were striking. It is time now to turn to the Federal Elections Bill itself—and Hoar's role in its creation.

The Federal Elections Bill Itself

The idea for an elections bill, in Hoar's mind, dated to the aftermath of the 1884 elections. Hoar determined to introduce some sort of new national elections bill. Doing so must have meant admitting two things to himself: that the Supreme Court had broken beyond repair the Reconstruction elections statutes that directly implemented the Fourteenth and Fifteenth Amendments, and that previous post-Reconstruction Southern strategies—counting on Southern promises (President Hayes's approach) or building independent party movements (President Arthur's approach)—were insufficient.

Speaking to the Commonwealth Club of Boston on December 27, 1884, Hoar announced a decision to "consecrate" himself to the "cause" of erecting a "system of laws, institutions, and administration under which . . . millions of men will represent the Black race in the manhood and citizenship of this republic."[24] During the 50th Congress, the Senate Committee on Privileges and Elections, chaired by Hoar, reported on its investigation into the 1886 elections in Washington County, Texas, which left three African Americans dead from lynching. In a dress rehearsal for the epic conflict to come, Democrats prevented a vote on the main recommendation, "that the Committee on Privileges and Elections be directed carefully to revise the existing laws relating to elections of members of Congress, with a view of providing for the more complete

protection of the exercise of the elective franchise." Hoar got to work anyway on drafting a bill.[25]

When the policy window opened during the 51st Congress, the *Siebold-Yarbrough* jurisprudence immediately influenced how Republicans addressed federal electoral regulation. It encouraged Hoar and others to take the implications of Article I, Section 4, to the next step, a fully national approach. Hoar did not start out by building on the regulatory system just described, but instead worked up a new system of dual registration and elections for national elections that was initially roughed out by Senator John Sherman. Many other—particularly Southern and African American—Republicans were interested in such a fully national system.[26]

The alternative, though, was building on and extending the existing supervisory system that so exercised Woodrow Wilson. Worried about administrative feasibility and cost, Hoar and most Republicans soon fell back on this option. Working with the newly arrived Senator John Coit Spooner, Hoar abandoned Sherman's fully national scheme and proposed having "National officers . . . present at the registration and election of Members of Congress, and at the count of the vote, and who should know and report everything which should happen." Hoar opted, in short, for building on the existing hybrid system of "concurrent sovereignty."[27]

Elsewhere in the Capitol, the House Republican caucus wrestled with both approaches, but it too settled on enlarging the existing system of "concurrent sovereignty." A lengthy bill, over seventy pages long, was reported to the full House by a select House committee chaired by Hoar's protégé, Henry Cabot Lodge. After brief and tightly controlled debate, the House passed the Lodge version of the elections bill on July 2, 1890. Every single Democrat who voted on the bill cast his ballot against it. Only two Republicans voted with them.[28]

When the House bill got back to the Senate, Hoar, as chair of the Committee on Privileges and Elections, took custody of it. He sought to make it more palatable to his colleagues by stripping out provisions for military enforcement and the detailed criminal regulations the House had put into the bill. He also watered down the fee schedule for the supervisors, and dispensed with federal juries that would regulate indictment and trial for bribery, intimidation, and fraud. In his opinion, the end result "was a very simple measure. It only extended the law which . . . had been in force in cities of more than twenty thousand inhabitants, to Congressional districts, when there should be an application to the Court, setting forth the necessity for its protection. . . . We added to our Bill a provision that in case of a dispute concerning an election certificate, the Circuit Court of the United States in which the district was situated should hear the case and should award a certificate entitling the member to be placed on the Clerk's roll, and to hold his seat until the House itself should act on the case."[29]

This was not quite the full story. Hoar might have added that during the

51st Congress Republicans had begun a drive to modernize the federal circuit courts—what eventually became the Evarts Circuit Court Bill of 1891 (in the 52nd Congress.) Remodeling the federal judiciary was certain to improve the Elections Bill's impact.[30]

Also, a chief federal election supervisor would in fact already exist for each national judicial circuit.[31] Once appointed, the supervisor's role in regulating the congressional electoral process could be activated by a petition of one hundred citizens in a House district. Regulation by the supervisor was not, in other words, automatic; it had to be activated. Once the supervisor's role was set in motion by the citizen petition to the supervisor, the supervisor could then appoint two deputy supervisors, one from each major political party. Prior to election day, the federal supervisors could screen registration lists. On election day they could observe the balloting.

After election day, the federal supervisors were entitled to offer certifications of the count and of the winner of a House election in parallel with that offered by state elections officials. These certifications would be forwarded by both sets of officials to a three-person U.S. Board of Canvassers appointed by the circuit court.

If the Board of Canvassers found that a federal certificate agreed with a state certificate, then a House candidate with congruent certificates would be elected from the congressional district. If the two certificates disagreed, the Board would vote on whether the federal certificate trumped the state certificate. If the Board decided, by majority vote, that the federal supervisors' certificate was more accurate than the state certificate—something it would know from registration and citizenship data previously collected by the supervisors—then the federal certificate prevailed. The decision could be appealed directly to the circuit court, and that court had authority to reverse it. But the circuit court's decision was final whatever the outcome, reversal or affirmance of the U.S. Board of Canvassers, unless the House itself reversed the court in hearing a contested elections case from the losing candidate.

Whatever the precise details of a finally enrolled statute, its purpose would have been clear: to impose effective federal regulation over all House elections in the South. Before 1890, the Article I system covered less than a fifth of U.S. House districts. The shift envisioned by Hoar and other proponents was therefore huge.[32] The *Siebold-Clarke* doctrine, which protected federal elections supervisors in House districts and allowed them to operate freely there as law enforcement officials—able to actually sanction irregularities—could in principle extend to all U.S. House elections.

As a result of *Yarbrough*, furthermore, federal supervisory officials in the South would have been able to inhibit and sanction behavior by private citizens who attacked black voters as they exercised Fifteenth Amendment rights. Not only would the supervisors have been immune from arrest by state and local officials; indeed, the implication of *Coy* was that these state

and local officials were themselves federal officials with federal responsibilities, if only temporarily. These federal supervisors could themselves arrest and process private individuals who operated in Southern congressional elections to intimidate black voters before, on, or after election day.

Finally, challenge in the federal courts to any new system created by the Federal Elections Bill would face a great obstacle. During the Reconstruction the federal elections statutes that enforced the Civil War Amendments had been implemented for several years in the South *before* the Supreme Court reviewed them. The Federal Elections Bill, in contrast, would be implemented *after* the Court had already reviewed and approved of the plan's various components.

In short, the Federal Elections Bill was a very serious proposal. Its enormity was heightened, furthermore, by highly dramatic circumstances—what Kingdon aptly calls "focusing events." One was the assassination of a Republican candidate from Arkansas, murdered while collecting evidence for his contested elections case. Another was the assembly of Mississippi's famous constitutional convention for the purpose of legally disenfranchising African American voters. America was manifestly at a political crossroads.[33]

Reconstructing the Reconstruction?

What about the Federal Elections Bill's result on the ground? What would it have done to Southern politics? Would it have forestalled Black disenfranchisement, and, if so, how? There are two answers. First, the prospect of a new federal elections bill had a clear effect before the bill reached the Senate. Second, we can fruitfully speculate about its possible impact had it passed and been implemented.

All over Dixie, Republican and independent parties called for fair elections during the 1888 state conventions. In Mississippi, for instance, Republicans ran a statewide ticket in 1888, their first since 1875, with former Confederate general James Chalmers running for governor. The party ran on a platform attacking the "present State Government" for relying on a "fraudulent and violent suppression of free suffrage." The ticket functioned, more or less, until violence forced its cessation. The party then issued a statement that "our candidates are not safely allowed to discuss or protest. We refer not only to such well-known slaughters as Kemper and Copiah. . . . Yazoo City and Leflore, but the nameless killing by creek and bayou." Mississippi Republicans thus urged a federal elections statute.[34]

The Alabama Republican party called for a "national law to regulate the election of members of Congress and presidential electors"; the Arkansas Union Labor party, representing the Agricultural Wheel, the National Farmers Alliance, and the Knights of Labor, fused with the state Republi-

can party and called for the "consolidation of the elections, State and national"; the North Carolina Republican party called for protective state legislation that would assure "free and just exercise of the elective franchise"; the South Carolina Republican party asked "Congress to enact such legislation as shall secure a fair election at least for members of Congress and presidential electors"; and the Waco gathering that fused the State Alliance, Knights of Labor, Union Labor, Prohibition, and Republican parties of Texas called for a "free ballot and a fair count."[35]

In short, the anti-Bourbon forces anticipated a federal elections bill. Thus, in Southern House districts, black citizens would probably have quickly organized themselves to petition the federal courts. During and after the Civil War, when promising political opportunities opened up, Black Southerners regularly displayed capacities for action and organization through an intricate matrix of social networks, associations, institutions, and small business. The Election Bill's design invited such self-organization among black voters and cooperation with Republican candidates and party organizations. That process would have stimulated the rebuilding of Southern Republican party organizations.[36]

The protections afforded by the bill would also have brought talented politicians, both black and white, out of the woodwork. Because federal officials regulated House elections, maintained physical surveillance on them, kept their own records, and could criminally sanction intimidation and fraud, the incentives to join the Republican party—or the largely white but pro-voting rights populist third parties—would have been strong. It was the candidate certified by federal officials, after all—not state and local officials—who would travel to Washington for the next session of Congress. Losing candidates could certainly launch an election contest. But the burden of proof for a contest would rest on them, not on the federally certified winner—and it would have to be carried after an adverse determination by a federal circuit.[37]

What House Republicans Got—As a Party—Out of the Elections Bill

The Elections Bill had great potential, in short, to recast Southern politics. There was another vital sense in which the Federal Elections Bill would have altered the course of Gilded Age politics: it would have increased the national policymaking capacities of the Republican party. The Elections Bill would have augmented the Republican party's policy-making capacities in two ways. It would have brought back a large number of Southern House districts for the Republicans. Also, it institutionally relocated the contested elections process, freeing up legislative time and energy.

To appreciate these two points—(1) that the Federal Elections Bill meant better outcomes for Republicans in Southern House elections; and (2) that the bill freed up scarce legislative time for the majority in the

House—it helps to look more closely at the characteristics of Southern House elections, the contested elections process, and the conflict between that process and growing pressures on legislative time and energy.

Panel A in Table 3 shows that Republicans continued to compete in Southern House elections in the period between the Compromise of 1877 and the introduction and consideration of the Federal Elections Bill. (It is interesting to note, in panel A, that *Yarbrough* may have induced a sharp increase in the supply of Republican candidates in 1884—all the more striking since the number of Southern House districts increased from seventy-three to eighty-five between 1880 and 1882.) But as panel B shows, very few Republicans won House elections.

TABLE 3. HOUSE RACES IN THE FORMER CONFEDERACY, 1878–90

Panel A: Extent of competition						
Election	1878	1880	1882	1884	1886	1888
Percent of districts with competition	85	94	94	91	67	92
Percent of competitive elections with Republican candidates	48	76	61	91	52	86
Panel B: Relative success						
Congress	46th	47th	48th	49th	50th	51st
Total Southern Republicans	3	12	9	8	9	14
Percent of all Southern seats held by Republicans	4	16	10	9	10	16

Sources: *Congressional Quarterly Guide to U.S. Elections* (panel A); Jeffery A. Jenkins, "Partisanship and Contested Election Cases in the House of Representatives, 1789–2002," *Studies in American Political Development* 18 (Fall 2004): 112–35; table 11: "Election Contests and Republican Seats in the Former-Confederate South, 1867–1911" (panel B). States are Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

What made the Republicans' lack of success palpably galling was the fact that *about a third of Southern House districts were majority African American.*[38] Thus the Southern Democratic war of attrition against the voting rights of Black Southerners—through fraud, intimidation, and violence—cost the Republican party a great deal. Imagine how Democrats today would react if, during several presidential elections in a row, the Republican governors of key, battleground states and their secretaries of state delivered the Electoral College to the GOP by adopting irregular administrative tactics. For the Republicans of the Gilded Age, something rather similar was happen-

ing to them—to say nothing of black Southerners who wanted national representation.

Republicans were apparently "cheated" *of about 15–19 seats per Congress*—or so they could understandably conclude.[39] As Table 4 shows, during the post-Compromise Congresses in which Democrats controlled the House, that number of 15–19 seats was a huge percentage of the number necessary to instead give Republicans control of the U.S. House. Small wonder, then, that the administration of national elections in the former Confederacy preoccupied Republicans. Indeed, the day after the House passed Lodge's version of the elections bill, the *National Republican* (edited by New Hampshire Republican Senator William Chandler, the only member of the Senate who knew as much as Hoar did about Southern elections) optimistically predicted that over half of the ex-Confederacy would become Republican, replacing a dozen Democratic senators and twenty Democratic members of the House. Undoubtedly this was too hopeful. But the prediction speaks volumes about Republican expectations.[40]

TABLE 4. DIFFERENCE MADE TO REPUBLICANS BY SOUTHERN HOUSE ELECTIONS ADMINISTRATION

Congress	*46th*	*48th*	*49th*	*50th*
GOP "Southern Deficit" as percent of margin of control exercised by Democrats in Democratic controlled Houses	166	49	90	190

Source: Jerrold G. Rusk, *A Statistical History of the American Electorate* (Washington, D.C.: CQ Press, 2001), 219, and author's calculations.

There was a second way in which the Federal Elections Bill would have helped Republicans. It was not an issue in debate, but it is hard to believe that no one noticed the matter. The Elections Bill would have meant an abandonment of any further reliance on the existing contested elections process—freeing up legislative time at the margin for policy making. Due to the bill's impact on Southern elections, that benefit would immediately accrue to Republicans.

The existing contested elections process had become something of a burden on the House by this point.[41] Further, because so many contests involved Southern House elections, there was little prospect of the burden becoming lighter if no change was made. In the 46th Congress, 45 percent of the 11 cases were Southern; in the 47th, 84 percent of the 19 cases were Southern; in the 48th, 54 percent of the 13 cases were Southern; in the 50th (there were no Southern cases in the 49th), 25 percent of the 8 cases were Southern. Yet only about 25 percent of House seats were Southern. Most of the time, then, the politics of contested elections was disproportionately Southern.[42]

Leading Republicans interested in streamlining the House—principally Thomas Brackett Reed of Maine, Speaker of the House in the 51st (and later the 54th and 55th) Congress(es)—were eager for change. Speaker Reed considered the existing contestation process

a tremendous waste of resources for the committee members, who had to read thousands of pages of testimony, as well as the House, which had to spend an often significant amount of time considering arguments and rendering decisions. His principal concern was the Republican party agenda, which was often put on hold for contested elections cases. As Reed stated, elections contests "consume the time of the House to the exclusion of valuable legislation."[43]

Reed was right. Congress was busier than it had ever been by the 51st Congress. As Table 5 shows, the overall size of the congressional agenda expanded sharply between the 46th and 50th Congresses. In the face of this conjunction of scarce time and constant elections contests, the Federal Elections Bill offered a welcome solution.

TABLE 5. EXPANSION OF THE CONGRESSIONAL AGENDA IN THE GILDED AGE

Measures introduced					*Measures enacted*		
Congress	*Years*	*Total*	*Bills*	*Joint resolutions*	*Total*	*Public*	*Private*
46th	1879–81	10,067	9,481	586	650	372	278
47th	1881–83	10,704	10,194	510	761	419	342
48th	1883–85	11,443	10,961	482	969	284	685
49th	1885–87	15,002	14,618	384	1,452	424	1,028
50th	1887–89	17,078	16,664	414	1,824	570	1,254

Source: Erik W. Austin with Jerome M. Clubb, *Political Facts of the United States Since 1789* (New York: Columbia University Press, 1986), 47, table 1.18.

The Federal Elections Bill's Impact on Party Conflict

To sum up, the word "ingenious" nicely describes the Federal Elections Bill. It had reinforcing complementarities. In strengthening Black voting rights, it increased the number of Republicans likely to take seats in every House—and in doing that it portended more frequent Republican control of the House, and conceivably more frequent unified Republican control of the national government. By transferring to the courts the process of handling contested elections cases at a time when these were frequent, the Federal Elections Bill also freed up scarce legislative time and energy just when agenda control was becoming a more serious problem for parties-in-Congress. Due to the efficiencies of the Federal Elections Bill, the party likely to make the most of this increase in legislative

capacity—at least in the short run—was the Republican Party. Finally, the federal regulatory sytem that created these changes was likely to survive judicial review.

In an important sense, though, the bill was *too* strong. Its partisan implications were not just zero-sum; they were transparently and palpably zero-sum. Hoar had devised and championed the party systemic equivalent of an atom bomb.

Furthermore, in a little-known but vital facet of the whole struggle, Speaker Reed had shown what the bomb could do. Before his ascension in the 51st Congress, Speaker Thomas Brackett Reed expected to streamline House procedure—that is, to impose the famous Reed Rules lowering the size of the House quorum—*in order to pass the Elections Bill* (as well, of course, as other major pieces of legislation.)[44] Reed's imposition of his eponymous reform allowed him to demonstrate why Republicans would benefit from the Elections Bill. The House GOP had begun the 51st Congress with just a one-vote majority. But the House Republican majority quickly grew once the Reed Rules allowed the Speaker and his copartisans to resolve a large crop of contested elections in their favor, thereby sweeping in a more comfortable majority early in the session. It would have been hard for rational politicians to miss the obvious lesson of how Reed smartly increased his majority. The contested elections cases which Reed rapidly sorted out were overwhelmingly from the South. More than one of them involved a black Republican candidate running in an overwhelmingly African American district who nonetheless lost to a Democrat when the state's governor certified the election. By providing for a judicially controlled certification process, the Elections Bill leveled the playing field for Southern Republican candidates and their electoral supporters—thereby obviating the kind of ex post restoration which Reed so briskly supplied.[45]

Reed's real-time demonstration of what an Elections Bill might do to Southern House elections enormously raised the stakes for Democrats. Democrats also came to strongly believe that they had public opinion on their side. In the 51st Congress, Republicans enjoyed a majority of 179–152; in the 52nd, Democrats would enjoy a stunning 238–86 majority, having crushed Republicans in the 1890, off-year elections. Democrats interpreted the House elections as a popular revolt against "Reedism" meant to check the entrenchment of one-party government.[46]

Under the circumstances, were Senate Democrats to let the Elections Bill pass (during the imminent, short session of the 51st Congress, after the 1890 elections), then they had only themselves to blame for whatever the bill did to the Democratic Party. Democratic resistance in the Senate during the short session was tenacious, coordinated, and relentless. Indeed, Democrats displayed perfect cohesion during all of the Senate roll calls related to the Elections Bill.[47]

The Elections Bill's supporters nonetheless fought a remarkably fierce action, coping ably with the problem of only tepid support from Western Republicans and hostility from silver Republicans. President Harrison, a consistent advocate for the measure, lobbied his Senate colleagues. Vice President Levi Morton, also a supporter, entered the process as presiding officer, and worked with Rhode Island Senator Nelson Aldrich (who had taken over for an exhausted Hoar) to abolish the filibuster altogether—choosing what today, thanks to Senator Bill Frist's similar interest, is called "the nuclear option."[48]

Together, Morton and Aldrich actually won a historic vote, 36-32, to abolish the Senate rules that permitted a filibuster. But lacking the parliamentary touch possessed by Speaker Reed, the vice president failed to immediately clinch the results of the vote, paving the way for the disastrous vote of January 26, described at the beginning of this chapter.[49]

TABLE 6. SENATE VOTE, JANUARY 22, 1891, TO ABOLISH THE FILIBUSTER

Party	*Yeas*	*Nays*	*Not voting*	*Total*
Republican	36	4	11	51
Democrat	0	28	9	37
Total	36	32	20	

Source: Voteview for Windows v. 3.0.3; roll call no. 423, Senate, 51st Congress.

Even the January 26 vote just might have been reversed. A bitter dispute broke out when silver Republican Senator William Stewart claimed that the absent Senator Leland Stanford was actually paired with the one-vote majority. While not a strong supporter of the Elections Bill, Stanford had previously announced he would vote both for changing Senate rules to gain cloture and for the bill. The historian Daniel Crofts has shown, in his unpublished dissertation, that Stewart's apparently fantastic "inside" account in his memoir of how he then got Stanford to back him up was in fact true. According to Stewart's memoir, he inadvertently learned of a plan by Aldrich to rush to New York City to get Stanford's vote. Stewart accompanied Aldrich on the train to New York, taking pains to treat his presence as nothing more than a coincidence, but then gave Aldrich the slip in the middle of the night to take an express stagecoach to Manhattan, getting to Stanford's hotel before Aldrich did. In his memoir, Stewart wrote, "we met Senator Aldrich at the elevator on his way to visit Senator Stanford. I told him he was too late." Had Stewart not "happened to be in the cloakroom," and overhead "one of the . . . messengers remark that Senator Aldrich was going to New York that night," Aldrich might have gained Stanford's vote and thus forced a tie that the vice president would have decided.[50]

TABLE 7. PRIORITY INDEX OF EQUAL SUFFRAGE FOR MAJOR PARTY PLATFORMS

	1868	*1872*	*1876*	*1880*	*1884*	*1888*	*1892*
Republicans	0.93	1.0	0.89	0.14	0.04	0.85	0.76
Democrats	0.37	0.93	1.0	0.72	0.45	0.00	0.96

Source: Kirk H. Porter and Donald Bruce Johnson, comps., *National Party Platforms, 1840–1956* (Urbana: University of Illinois Press, 1956).

Democrats did not rest easy, though, after the Republican drive collapsed. Consider Table 7. Based on a measure devised by Carmines and Stimson, it displays scores for the parties on the salience of black suffrage and Southern elections administration.[51] The score is calculated as 1.0 minus the *ratio* of (a) the number of the quadrennial party platform paragraph (counting from the top of the platform) that contains the first clear discussion of African American voting rights and (b) the total number of paragraphs in the party platform. The higher the number, the greater the importance, and vice versa.

As one reads Table 7 from left to right, one sees sharp conflict between the parties during most of Reconstruction. After Reconstruction, however, the parties do not match each other in taking the issue seriously, yo-yoing back and forth. In 1880 and 1884, Republicans hardly treat the matter; Democrats, in contrast, show some concern over black suffrage and Southern elections administration. Then, in 1888, Republican concern shoots back up. But Democrats drop the subject altogether. In 1892, in the wake of the elections bill crisis, Republicans draw attention to the issue. But here we get to the outlier in the series: Democrats rocket from 0 in 1888 all the way up to .96. This is far and away the largest jump in either party for the entire period from 1868 to 1892.

Such a single-minded issue focus did not emerge automatically. Lawrence Grossman has shown that Northern Democrats were racially moderate before the Elections Bill standoff. Their stance on race relations was meant to capitalize on the discontent with the Republican Party that circulated among a small part of the black Republican base in the North and to thereby attract enough black votes to cost Republicans across a variety of Northern state and local elections. The Southern wing enabled this Northern strategy by avoiding open rhetorical pressure for white supremacy. But the Elections Bill brought out full-throated white supremacism among Southern Democrats—not least to break the Populist wave coursing among white Southerners. The Northern Democrats could fight the Southern wing's white supremacist stance, or adopt it. An energetic faction of Northern Democrats pressured Grover Cleveland, the 1892 candidate, and other racial moderates, to rhetorically line up with Southern white supremacy. Eager to return to the White House, they complied.[52]

As the elections turned out, Democrats scored very big: they established

unified control of the national government *for the first time since before the Civil War.* Had the racially moderate Northern Democrats successfully resisted the intraparty turn to white supremacy, and had the party done as well as it actually did, the new Democratic administration would very probably have left the federal statutes alone. But Democrats instead regained unified control—after 36 years—through making federal regulation of elections the paramount national issue. The implications for the federal elections statutes could not have been clearer.

In September 1893, House Democrats proposed to repeal *all* of the Reconstruction-era federal elections statues. On October 10, the House passed a repeal, 201-102. The majority was entirely Democratic; the minority entirely Republican. The Senate did not consider the repealer until December. But on February 7, 1894, the Senate repealed the elections statutes 39-28—and, quite significantly, *without a Republican filibuster.*[53]

That Senate Democrats won a filibuster-free repeal revealed much about what the Southern Democrats had accomplished by then. The Democratic majority numbered forty-four, the Republican minority forty. Nevada's William Stewart, erstwhile adversary of the Elections Bill, had returned to the chamber as a "silver" independent. Three Prairie Populists from South Dakota, Nebraska, and Kansas rounded out the chamber's independent/ minor party contingent. So the numbers hardly precluded a filibuster. Stewart and the Populists would certainly have cooperated with the Democrats to try to impose cloture. But a Republican filibuster was quite possible.

Why, then, was there no such obstruction? In his memoirs Hoar supplied the vital clues:

> The last vestige of the National statute for securing purity of elections was repealed in President Cleveland's second administration. . . . I have reflected very carefully as to my duty in that matter . . . such legislation, to be of any value whatever, must be permanent. If it only be maintained in force while one political party is in power, and repealed when its antagonist comes in, *and is to be a constant matter of political strife and sectional discussion,* it is better . . . to abandon it than to keep up an incessant, fruitless struggle. (emphasis added)[54]

The point seemed to be that Democrats had introduced an alarming new uncertainty into national party competition. They appeared willing and able to indefinitely make electoral regulation *the* issue in American politics. The choice for Republicans was clear. They could subordinate all of their other policy goals in favor of Black voting rights, opting instead for "constant . . . political strife." Or they could call off the fight.

They called off the fight. African Americans were now on their own. Construing the new reality in words that must have had his mentor Charles Sumner spinning in his grave, Hoar later wrote, "So, after [the] repealing act got through the Senate, I announced that, so far as I was concerned, and so far as I had the right to express the opinion of Northern Republi-

cans, I thought the attempt to secure the rights of the colored people by National legislation would be abandoned until there were a considerable change of opinion in the country, and especially in the South, and *until it had ceased to become a matter of party strife*. . . . So far as I know, no Republican has dissented from it."[55]

The political progression that stretches from 1888 to 1894 looks very much like a "boomerang" (Skocpol's apt term for cycles such as this).[56] Leveraging both Republican interest in a renewal of the party's Southern strength and the party's announced concern over Southern elections and African American voting rights, George Frisbie Hoar comes very close to an extraordinary feat: he nearly reconstructs the Reconstruction. Ratcheting up the conflict, the Democrats respond by placing the issue of federal electoral regulation at the very center of national party competition and dare Republicans to keep it up. Brought to the brink of "incessant . . . struggle," the Grand Old Party backs off.

Policy Entrepreneurship, Policy Windows, and Party Showdowns

The dramatic conclusion to the two-party standoff over Hoar's proposal underscored how much rode on the 1890 Federal Elections Bill. Several things had been in play: the basic interests of the two parties as vote-getting, office-seeking organizations; sectional conflict and the continuing red glow cast by the Civil War on national life; the voting rights of African American voters in the South, and thus the actual status in American political life of the Fifteenth Amendment; the filibuster and whether it would persist; the relationship between the federal circuit courts and national electoral administration; and the consequences of Article I, Section 4, for electoral administration. Contrary to the bulk of scholarly opinion, the Federal Elections Bill was by no means an irresponsible, misguided, or futile project. Instead, the bill seized and fortified precisely the ground that was still available to the Republican party for protecting African American voting rights.[57]

As is already apparent, concepts and terms from Kingdon's classic analysis of policymaking clarify this pivotal sequence. For Kingdon, policy change is neither incremental nor rational-comprehensive. Instead, it results from a partly random, disjointed coupling of "three major process streams . . . (1) problem recognition, (2) the formation and refining of policy proposals, and (3) politics." He adds, "These three streams of processes develop and operate large independently of one another." When opportunity knocks, the kind of action undertaken by Hoar connects these three streams.[58]

Kingdon's perspective highlights at least two essential things about the cycle. First, because consideration of the elections bill happened during a window of opportunity, the effort stood a serious chance of success. In-

deed, history could easily have turned out differently. Second, and relatedly, because entrepreneurship was the factor that connected the trio of (1) political change, (2) problem definition, and (3) refinement of relevant proposals, George Frisbie Hoar's considerable expertise and creativity bore fully on the situation and aroused the energies of many partisan colleagues in both houses of Congress.

The story also teaches a great deal about the role of policy entrepreneurship when it intersects with sharp partisan conflict. Party divergence plays little role in Kingdon's analysis. Instead, he tacitly assumes partisan convergence or inaction as constant and background features of policymaking dynamics. Kingdon treats a party platform, for instance, as "a grab bag of mostly very vague concerns." He adds, "While differences between the two platforms are obvious, and while the agendas of the parties are different and reasonably clear, the party position could not possibly constitute a serious guide to policy making once the party is in power."[59]

In contrast to Kingdon's premise of party irrelevance, party divergence and conflict were critically defining elements of Federal Elections Bill politics. Hoar's plan had zero-sum implications for the party system: one party would lose; another party would win by as much as the other party lost. The results were explosive. Hoar's party-centered policy entrepreneurship had effects that lasted well beyond the opening of the 51st Congress policy window.

Partisan, zero-sum policy entrepreneurship will feed back into politics, palpably and right away. All that is in question is the direction of the feedback—in a forward cycle, toward the entrepreneur's goals, or in a reverse cycle that will unexpectedly damage, even tragically postpone, those goals.

Way Police Reform," *WP*, September 8, 1928; "Maj. Hesse Wants 1,500 Police Force for War on Crime," *WP*, September 9, 1927 "Klan Seeks Permit to Parade Sept. 13," *WP*, August 13, 1926, 20; "100,000 Visitors Coming to Greet Col. Lindbergh," *WP*, June 7, 1927, 1; "Police Get Orders to Do Their Best to Protect Flier," *WP*, June 10, 1927, 3; "Capital Heads Approve Hesse Plea to Retire," *WP*, March 10, 1929; "Pratt to Urge Police School and More Men," *WP*, April 21, 1929, 20; "Pratt to Back Present Laws; Will Ask None," *WP*, April 25, 1929, 20; "Maj. Pratt's Report," *WP*, January 28, 1930.

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39. Green, *Washington*, 365–66; "Bonus Brigade Asks Permit for Parade," *WP*, December 13, 1931, M14; Barber, *Marching on Washington*, 81–83; "Glassford Moves to Limit Veterans' Stay to 48 Hours," *WP*, May 26, 1932, 1; "The Bonus Seekers," *WP*, June 1, 1932; "Curb on Glassford Benevolence Urged," *WP*, June 8, 1932.

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43. "Troops Ready for Call in Case of Trouble," *WP*, December 4, 1932; "Court Test Is Set Today on Camp Restriction," *WP*, December 5, 1932; "New Police Radio Studio, Nearer Curb on Crime," *WP*, February 6, 1933, 14; "Police Headquarters Given New Modern Switchboard," *WP*, February 20, 1933, 2; "Washington Crime at Low Ebb During Last Few Months," *WP*, June 28, 1933, 22.

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45. David J. Garrow, *Bearing the Cross: Martin Luther King, Jr., and the Southern Christian Leadership Conference* (New York: Harper, 1986), 272, 277; Barber, *Marching on Washington*, 149–50.

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Chapter 7. Partisan Entrepreneurship and Policy Windows: George Frisbie Hoar and the 1890 Federal Elections Bill

Dan Crofts provided invaluable comments on an early draft. A residential research fellowship at the Massachusetts Historical Society to work with the papers of George Frisbie Hoar in June 1996 allowed me to learn a great deal about Hoar.

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18. Wang, *Trial of Democracy*, app. 5, 292–93.

19. *Ex parte Siebold*, decision for the Court by Justice Bradley, quotations at 382, 386–88, 394, 395–96.

20. The supposedly unconstitutional sections of the Revised Statutes were Sections 5508 (formerly Section 6 of the First Federal Elections Act of May 31, 1870) and Section 5520 (a piece of Section 2 of the Third Federal Elections Act—the Ku-Klux Act—of April 20, 1871). Wang, *Trial of Democracy*, app. 6, 294–99, "Sections from the Enforcement Acts in the *Revised Statutes*, Their Repeals, and Amendments." These numbers refer both to the first and second editions of the Revised Statutes; the first edition was published in 1875, the second in 1878.

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Chapter 8. Andrew Johnson and the Politics of Failure

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