

ESSAY

TOWARD A LAW AND POLITICS OF RACIAL SOLIDARITY

Luis Fuentes-Rohwer† & Guy-Uriel Charles††

INTRODUCTION

“It began,” the BBC tells us “with a report of a fake \$20 . . . bill.”¹ Mr. George Floyd, a black man, was killed on May 25, 2020 in Minneapolis, Minnesota while in police custody after a grocery store clerk called 911 to report that Mr. Floyd purchased a pack of cigarettes with what the clerk believed was counterfeit currency.² The clerk also reported that Mr. Floyd appeared to be inebriated.³

When the police arrived, Mr. Floyd was supposedly sitting on top of his car.⁴ The police officers at the scene, Derek Chauvin, Thomas Lane, Tau Thoa, and J. Alexander Keung, ordered Mr. Floyd to step away from his car.⁵ The officers reported that Mr. Floyd was uncooperative.⁶ They arrested him and eventually placed him in a squad car.⁷ Mr. Floyd repeatedly complained that he was feeling unwell and that he could not breathe.⁸ Mr. Chauvin removed him from the squad car and positioned him face first on the ground.⁹ Mr. Lane held Mr. Floyd’s legs, Mr. Keung put pressure on this back, and Mr. Chauvin, who is white, placed his knee on Mr. Floyd’s neck.¹⁰

† Class of 1950 Herman B. Wells Endowed Professor of Law, Indiana University Maurer School of Law.

†† Edward & Ellen Schwarzman Professor of Law, Co—Director, Center on Law, Race, and Politics, Duke Law School.

¹ *George Floyd: What happened in the final moments of his life*, BBC NEWS (July 1, 2020), <https://www.bbc.com/news/world-us-canada-52861726> [<https://perma.cc/MN23-PAWR>].

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Supra* note 1

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Mr. Floyd continued to complain that he could not breathe.¹¹ Mr. Chauvin knelt on Mr. Floyd's neck for approximately eight minutes and 15 or so seconds even as Mr. Floyd continued to complain that he was dying and could not breathe.¹²

Onlookers and bystanders plaintively implored the officers to relent, as it was obvious to them that Mr. Floyd was in distress.¹³ A paramedic finally arrived at the scene to check Mr. Floyd's pulse.¹⁴ Mr. Floyd was eventually taken to the hospital where his death was officially confirmed.¹⁵ A bystander at the scene recorded the event and posted it on Facebook.¹⁶ That evening hundreds of people took to the streets in Minneapolis to protest the manner in which Mr. Floyd was killed by the police.¹⁷

"It began," the BBC tells us, though it does not tell us exactly what is the "it" that "began."¹⁸ "It," the nondescript nominative pronoun, ostensibly refers to the events that led to the killing of George Floyd. The logical and plausible contextual interpretation is that "it" was referring to the allegation that Mr. Floyd used counterfeit currency to purchase cigarettes, as if this was a justifiable proximate cause for death. The "it" could have also been pointing to the fact that Mr. Floyd's killing, once again, placed a searing spotlight on racism and structural inequality. America was once more forced to reckon with the depth of its racial subjugation. Relatedly, "it" could have been vaguely gesturing to the fact that Mr. Floyd's killing reignited a modern social movement—loosely understood as the Black Lives Matter Movement—and galvanized protests around the country and the world.

Of course, as a genesis story, to begin with Mr. Floyd's killing is woefully incomplete. Mr. Floyd's killing was a tragic link in a deadly chain. The popular protests that erupted in reaction to his death cannot be viewed in isolation. The protests that followed Mr. Floyd's killing were not only about his death but also a reaction to the death of another black man,

¹¹ *Id.*

¹² Nicholas Bogel-Burroughs, *8 Minutes, 46 Seconds Became a Symbol in George Floyd's Death. The Exact Time Is Less Clear*, N.Y. TIMES (June 18, 2020), <https://www.nytimes.com/2020/06/18/us/george-floyd-timing.html?action=click&module=RelatedLinks&pgtype=Article> [<https://perma.cc/G5DQ-NZBW>].

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Supra* note 1.

18-year-old Michael Brown, shot by police six years earlier in Ferguson, Missouri, just outside of St. Louis.¹⁹ His death came in the wake of the killing of 17-year-old Trayvon Martin by George Zimmerman in Sanford, Florida on February 26, 2012.²⁰ Trayvon Martin died only a few months after police officer Daniel Pantalon used a chokehold on Eric Garner on July 17, 2014 on Staten Island, New York.²¹ Garner repeatedly moaned that he could not breathe until he became unconscious and died.²² Between Eric Garner and George Floyd, seventeen-year old Laquan McDonald was shot by a Chicago police officer on October 20, 2014.²³ One month later, twelve-year old Tamir Rice was shot by a Cleveland police officer.²⁴ On April 4, 2015, Walter Scott was shot by a police officer in North Charleston, South Carolina.²⁵ A few weeks later, on April 19, 2015, Freddie Gray died of severe spinal injury one week after he was chased and arrested by Baltimore police officers.²⁶ He suffered his injuries between the time of the arrest and the time he arrived at the police station.²⁷ Just a few months later, on July 13, 2015, Sandra Bland was found hanging in

¹⁹ See Update: *Unarmed Teen Michael Brown Killed by Ferguson Police*, THE ST. LOUIS AMERICAN (Aug. 10, 2014), http://www.stlamerican.com/news/local_news/article_1160a5ba-2050-11e4-aa5c-001a4bcf887a.html.

²⁰ Serge F. Kovalski & Campbell Robertson, *New Details Are Released in Shooting of Trayvon Martin*, N. Y. TIMES (May 17, 2012), <https://www.nytimes.com/2012/05/18/us/new-details-are-released-in-shooting-of-teenager.html> [https://perma.cc/7LCF-CA3W].

²¹ Deborah Bloom & Jareen Imam, *New York Man Dies After Chokehold by Police*, CNN (Dec. 8, 2014), <https://www.cnn.com/2014/07/20/justice/ny-chokehold-death/index.html> [https://perma.cc/43CL-NM33].

²² *Id.*

²³ Polly Mesendz, *Chicago Officials Release Video of White Police Officer Shooting Black Teenager*, NEWSWEEK (Nov. 24, 2015), <https://www.newsweek.com/chicago-police-officer-charged-murder-black-teenager-398031> [https://perma.cc/LWE8-PD6C].

²⁴ Emma G. Fitzsimmons, *12-Year Old Boy Dies After Police in Cleveland Shoot Him*, N.Y. TIMES (Nov. 23, 2014), <https://www.nytimes.com/2014/11/24/us/boy-12-dies-after-being-shot-by-cleveland-police-officer.html> [https://perma.cc/4533-S2WX].

²⁵ Michael S. Schmidt & Matt Apuzzo, *South Carolina is Charged With Murder of Walter Scott*, N.Y. TIMES (Apr. 7, 2015), <https://www.nytimes.com/2015/04/08/us/south-carolina-officer-is-charged-with-murder-in-black-mans-death.html> [https://perma.cc/3WGS-47DR].

²⁶ Sheryl Gay Stolberg & Ron Nixon, *Freddie Gray in Baltimore: Another City, Another Death in the Public Eye*, N. Y. TIMES (Apr. 21, 2015), <https://www.nytimes.com/2015/04/22/us/another-mans-death-another-round-of-questions-for-the-police-in-baltimore.html> [https://perma.cc/PV8T-S2UM].

²⁷ *Id.*

her cell after she was arrested and jailed following a pretextual traffic stop in Walker County, Texas.²⁸ Slightly less than a year later, on July 5, 2016, Alton Sterling was shot by police officers in Baton Rouge Louisiana.²⁹ The next day, July 6 2016, was Philando Castile's last.³⁰ He was shot by a police officer just outside of the Twin Cities in Minnesota.³¹ On March 18, 2018, police officers shot an unarmed Stephon Clark in Sacramento, California.³² On February 23, 2020, Ahmaud Arbery was jogging near his home in Glynn County, Georgia when he was accosted by three white men, one of whom eventually shot him.³³ Breonna Taylor was sleeping when her bed on March 13, 2020 when police officers used a battering ram to enter her apartment.³⁴ Police officers shot at least 20 times into her apartment and shot Ms. Taylor at least eight times, killing her.³⁵

These killings have occurred under different factual circumstances, in different states, at the hands of both state and private actors, and have engendered different levels of outrage on the basis of their perceived egregiousness. Collectively and cumulatively, they have forced Americans to, once again, wrestle with the visible manifestation of racism and structural inequality. This confrontation is not simply a function of the inability to avert one's eyes when

²⁸ David Montgomery, *New Details Released in Sandra Bland's Death in Texas Jail*, N. Y. TIMES (July 20, 2015), <https://www.nytimes.com/2015/07/21/us/new-details-released-in-sandra-blands-death-in-texas-jail.html?smid=pl-share> [https://perma.cc/9GW4-UZGQ].

²⁹ Richard Fausset, Richard Perez-Pena, & Campbell Robertson, *Alton Sterling Shooting in Baton Rouge Prompts Justice Dept. Investigation*, N. Y. TIMES (July 6, 2016), <https://www.nytimes.com/2016/07/06/us/alton-sterling-baton-rouge-shooting.html> [https://perma.cc/F7SC-4FER].

³⁰ Mitch Smith, *Video of Police Killing of Philando Castille is Publicly Released*, N. Y. TIMES (June 20, 2017), <https://www.nytimes.com/2017/06/20/us/police-shooting-castille-trial-video.html> [https://perma.cc/8B9W-LDCY].

³¹ *Id.*

³² Christine Hauser, *Sacramento Man Fatally Shot by the Police in His Backyard*, N. Y. TIMES (Mar. 21, 2018), <https://www.nytimes.com/2018/03/21/us/stephon-clark-police-shooting.html> [https://perma.cc/5KTN-UH3X].

³³ Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, N. Y. TIMES (Feb. 28, 2021), <https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html> [https://perma.cc/HQH3-KZE6].

³⁴ Richard A. Oppel, Jr., Derrick Bryson Taylor, & Nicholas Bogel-Burroughs, *What to Know About Breonna Taylor's Death*, N. Y. TIMES (Jan. 6, 2021), <https://www.nytimes.com/article/breonna-taylor-police.html> [https://perma.cc/7R42-FT5F].

³⁵ *Id.*

faced with incontrovertible evidence of evident inhumanity and abject degradation, though it is in part that. After all, how to justify the deployment of state power to literally snuff the breath of another human being who was otherwise harmlessly restrained and presented a threat to no one? Or, how not to be appalled by three white men effectively hunting down and shooting a black man who was simply jogging? These facts are self-evidently heinous, and the only acceptable reaction is outrage.

Ours is a moment rife with the possibilities of racial justice. Fundamental change seems possible. The question for the future is about how to harness this moment to make this fundamental change real and lasting. How does a movement translate its demands into actionable policy? In this Essay, we argue for a three-step incremental process, from protest to politics to law. Taking as our example the case of the Voting Rights Act, we illustrate how the Freedom Movement went from its voting rights campaign to the heart of the Democratic Party and ultimately to August 6, 1965, when President Johnson signed the Voting Rights Act into law. Fundamental change, as we show in the pages that follow, requires all three steps.

I

“IF WE CAN CRACK MISSISSIPPI.” THE FREEDOM MOVEMENT COMES TO MISSISSIPPI

The situation in Mississippi was dire. The Freedom Movement came to the state in 1961 to register black citizens to vote. Once there, Movement volunteers encountered violence and intimidation at the hands of the Klan, economic retaliation at the hands of the White Citizens Council, and violence and arrests at the hands of local sheriffs and police.³⁶ There were bombings, beatings and shootings.³⁷ There were evictions, foreclosures and firings.³⁸ There were arrests on trumped-up charges.³⁹ The situation had not much improved by August 1963. After two and a half years of such difficult work, according to Stokely Carmichael, the Movement had managed to register “probably no more than

³⁶ See *Mississippi — the Eye of the Storm*, CIVIL RIGHTS MOVEMENT HISTORY 1961, <https://www.crmvet.org/tim/timhis61.htm#1961vep> [<https://perma.cc/SG9S-EUSS>] (last visited Apr. 18, 2021).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

maybe three hundred [black voters] total.”⁴⁰ The Voter Education Project stopped funding the Mississippi Project.⁴¹ But the Movement could not give up on Mississippi, a place that Movement veterans called “in a class by itself — the absolute deepest pit of racism, violence, and poverty.”⁴² The stakes could not be any higher. “If we can crack Mississippi,” said John Lewis in 1964, “we will likely be able to crack the system in the rest of the country.”⁴³

Internally, Movement leaders debated what their next steps should be. They took notice of the reaction to Freedom Day in Selma, Alabama held on October 7th and the Freedom Vote campaign that began on October 6th.⁴⁴ In both instances, the presence of white volunteers held local officials in check, heightened the FBI’s presence in the region, and brought media attention to the cause. “The thing that was most instructive,” noted Stokely Carmichael, “was the violence. During the three weeks the volunteers from elite private universities were in the state, nobody – local person or volunteer – was badly hurt.”⁴⁵ Importantly, explained Bob Moses, this “was the first time that I realized that the violence could actually be controlled. Turned on and off. That it wasn’t totally random. I realized that somewhere along the line there was someone who . . . could at least send out word for it to stop. And it would. That was a revelation.”⁴⁶ In response, they argued for a summer project that would bring 1,000 white volunteers to Mississippi. Skeptics within the Movement worried that such a large presence of white volunteers would enrage local officials; endanger the local Black community; and would be “an admission of racial dependence.”⁴⁷ But the critics were in the minority, and Mississippi Freedom Summer was born.

The similarities to our present moment are unmistakable; we are asking essentially the same questions. Here is how Jim Forman put it a generation later:

⁴⁰ STOKELY CARMICHAEL & EKWUEME MICHAEL THELWELL, *READY FOR REVOLUTION: THE LIFE AND TIMES OF STOKELY CARMICHAEL* 352 (2003).

⁴¹ *Supra* note 36

⁴² *Id.*

⁴³ James Atwater, “*If We Can Crack Mississippi*”, *THE SATURDAY EVENING POST*, July 25 – Aug. 1, 1964 at 19.

⁴⁴ *Mississippi Summer Project*, CIVIL RIGHTS MOVEMENT ARCHIVE, <https://www.crmvet.org/tim/tim64b.htm#1964b-1> [<https://perma.cc/KN3X-F9UQ>] (last visited Apr. 18, 2021).

⁴⁵ CARMICHAEL, *supra* note 40, at 353.

⁴⁶ *Id.*

⁴⁷ *Supra* note 44.

IN SNCC we had often wondered: How do you make more people in this country share our experiences, understand what it is to look in the face of death because you're black, feel hatred for the federal government that always makes excuses for the brutality of Southern cops and state troopers?

We often wondered: How do you make a fat, rich country like the United States understand that it has starving people within its own boundaries, people without land, people working on Senator Eastland's plantation for three dollars a day or less?

We often wondered: How can you make the people in the United States exercise their responsibility to rid themselves of racist politicians who fight every progressive measure introduced in the halls of Congress?

We often wondered: How can we find the strength to continue our work in the face of the poverty of the people, to do everything that shouts to be done in the absence of so many resources?

The Mississippi Summer Project was an attempt to answer those questions.⁴⁸

Almost 60 years later, we are still looking for answers to these questions.

John Lewis asked a more practical question. During his "March on Washington" speech, he reminded his audience, "politicians who build their career on immoral compromise and allow themselves an open forum of political, economic and social exploitation dominate American politics."⁴⁹ Though conceding that there were exceptions, he continued, "what political leader can stand up and say, 'My party is a party of principles'? For the party of Kennedy is also the party of Eastland. The party of Javits is also the party of Goldwater."⁵⁰ He then asked a crucial question, a question that takes the Movement from protest to the needed arena of politics: "Where is our party?"⁵¹ More specifically, "[w]here is the political party that will make it unnecessary to march on Washington? Where is the political party that will make it unnecessary to march in the streets of Birmingham? Where is the political party that will protect the citizens of Albany,

⁴⁸ JAMES FORMAN, *THE MAKING OF BLACK REVOLUTIONARIES* 418 (1997).

⁴⁹ Lauren Feeney, *Two Versions of John Lewis' Speech*, BILLMOYERS.COM (July 24, 2013) <https://billmoyers.com/content/two-versions-of-john-lewis-speech/#original> [<https://perma.cc/9G3R-3JVK>].

⁵⁰ *Id.*

⁵¹ *See id.*

Georgia?”⁵² Another way to think about these questions is, how do we move from protest to political action through the party system?

In direct response to these questions, Bob Moses proposed on February 9, 1964 the creation of the Mississippi Freedom Democratic Party. To Stokely Carmichael, MFDP was “a bold, creative response to the political realities that confronted us in Mississippi and in the South.”⁵³ In his view, “it was the single most incredible act of organizing in the entire civil rights movement.”⁵⁴ This was a party open to all races and citizens, a party that required neither literacy nor any other qualification other than age and citizenship.⁵⁵ MFDP allowed all members to participate in its internal processes, even those not registered to vote in the state.⁵⁶ In fact, while continuing to register voters through the existing channels, MFDP also conducted its own “freedom registration” campaign.⁵⁷ Importantly, MFDP provided “a framework for community organizing to win political power.”⁵⁸ This meant that MFDP must work at the local level and take on the racist individuals who had committed unconscionable acts of violence, on the local elected officials who refused to register Black voters, on the institutions that refused to acknowledge Black citizens as human beings. Not to mention, Carmichael recognized, that it would take a tremendous amount of work. “It was impossible. Any rational person would not have even started. Forget danger, just the work.”⁵⁹

Just as importantly, MFDP must also take its challenge nationally, to the Democratic Party. MFDP would do precisely that, at the upcoming Democratic National Convention in Atlantic City.⁶⁰ Their goal was to unseat the Mississippi delegation, selected through racist process and institutions.⁶¹ Protest, as it must, came to politics.

⁵² *Id.*

⁵³ CARMICHAEL, *supra* note 40, at 400.

⁵⁴ *Id.*

⁵⁵ *Mississippi Freedom Democratic Party (MFDP) Founded (April)*, CIVIL RIGHTS MOVEMENT ARCHIVE, <https://www.crmvet.org/tim/timhis64.htm#1964mfdp> [<https://perma.cc/GMG4-T428>] (last visited Apr. 18, 2021).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ CARMICHAEL, *supra* note 40, at 401.

⁶⁰ *Supra* note 55.

⁶¹ *Id.*

II

“IS THIS AMERICA?”⁶² THE MISSISSIPPI FREEDOM DEMOCRATIC PARTY COMES TO ATLANTIC CITY

Fannie Lou Hamer came to the 1964 Democratic as one of three delegates of the Mississippi Freedom Democratic Party. President Johnson was terrified of Ms. Hamer and the damage she could cause his candidacy. The Democratic establishment worried about losing the South, and ultimately the '64 presidential election, if the Party capitulated to MFDP's demands. So party leaders issued a warning: if the MFDP continued with their pressure campaign at the Convention, they would not nominate Senator Hubert Humphrey, their preferred candidate, as vice president. But Ms. Hamer was undeterred. “So I said, you mean that one man's position is more important than 400,000 black people's lives? I never was even allowed to meet again.”⁶³

Ms. Hamer made her case to the Credentials Committee on August 22nd.⁶⁴ Speaking right before Rita Schwerner—wife of Michael Schwerner, one of three civil rights workers murdered on June 21st near Philadelphia, Mississippi—her words dripped with a passion borne of injustice and racial oppression. She told the committee of the time in 1962 when she and seventeen others traveled to the county courthouse 26 miles away “to try to register to become first-class citizens.”⁶⁵ The registrar only allowed two of them to apply, telling the rest of the group to “get out.”⁶⁶ Ms. Hamer recalled later how the clerk had asked her to interpret a section of the state constitution about “de facto” laws. She failed the literacy test, since “I knowed [sic] as much about a facto law as a horse knows about Christmas Day.”⁶⁷ As they drove back home, they were stopped by highway patrolmen and the bus driver was charged with “driving a bus the wrong

⁶² Fannie Lou Hamer, *Testimony Before the Credentials Committee, Dem. Nat'l Convention*, AMERICAN PUBLIC MEDIA (Aug. 22, 1964), <https://americanradioworks.publicradio.org/features/sayitplain/flhamer.html> [<https://perma.cc/GH9R-644V>].

⁶³ *Oral History Interview with Fannie Lou Hamer, African-American, Woman, FDP: Member of ex com., 0491, Ruleville, Mississippi. 0491*, KZSU PROJECT SOUTH INTERVIEWS, <https://purl.stanford.edu/zb317wv2717> [<https://perma.cc/7FU5-V3XA>] (last visited Apr. 18, 2021).

⁶⁴ *Supra* note 62.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Supra* note 63.

color.”⁶⁸ Once home, the plantation owner warned her to withdraw her application to register, or else leave her home of 20 years. In fact, even if she withdrew, she “still might have to go because we are not ready for that in Mississippi.”⁶⁹ Ms. Hamer was not cowed. “I didn’t try to register for you,” she responded. “I tried to register for myself.”⁷⁰ She left the plantation that night. But she was not safe. On night of September 16th, 16 bullets were fired into the home where she was staying.⁷¹ Violence and intimidation were constant themes in her life.

She told a second story. On the way home after attending a voter registration workshop with nine others, they stopped at a rest area and a few of her companions went to the lunch counter to order food. A white waitress refused to serve them and a white patrolman yelled, “Y’all get out.”⁷² Annell Ponder, from the Southern Christian Leadership Council, reminded the officer that the U.S. Supreme Court had ruled segregated rest stops unconstitutional. “Ain’t no damn law,” he responded. “You just get out of here.”⁷³ Ms. Ponder was arrested in the parking lot, as she wrote the license plates of the patrol cars. Ms. Hamer, who had stayed on the bus, stepped off once she saw the arrests begin and was also arrested. They were taken to the county jail. From her cell, Ms. Hamer could hear “the sounds of licks and horrible screams. And I could hear somebody say, ‘Can you say, “Yes, sir,” nigger? Can you say, “Yes, sir?”’”⁷⁴ Ms. Hamer could not tell how long the beating went on, though she remembered that “after a while [Ms. Ponder] began to pray, and asked God to have mercy on those people.”⁷⁵

Soon, three white men came to Ms. Hamer’s cell. One of the men told her, “[w]e are going to make you wish you was dead.”⁷⁶ Two black prisoners were ordered to beat her with a blackjack, taking turns as they tired. She tried to “work my feet,” so the patrolman ordered the resting Black prisoner to sit on her feet.⁷⁷ As she began to scream, “one white man

68 *Supra* note 62.

69 *Id.*

70 *Id.*

71 *Id.*

72 *Id.*

73 *Id.*

74 *Supra* note 62

75 *Id.*

76 *Id.*

77 *Id.*

got up and began to beat me in my head and tell me to hush.”⁷⁸ In a later interview, Ms. Hamer said that she “was beaten in jail until my body was just as hard as metal.”⁷⁹ She suffered a blood clot behind her left eye and permanent kidney damage. She was still in jail three days later when, she told the committee, Medgar Evers was assassinated.

Ms. Hamer closed her brief yet powerful statement with a reminder to her audience that she had been treated this way “on account of we want to register, to become first-class citizens.” She pointed fingers. She was asking the Credentials Committee to replace the three candidates elected through a racist and illegitimate process, “[a]nd if the Freedom Democratic Party is not seated now, I question America.”⁸⁰ Ms. Hamer ended with a thundering question: “Is this America, the land of the free and the home of the brave, where we have to sleep with our telephones off the hooks because our lives be threatened daily, because we want to live as decent human beings, in America?”⁸¹

President Johnson wanted none of this. He was coming to Atlantic City for a coronation, not for a fight for the soul of the nation. Two weeks prior, on August 8, the House passed the Economic Opportunity Act, the centerpiece of Johnson’s War on Poverty, which the Senate had approved in slightly different form in July. And two days later, Congress approved the Gulf of Tonkin Resolution by near unanimous vote, thus neutralizing the Vietnam conflict as a campaign issue and taking from Senator Goldwater the chance to press for further escalation. But Johnson could not bask in the glory of these two achievements, having instead to fix “the Mississippi problem.” There was reason to worry. As he told Senator Humphrey, “if we mess with the group of Negroes . . . we will lose fifteen states without even campaigning.”⁸²

Johnson worked behind the scenes to neutralize the MFDP delegation, pressuring the credentials committee to end any support for the Freedom Party. Johnson could not stop Ms. Hamer from speaking to the committee, though he would have liked to; he was afraid of her testimony and how it might be received by the nation. So as he watched her on

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Supra* note 63.

⁸¹ *Id.*

⁸² TAYLOR BRANCH, *PILLAR OF FIRE: AMERICA IN THE KING YEARS, 1963-65* 448 (1998).

television, Johnson called an impromptu press conference knowing that the networks would cut away to the White House, expecting the president to announce his choice of vice president.⁸³ But no major announcement would be forthcoming. Instead, Johnson spoke of small news and noted that “on this day nine months ago at very nearly this same hour in the afternoon, the duties of this office were thrust upon me by a terrible moment in our national history.”⁸⁴ The gambit backfired, however. The networks replayed Ms. Hamer’s testimony in the evening news, to much larger audiences.

Days later, the Johnson administration brokered a solution. Senator Humphrey came to the Pageant Hotel and offered Bob Moses and MFDP negotiators a three-part compromise. First, each member of the Mississippi delegation must pledge support to the presidential candidate and the party’s civil rights platform as a condition to take their seats in the Convention. They expected the delegates to reject the pledge. Second, the party would bar segregated delegations at future conventions, beginning in 1968. And finally, MFDP delegates could come to the convention as nonvoting guests. As the negotiations dragged on, the Party made Joseph Rauh, MFDP’s lawyer, two further concessions: two at-large voting seats at the convention, to be filled by MFDP chair Aaron Henry and Tougaloo College chaplain Edwin King, and the establishment of a special commission to enforce nondiscriminatory standards for the 68 convention. As they discussed these new concessions and whether they could substitute the named delegates, Humphrey told negotiators that the “president will not allow that illiterate woman to speak on the floor of the convention.”⁸⁵ Bob Moses immediately objected, branding the exclusion racist and autocratic. Humphrey first deflected blame, telling the group that this came from President Johnson, not him. He then reasoned that Johnson was likely worried that Ms. Hamer “spoke too emotionally to help the party.”⁸⁶

⁸³ *Supra* note 62.

⁸⁴ BRANCH, *supra* note 82, at 95.

⁸⁵ DeNeen L. Brown, *Civil Rights Crusader Fannie Lou Hamer Defied Men – and Presidents – Who Tried to Silence Her*, N. Y. TIMES (Oct. 6, 2017), <https://www.washingtonpost.com/news/retropolis/wp/2017/10/06/civil-rights-crusader-fannie-lou-hamer-defied-men-and-presidents-who-tried-to-silence-her/> [https://perma.cc/VL7Q-Q4PQ].

⁸⁶ BRANCH, *supra* note 82, at 470

Senator Humphrey pleaded with MFDP leaders to accept the compromise and stop pushing for convention seats. Ms. Hamer shamed him: “Senator Humphrey, I been praying about you, and I been thinking about you, and you’re a good man. . . . The trouble is, you are afraid to do what you know is right.”⁸⁷ Movement leaders offered advice. Dr. King told the group that “being a Negro leader, I want you to take this, but if I were a Mississippi Negro, I would vote against it.” Bayard Rustin had different priorities, and argued, according to Ed King, “that the peace of the world is more important than race at the moment, and the Negroes had to realize that Lyndon Johnson was the great candidate for peace, and if we wanted peace in the world, we had to support him and not upset the convention.”⁸⁸ Roy Wilkins lost his cool and told Ms. Hamer: “You’re ignorant, you don’t know anything about politics. I been in the business over twenty years. You people have put your point across. Now why don’t you pack up and go home?” Joseph Rauh, feeling pressure from all sides, also counseled towards accepting the compromise.

As the group deliberated with Senator Humphrey, Walter Mondale, then Minnesota’s attorney general, went on national television to report that the Credentials Committee, as well as MFDP, had accepted the compromise. Bob Moses stood up immediately and “stomped out of the room, slamming the door in Hubert Humphrey’s face. Although Senator Humphrey was probably caught by surprise too, I was furious.”⁸⁹ Moses had not expected that the MFDP delegation would be seated, nor did he think that the Democratic Party would negotiate in good faith. But this went too far; as Moses wrote later, “here the Democrats were saying we’ll pick your leadership too.”⁹⁰ The Freedom Party voted unanimously to reject the compromise. As MFDP vice-chair Fannie Lou Hamer put it, “we didn’t come all this way for no two seats.”⁹¹

This was a turning point in the history of the Freedom Movement. The MFDP delegation made claims to the Democratic Party about the future of the country and the

⁸⁷ BRANCH, *supra* note 82, at 465

⁸⁸ Anne Romaine, “We Come from a Distance,” (The Story of the Mississippi Freedom Democratic Party through August, 1964) at 304.

⁸⁹ BOB MOSES AND CHARLES COBB, *RADICAL EQUATIONS: CIVIL RIGHTS FROM MISSISSIPPI TO THE ALGEBRA PROJECT* (2002).

⁹⁰ *Id.*

⁹¹ *Id.*

role that common people – “sharecroppers, farmers, and ordinary working people”⁹² —would play in it. The Democratic Party rejected them outright. Reflecting on this moment, Bob Moses wrote years later that “[w]e were trying in part to bring morality into politics, not politics into our morality.”⁹³ Crucially, Moses continued, “MFDP was raising an important question with this country, and with the Democratic Party, as one of its major political institutions: Generations of Black people had been denied access to the political process; could they get it now?”⁹⁴

The future was grim. According to Cleveland Sellers, SNCC’s field secretary, “we were devastated about the fact that, inside of the Democratic Party, morality wasn’t the basis upon which decisions are made. It’s power politics at its rawest.”⁹⁵ Up until that moment, he explained, “we were still very idealistic about, you know, if we do the right things and if we follow the procedures, then good things will happen to you. That wasn’t the case. And so, it was devastating.”⁹⁶ After Atlantic City, SNCC leaders better understood the political dynamics and structures standing in the way of racial progress. They knew then, in August 1964, that the established rules and institutions would not be the way to achieve freedom, justice and equality. “After Atlantic City,” Sellers recalled, “our struggle was not for civil rights, but for liberation.”⁹⁷

John Lewis agreed. “As far as I’m concerned,” he reflected, “this was the turning point of the civil rights movement. I’m absolutely convinced of that.”⁹⁸ Until Atlantic City, the movement had setbacks and disappointments yet could believe that the system was fair and responsive to their calls for justice. The Movement would see results if only they played the game by the rules and did as required. But Atlantic City taught them a very painful lesson. As soon as they made it “to the very center of the system,” they “found the door slammed in our face.”⁹⁹ To Lewis, Atlantic City

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Cleveland Sellers oral history interview conducted by John Dittmer in Denmark, South Carolina*, LIBRARY OF CONGRESS (Mar. 21, 2013), <https://lccn.loc.gov/2015669180> [<https://perma.cc/EY9L-55RB>].

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ JOHN LEWIS, *WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT* 282 (1998).

⁹⁹ *Id.*

marked the moment when “[t]hat crisis of confidence, the spirit of cynicism and suspicion and mistrust that infects the attitude of many Americans toward their government today, began.”¹⁰⁰ Looking back, Lewis concluded that Atlantic City “was the turning point for the country, for the civil rights movement and certainly for SNCC.”¹⁰¹

In the end, MFDP did not achieve its purpose in Atlantic City. The Democratic Party would only offer a compromise that MFDP had no choice but to reject outright. To be sure, the Mississippi Freedom Democratic Party left Atlantic City empty-handed, angry, disenchanted. Some left the Movement altogether and towards Black Power. It is also true, however, MFDP had achieved much. The Party had come to the seat of power, to the center of politics, and forced President Johnson and party leaders to react to their demands. Though losers in a strict sense, they had clearly become influential players within the Democratic Party. It would only be a matter of time—less than a year, to be exact—for the Movement to achieve a better outcome.

III

“THE PRESIDENT HAS ASKED ME TO INVITE YOU. . .”¹⁰²

It began in Selma, Alabama. On January 17, 1965, the Freedom Movement began a voter registration drive in Selma, a city (and county) with abysmal racial disparities in voting. Though African Americans comprised 57% of the population in Dallas County, only 0.9% were registered to vote (compared to 64% of whites).¹⁰³ The same was true across Alabama’s Black Belt counties. Five hundred marchers went to the county courthouse on January 18, stood in the alley all day yet none took the voter registration test. Marchers continued to come to the courthouse in subsequent days, and arrests soon followed. Tension rose. On February 26, the police shot and killed Jimmy Lee Jackson, a 26-year-old Black man, as he tried to help his mother after the police had clubbed her.¹⁰⁴ Mass protests

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Box 1—Legislative Background Voting Rights Act 1965*, (January 1964 – August 1966) VOTING RIGHTS LEGISLATION, LBJ LIBRARY; TELEGRAM FROM PRESIDENT LYNDON B. JOHNSON INVITING MLK TO THE SIGNING OF THE VOTING RIGHTS ACT (Aug. 5, 1965).

¹⁰³ 1961 US COMMISSION ON CIVIL RIGHTS REPORT, BOOK 1 VOTING, US COMMISSION ON CIVIL RIGHTS (1961).

¹⁰⁴ *Jimmie Lee Jackson, Biography*, STANFORD: THE MARTIN LUTHER KING, JR.

ensued, as did plans of a march from Selma to Montgomery to highlight the plight of Alabama's Black population.¹⁰⁵ The march was set for Sunday, March 7.¹⁰⁶

This day became known as "Bloody Sunday," seared in the memory of American history as an infamous instance of police brutality and oppression.¹⁰⁷ After the attack on the Edmund Pettus Bridge, President Johnson could no longer ignore the Movement. Eight days later, and in direct response, Johnson told his audience of around 80 million Americans,

At times, history and fate meet at a single time in a single place to shape a turning point in man's unending search for freedom. So it was at Lexington and Concord. So it was a century ago at Appomattox. So it was last week in Selma, Alabama. There, long suffering men and women peacefully protested the denial of their rights as Americans. Many of them were brutally assaulted.¹⁰⁸

Johnson recognized Selma as a crucial moment—perhaps a necessary one—in the country's history of freedom, on par with the founding and the Civil War. This alone was a significant acknowledgment of the significance of the moment. The Freedom Movement had reached its intended audience. But Johnson left nothing to the imagination. Later in the speech, he came back to Selma and argued that "Bloody Sunday" was "part of a far larger movement which reaches into every section and state of America. It is the effort of American Negroes to secure for themselves the full blessings of American life."¹⁰⁹ Johnson could have stopped there, asking his audience to acknowledge the plight of the Movement and those who fought for freedom in the face of unimaginable sacrifices. Johnson asked his audience for more. "Their cause must be our cause too. Because it's not just Negroes, but really it's all of us, who must overcome the crippling legacy of bigotry

RESEARCH AND EDUCATION INSTITUTE,
<https://kinginstitute.stanford.edu/encyclopedia/jackson-jimmie-lee>
[<https://perma.cc/M28D-4RSM>] (last visited Apr. 18, 2021).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Lyndon B. Johnson: "We Shall Overcome", THE HISTORY PLACE: GREAT SPEECHES COLLECTION (Mar. 15, 1965), <https://historyplace.com/speeches/johnson.htm> [https://perma.cc/R458-XFWH].

¹⁰⁹ *Id.*

and injustice.”¹¹⁰ Then came the line that sent shivers down the spine of those who heard it. “And we shall overcome.”¹¹¹

That this was the anthem of the Movement, uttered by President Johnson, a Texan, a Southerner, was not lost on his audience, who rose to its feet and clapped for what must have felt like forever. The moment had arrived. The *Movement* had arrived. Those words, coming from the same person who rebuffed the Movement in Atlantic City only seven months before, meant everything. Back in Selma, Movement leaders could not believe what they heard. Dr. King cried. They knew what they had accomplished. The Movement had achieved short-term political success. One step remained. They must secure passage of voting rights legislation. Five months later, on August 6, 1965, President Johnson signed into law the Voting Rights Act.

For the signing ceremony, the administration chose a room that fit the moment: the President’s Room near the Senate Chambers. In this same room a 104 years before, President Lincoln signed into law various bills, including the first Confiscation Act, authorizing the US government to seize confederate property and freeing all slaves who fought or worked for the confederate army. Horace Busby wrote to Johnson, “I think a useful and intriguing historic relationship with Lincoln might be established by signing the Voting Rights Bill in the same room 104 years after Lincoln sat at the same place to perform that same duty.”¹¹² We can hardly underscore what the White House was thinking about and what this bill meant to the administration, to the Freedom Movement, and to the nation. This was indeed a Second Reconstruction.

Among those invited to the signing ceremony were congressional VIPs, heads of departments and agencies, members of the Civil Rights Commission and the Equal Employment and Opportunity Commission, select governors and public servants.¹¹³ The list of non-governmental VIPs was remarkable. It included some of the most influential contemporary figures in the civil rights struggle, including Rosa Parks, Linda Brown, Vivian Malone, and James

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Memorandum To the President From Horace Busby on Voting Bill Signing (Aug. 4, 1965); *Box 1 - Legislative Background Voting Rights Act 1965*, (January 1964 – August 1966) VOTING RIGHTS LEGISLATION, LBJ LIBRARY.

¹¹³ Memorandum To Horace Busby From Lee White on Invitations to the Signing Ceremony (Aug. 5 - 6, 1965).

Meredith. The symbolism of these invitations was immeasurable. The invitations also included the Big 6 of civil rights organizations: Roy Wilkins from the NAACP; Dr. King from SCLC; James Farmer from CORE; Whitney Young from the Urban League; John Lewis from SNCC; and A. Philip Randolph from the Brotherhood of Sleeping Car Porters.¹¹⁴

We cannot underemphasize this moment, as Movement leaders bore witness to the signing of the bill for which they had fought for so long. To be clear, the Movement had not won, in the sense that much work remained. The Movement also did not get everything it wanted. It is clear to us, however, that the Movement had achieved more than they had a right to expect seven months before.

CONCLUSION

US history teaches us that achieving the goal of racial justice is difficult. In this brief essay, we explore why. Fundamental change requires a social movement willing to engage the structures of power in order to shift the social norms of its time. Next, it demands direct engagement with political struggle. Finally, change must be memorialized through the passage of legislation. In saying this, we are not suggesting that the movement may then declare victory and celebrate its achievement. Movements have counter-movements. The fight never ends. But we are suggesting that these three steps are required for fundamental change to happen. As we think about our racial reckoning, it bears remembering the racial victories of the past and the challenges for the future.

¹¹⁴ TELEGRAM FROM PRESIDENT LYNDON B. JOHNSON INVITING MLK TO THE SIGNING OF THE VOTING RIGHTS ACT (Aug 5, 1965).