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# Civil Rights and the Making of the Modern American State

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Megan Ming Francis

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MEGAN MING FRANCIS

*Pepperdine University*



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## Civil Rights and the Making of the Modern American State

Did the civil rights movement impact the development of the American state? Despite extensive accounts of civil rights mobilization and narratives of state building, there has been surprisingly little research that explicitly examines the importance and consequence that civil rights activism has had for the process of state building in American political and constitutional development. Through a sweeping archival analysis of the NAACP's battle against lynching and mob violence from 1909 to 1923, this book examines how the NAACP raised public awareness, won over U.S. presidents, and secured the support of Congress. In the NAACP's most far-reaching victory, the Supreme Court ruled that the constitutional rights of black defendants were violated by a white mob in the landmark criminal procedure decision *Moore v. Dempsey* – a decision that changed the relationship of state and local courts to the national state. This book establishes the importance of citizen agency in the making of new constitutional law in a period unexplored by previous scholarship.

Megan Ming Francis is Assistant Professor of Political Science at Pepperdine University. She completed her PhD in the Department of Politics at Princeton University in 2008 and served as a Postdoctoral Fellow at the University of Chicago in 2008–2009 and as a Jerome Hall Postdoctoral Fellow at the Center of Law, Society, and Culture at Indiana University Maurer School of Law in 2009–2010. Francis's research interests include American political development, race, crime, capitalism, and civil rights.

*To my parents, Horace and Annette Francis, who taught me  
how to be courageous in fighting for the things I believe in,  
but most of all taught me how to love.*

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## Acknowledgments

This book was not supposed to happen. Eight years ago, I was at the precipice of leaving the academy. It was the spring of 2005, and I stood on the stairs looking up at the building that housed the Department of Politics at Princeton University and vowed never to return. I was near the end of my second year in graduate school, three weeks away from PhD qualifying exams, and five weeks away from final exams in my last year of coursework, and I did not feel like I wanted anything to do with political science. I felt that the area of research I cared about most – the intersection of law, race, and American political development – was marginalized in the discipline and I was tired of fighting others to care. Unfortunately for my hasty vow and fortunately for my career, I turned around and at that moment ran into Paul Frymer, my thesis advisor, who saw the look of distress on my face and talked me off the proverbial ledge. His ability to wear down my resolve that day changed a lot of things and set me on the course that I am still currently on. I would continue on at Princeton and write a dissertation that I was proud of under the tutelage of a brilliant group of scholars. Indeed, if there has been one lesson that stands out to me over the course of this book project, it is that writing and research comprise a journey that takes one down many unexpected but fascinating roads. I am blessed and humbled that this is part of what I do for a living.

This book has been written because of an incredible network of support from family, friends, colleagues, and mentors to whom I am forever indebted. Firstly, to my dissertation committee: To Melissa Harris-Perry for being a courageous and inspiring mentor and friend. My sincerest thanks to Melissa for always finding time in her life for me and my work. Melissa's blunt honesty about my scholarship has always pushed me to do better (and to rewrite whole chapters!), and her contagious laughter lifted me during some of my most trying times at Princeton. To Paul Frymer, without whom I likely would never have finished Princeton. My thanks to Paul for shepherding me through graduate

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My life outside of the academy is just as important as my life inside the academy. In this area, there are certain people who have shaped my life in ways that the words “thank you” will never seem sufficient: To my sister/cousin Camille Walker for digging me out of many a deep dark academic hole and often reminding me that there was life outside of research and writing. She was the balance I didn’t know I needed but don’t know what I’d do without. I am particularly indebted to the following supportive voices in my life: Tiana Allen, Michelle Antwi, Alexandria Carroll, Jessica Carter, Stan Chen, Christopher Coes, Jeff Dess, Anthony Francis, Hollins Gause, Jaira Harrington, Eddie Lincoln, Stephanie McDuffie, Julie Merseeth, Mike Mitchell, Adrienne Packard, Shana Pearson, Philip Rigueur, Samijo, Tia Silas, Sara Stewart, Matt Story, and Marvin Wilmoth. Thanks to a cat named Meebo and a corgi named President Bartlet for all the distractions. FWMJ has been incredibly supportive and allowed me to pour time into finishing this book project (albeit with time wasted on funny Facebook posts). My sincerest thanks to him for moving across the country and providing me with the exact kind of balance I need. He makes me laugh harder and smile bigger. When I’m done writing, let’s go get some xiao long bao!

My deepest debt of gratitude is reserved for the memories of the people that fill this book and give it life – those who put their lives on the line so that true American democracy could actually appear within reach. Sometimes when I

did not feel like completing this manuscript, their writings on tattered papers inspired me to keep going. From their work on fighting lynchings to their symbolic gains in the Wilson and Harding administrations and then to legal strategizing sessions that culminated in the landmark victory in front of the Supreme Court, this group of women and men forced the federal government to pay attention to their struggle. Today, we stand on the shoulders of greats, and my small hope in writing this book is that we not forget important accounts of how people on the margins of our society helped to close the vast gulf that existed between democratic rhetoric and reality. Nor that we forget how much power we still possess in working collectively toward a more just political and legal system.

## Abbreviations

ACLU	American Civil Liberties Union
AFPS	American Fund for Public Service (The Garland Fund)
AL	Arthur Link
APD	American Political Development
BOD	Board of Director
CCR	Center for Constitutional Rights
CPR	Communities United for Police Reform
KKK	Ku Klux Klan
LOC	Library of Congress
NAACP	National Association for the Advancement of Colored People
NACW	National Association of Colored Women
NUL	National Urban League
PFHUA	Progressive Farmers and Household Union of America
UL	Urban League
UNIA	United Negro Improvement Association
Waskow	Waskow Papers

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## Rethinking Civil Rights and American Political Development

*What's past is prologue.*

– William Shakespeare

*This is the sort of work which the National Association for the Advancement of Colored People is doing. It is a broader question than that of obtaining justice for Negroes. It is a fight for the high principles which we as Americans revere.*

– Walter White<sup>1</sup>

It was a dreary night on September 30, 1919, when a small group of African American tenant farmers peacefully gathered in a church in Phillips County, Arkansas, to organize in seeking relief from the sharecropping system that kept them as virtual slaves to their white landlords. However, the meeting would not end in success. Aware of the union of African Americans, a small band of white law enforcement officials disrupted the gathering by firing shots into the church, first shattering the ceiling lights and then aiming at the frightened men, women, and children trapped in the darkened building. Their fire was returned with fire from inside the church, and one white man was killed. Declaring that the African Americans were forming a plot to kill the “good whites” of Phillips County, prominent whites called on the Ku Klux Klan and other white vigilante organizations from neighboring states such as Mississippi and Tennessee to quell the fabricated insurrection by African Americans. What ensued in Phillips County would become the worst display of racial violence up to that point in the twentieth century: more than 200 African American men, women, and children were indiscriminately hunted and shot down over the course of three days. Thousands were driven from their homes, and the African

<sup>1</sup> Walter White to George Wickersham (former Attorney General in President William Howard Taft's administration) in reference to the NAACP victory in *Moore v. Dempsey*, Letter, March 9, 1923, NAACP Papers, Manuscript Division, Library of Congress, Washington, DC.

American section of town was looted and destroyed. When the dust cleared, seventy-two African American men had been arrested. After swift trials dominated by a bloodthirsty mob, all seventy-two were found guilty, and twelve were sentenced to death by the electric chair.

The Phillips County massacre was not an anomaly; the summer of 1919 had been marked by a series of horrifying race riots across the country.<sup>2</sup> Still, it stood out as the incident with the most devastating consequences and clearly displayed the power of white supremacy and the inadequacy of the American justice system. Twelve African American men faced what the National Association for the Advancement of Colored People's (NAACP) founder William English Walling called "lynching by law." These men, sharecroppers by profession, had been harassed in the first place because they sought to organize against exploitive white landowners who refused to pay them the market price for their cotton. Each member of the Phillips County 12 received a trial that was no longer than an hour. In the courtroom was a bloodthirsty mob that had agreed to let the legal proceedings take place only after the courts had promised that the accused would be found guilty and executed.<sup>3</sup>

The trial was just the latest example of the vulnerability of African American citizenship in postbellum America. At the time this incident occurred, Jim Crow justice was only an inch away from Judge Lynch. It was 1919, and mob-dominated trials and coercive methods of dealing with African American defendants in southern courtrooms were far from abnormal. The national government did not interfere in state criminal proceedings, and no uniform criminal procedure code existed. Individual states were responsible for the handling of their own criminal proceedings.

Despite not having a formal legal arm, the NAACP took as a serious affront the idea that twelve innocent African American men could be sentenced to die in an American courtroom. The sham trial threatened to undermine everything the organization had worked so hard to accomplish. The aspirations to effect equality in education, voting, and labor were doomed if brutal violence against African Americans could continue without punishment. Thus, legal support of the Phillips County 12 seemed like a necessary step for the NAACP. The circumstances surrounding the case were daunting; still, it chose to get involved. More than three years later, the NAACP's work would culminate in the precedent-setting Supreme Court criminal procedure decision, *Moore v. Dempsey* 261 U.S. 86 (1923), which would mark the first time the federal government interfered in state criminal court proceedings. The question before the Supreme Court was whether the presence of a mob in a courtroom violated the due process clause of the Fourteenth Amendment. In a decision written by Justice Oliver Wendell Holmes, the Supreme Court ruled in favor of the

<sup>2</sup> Arthur Waskow, *From Race Riot to Sit-In, 1919 and the 1960s: A Study in the Connections Between Conflict and Violence*, Garden City, NY: Anchor Books, 1967.

<sup>3</sup> Walter White, "'Massacring Whites' in Arkansas," *The Nation*, December 6, 1919, Waskow.

African American defendants and declared that a fair trial must be free from mob domination.

The initial incident that led to *Moore v. Dempsey* coincided with the apex of the NAACP's anti-lynching crusade. The issue of racial violence was foremost on the agenda of the NAACP because unchecked lynching and mob violence were some of the greatest impediments to equality for African Americans at the time of the NAACP's founding in 1909. After the brief period known as Reconstruction came to a close, state governments across the South sought to construct a system of racial and economic domination reminiscent of slavery. They set out to accomplish this goal through unrestricted racial violence. During the post-Reconstruction period, white mobs were free to inflict violence upon African Americans; they could easily, for instance, lynch an African American without punishment.<sup>4</sup> Numerous examples exist in which African Americans were lynched because they were in the wrong place at the wrong time, or when there were new challenges to southern political authority, and especially when the economic standing of southern whites was threatened.<sup>5</sup> Against such injustice African Americans had no recourse. Law enforcement and government officials looked the other way and thus played a complicit role in the violence.

The NAACP was established in the aftermath of a race riot in Springfield, Illinois, that occurred on August 14, 1908. During the riot, white mobs stormed through the African American district, burning homes and destroying business establishments. It took more than 4,000 militiamen two days to restore order. By this time, two people had already been lynched, and 2,000 African Americans had fled the city. Shock waves reverberated throughout the nation that such violence could occur in the North. The racist violence evidenced in the Springfield riot heightened the need for action and mobilized reformers to act. As a result, a biracial coalition of activists, clergy, and scholars was formed in 1909 as a watchdog of liberties for African Americans. The coalition members sought to create a unified front against future racial injustice and committed themselves to improving the fragile citizenship rights of African Americans.<sup>6</sup>

<sup>4</sup> Walter Francis White, *Rope & Faggot: A Biography of Judge Lynch*, New York and London: A. A. Knopf, 1929; Ida B. Wells, *Crusade for Justice: The Autobiography of Ida B. Wells*, Chicago: The University of Chicago Press, 1970; A. Arthur Raper, *The Tragedy of Lynching*, Chapel Hill: University of North Carolina Press, 1933; W. E. B. Du Bois, *Black Reconstruction in America*, New York: Atheneum, 1935; Leon Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow*, New York: Vintage Books, 1998.

<sup>5</sup> Susan Olzak, "The Political Context of Competition: Lynching and Urban Racial Violence, 1882-1914," *Social Forces* 69, no. 2 (1990): 395-421; Stewart Tolnay, E. M. Beck, and James Massey, "Black Competition and White Vengeance: Legal Execution of Blacks as Social Control in the Cotton South, 1890 to 1929," *Social Science Quarterly* 73 (1992): 627-644; Stewart Tolnay and E. M. Beck, *A Festival of Violence: An Analysis of Southern Lynchings, 1882-1930*, Urbana: University of Illinois Press, 1995.

<sup>6</sup> For accounts of the development of the NAACP, see the following: Langston Hughes, *Fight for Freedom*, New York: W. W. Norton, 1962; Charles Flint Kellogg, *NAACP: A History of*